

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1944 OF 2021

ARISING FROM CIVIL APPEAL NO.26 OF 2016

**(ALL ARISING OUT OF MAKINDYE CHIEF MAGISTRATES' COURT CIVIL SUIT NO.77
OF 2008)**

NAKAMYA SYLVIA:.....APPLICANT

VERSUS

- 1. NAKITYO TEDDY**
- 2. NAMUKASA RACHEAL**
- 3. NALUNKUUMA ANNET**
- 4. KIVUMBI JOHN**
- 5. SSONKO FRED :.....RESPONDENTS**

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING

Introduction:

The applicant, Mrs. Nakamya Sylvia filed this application under the provisions of **Section 98 of the Civil Procedure Act Cap.71, Order 24 rules 1, 3, 10 & 12** as well as **Order 51 rule 6** and **Order 52 rules 1 & 3 of the Civil Procedure Rules S.I 71-1** seeking for orders that;

- 1. This court be pleased to record the applicant herein as the appellant in Civil Appeal No.26 of 2016 to replace BENNA MUWANGA a deceased person.**
- 2. The applicant herein be allowed to prosecute or defend all applications arising from Civil Appeal No.26 of 2016.**
- 3. Costs of the Application be in the cause.**

The grounds of the application are contained the affidavit in support of Ms. Nakamya Sylvia wherein she deposed that she is one of the biological daughters of the late Benna Muwanga who was the appellant in **Civil Appeal No.26 of 2016** and that she obtained a grant of letters of administration over the deceased's estate on 21st September, 2021 vide **HCT-00-FD-AC-346 of 2019**.

That while **Civil Appeal No.26 of 2016** was determined in favor of the late Benna Muwanga who was the appellant therein, the respondents filed **Miscellaneous Application No.2001**



of 2018 which is still pending before this court, seeking clarification of the said judgement and that the applicant is willing to prosecute and defend all applications arising from the **Civil Appeal No.26 of 2016** therefore it is in the best interest of justice that the deceased be substituted with the Applicant.

- 5 In reply, the 1st respondent filed an affidavit on behalf of 2nd, 3rd and 5th respondents wherein she stated that the late Benna Muwanga passed on before the determination of **Miscellaneous Application No.2001 of 2018**.

10 That on the advice of her lawyers, the 1st respondent believes that in the interest of justice, the late Benna Muwanga ought to be replaced by her legal representative, Ms. Nakamya Sylvia to enable court proceed with hearing the pending application.

Representation:

The applicant was represented by **M/s Sserwada & Co. Advocates** while the 1st respondent was represented by **M/s Prudens Law Advocates**.

15 The respondents were served through their counsel on 26th October, 2021, who acknowledged receipt of both and applicant's submissions and the directives of this court under which parties had been required to file the written submissions.

The respondents did not object to the application. Her counsel accordingly did not file any submissions. In dealing with this matter I have taken into consideration all pleadings as well as the submissions by the applicant.

20 **Consideration of the application.**

The Law.

Section 180 of the Succession Act stipulates that the executor or administrator, as the case may be, of a deceased person is his or her legal representative for all purposes.

25 Furthermore, **section 264 of the Succession Act (supra)** provides that after a grant of letters of administration, no other person other than to whom the same has been granted has power to sue or prosecute any suit or otherwise act as the representative of the deceased until such grant has been recalled or revoked.

30 **Order 24 rule 3 (1)** empowers court, on an application made for that purpose, to cause the legal representative of the deceased defendant to be made a party and thereafter to proceed with the suit.

This court has noted that there is a pending application before this court to wit; **Miscellaneous Application No. 2001 of 2018** which sought a clarification of the judgment in **Civil Appeal No. 26 of 2016**. The application had however been dismissed on 4th February, 2020, but later reinstated on 5th May, 2021, and is now still pending determination.

The record also shows that on 21st September, 2021, the applicant had obtained letters of administration of the estate of the late Benna Muwanga, vide: **AC No. 346 of 2019**, implying therefore that as a daughter of the deceased and administrator of her estate, the applicant has interest in the outcome of **M.A 2001 of 2018**.

- 5 The leave is therefore granted to make the substitution of the name of Benna Muwanga with that of the applicant herein as the respondent in the reinstated application: **M.A 2001 of 2018**.

The applicants in **M.A 2001 of 2018** had been directed by this court to file reply to the application within 14 days after delivery of the ruling which was delivered on 5th May, 2021;
10 a rejoinder by 12th May, 2021.

Since the directives were not complied with, this court shall proceed to determine the said application on the basis of the pleadings. Ruling to be delivered on notice.

I so order.

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Alexandra Nkonge Rugadya
Judge
20th December, 2021.

Delivered on 20/12/2021 by email
Autopsy
20/12/2021