

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 063 OF 2019

GEOFREY KIBIRA ::: PLAINTIFF

VERSUS

1. NAMPEWO MIRIAM

2. MAGALA GEORGE WILLIAM

3. NANNOZI VERONICA ::: DEFENDANTS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING ON A PRELIMINARY OBJECTION.

Introduction:

1. This is a ruling in respect of a preliminary objection that was raised by counsel for the defendants objecting to counsel for the plaintiff's prayer to have the 2nd and 3rd defendants granted letters of administration limited to a suit (administrators pendente lite) on behalf of the 1st defendant who passed on. Both parties made oral submissions in respect of the objection.



Background;

2. This is an action for recovery of land that has been proceeding interparty until when the 1st defendant passed on, the suit land is registered in the names of the 2nd and 3rd defendants. The process for applying for letters of administration for the estate of the 1st defendant is not yet complete, the 2nd defendant is a grandson to the 1st defendant and the 3rd defendant is the daughter in law to the 1st defendant.
3. The plaintiff desires to have the suit proceed against all parties involved and she wishes to move court to have 2nd and 3rd defendants appointed administrators pendent lite for the estate of the 1st defendant.

Representation;

4. The plaintiff was represented by Dr. Diana Musoke of MS Musoke & Co. Advocates whereas the 2nd and 3rd defendants were represented by Mr. Geoffrey Mutawe of M/S Law Associated Advocates. Both parties made oral submissions which I have considered in the determination of the objection.



Issues for determination;

- i) Whether the plaintiff's prayer to have the 2nd and 3rd defendants appointed administrators pendent lite for the estate of the 1st defendant can be sustained?***

Resolution and determination of the issue;

5. Counsel for the plaintiff submitted that the 1st defendant passed on and no letters of administration have been granted by court for the purposes of his estate. She further submitted that the 2nd defendant is a grandson to the deceased 1st defendant and the 3rd defendant is the daughter in law to the deceased 1st defendant.
6. Counsel for the plaintiff further submitted that the suit should be stayed and have an application to have the 2nd and 3rd defendants appointed administrators pendent lite to enable court proceed to hear the suit.
7. Counsel for the 2nd and 3rd defendants submitted that this is a suit for breach of contract which was between the plaintiff and 1st defendant which was supposed to be completed in 2003 but the 1st defendant failed to transfer the suit land to the plaintiff

and the same suit land is now registered in the names of the 2nd and 3rd defendants.

8. Counsel for the 2nd and 3rd defendants further submits that the plaintiff's pleadings don't speak to the 2nd and 3rd defendants, further states that during scheduling the joint scheduling memorandum under the agreed facts, the plaintiff states how he has never dealt with the 2nd and 3rd defendants. Counsel for the plaintiff prayed to have the instant suit dismissed for failure to disclose a cause of action.

9. In rejoinder, counsel for the plaintiff submitted that from the evidence of the plaintiff he started purchasing the suit land in 1996 and started staying on the same land. By the time the 2nd and 3rd defendants got registered on the land in 2000, the plaintiff was already in occupation of the land.

10. It is the submission of the plaintiff in rejoinder that the 1st defendant effected the transfer of the suit land to the names of the 2nd and 3rd defendants well aware he had already sold the same to the plaintiff.

11. The Succession act cap.230 provides room for the grant of letters of letters of administration limited to the suit under

section 222 which provides that ***“When it is necessary that the representative of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, Limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution”***

12. The grant in such an application is only limited for the purpose of filing or prosecuting a suit or defending a suit, with no powers to the grantee to distribute or deal with the estate under the grant. ***(See; Okway John Kimbo Vs Oddia Nuru & Anor, Misc.App No.0039 of 2016, Before Justice Stephen Mubiru)***

13. Further counsel for the 2nd and 3rd defendant submits that the plaintiff has no claim against the 2nd and 3rd defendants,

however upon perusal of the plaint in the instant suit, the plaintiff clearly states that he brings the action against the defendants jointly and severally for an action of recovery of land.

14. The suit is still in its preliminary stages and pending before this honorable court, the process of acquiring letters of administration for the estate of the 1st defendant has never been complete.

15. For purposes of ensuring that the ends of justice are met and substantive justice is administered, I find that there exist grounds for the plaintiff to bring an action for administrator pendent lite against the 2nd and 3rd defendants for the estate of the 1st defendant.

16. In the premises, it is to the findings of this honorable court that the objections raised by counsel for the 2nd and 3rd defendant stands overruled and the same is dismissed with no orders as to costs.

I SO ORDER.



Hameeqa

NALUZZE AISHA BATALA

JUDGE

12th/03/2024