

UGANDA / JUDGMENT

Amrit Goyal v Hari Chand Goyal & 3 oers (Civil App.No. 109 of 2004) [2006] UGCA 41 (21 June 2006) [2006] UGCA 41

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Civil App.No. 109 of 2004

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\b\insrsid2241246\charrsid15362900 }}{\rtlch\fcs1\ab\af0\ltrch\fcs0
 \b\insrsid2241246\charrsid15362900 25th September 2003 before Justice James Ogoola}}
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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 When this application was ca}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid15362900 lled for hearing, Mr. Masembe}{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid2241246\charrsid11429739

Sewanyana Kanyerezi, co}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid15362900 unsel for Applicant/
Respondent }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 objected to the
commencement of the hearing of the application, which he himself filed in court, to strike out
Civil Appeal No. 10 of 2004 pending in court between the parties. The }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid15362900\charrsid11429739 objection}{\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 was based on the ground that since the }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1258195 filing of the application, the 1st}{\rtlch\fcs1 \ab\af0
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\af0 \ltrch\fcs0 \insrsid15362900 respondent, Hari}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid2241246\charrsid11429739 Chand Goyal had passed away and to date }{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid1258195 there has been no substitut}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid2241246\charrsid11429739 ion of his legal}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1258195 representative on the record.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 Counsel contended that unless }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1258195 and until such substitution is}{\rtlch\fcs1 \af0
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made, the hearing of both the app}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1258195 lication and the
appeal cannot }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 validl

y proceed. Relying on Rule 96 of the Court of Appeal Rules Directions, 1996, counsel pointed out
that it was essential to have the legal representative of the deceased on record to prosecute the}
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application and the appeal.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739 Counsel cited the case of }
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\b\insrsid2241246\charrsid11429739 Abdulla [1958] EA 60. }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid2241246\charrsid11429739 He explained that the rationale in that case was to guard
against injustice to a non party who should not be boun}{\rtlch\fcs1 \af0

d by a decision made in his absence. Such person would be justified to return to Co

urt to have the case retried and that the doctrine of res judicata would not be applicable. Counsel then prayed Court to stay the hearing of this application until proper substitution of the 1

respondent by his legal representative.

In reply, Mr. Oscar Kambona, counsel for the Appellant/Respondents opposed the objection. He confessed he was at a loss as to whether this was an objection or an observation which required no Court ruling.

However, while conceding that the provisions of rule 96 of the Court of

Appeal Rules Directions, 1996, he argued that in the circumstances of this case, substitution was not essential. To him, this was only a procedural matter and he had got

instructions to oppose the application from the deceased prior to his death. He contended that as far as he was concerned, those were sufficient instructions for them to proceed with this application.

ion.

With regard to the appeal, counsel argued, the non substitution would not cause any substantial injustice. According to him, any legal repre

sentative of the deceased would not give instructions contrary to those given by the deceased before he died.

Counsel relied on the case of Kothari Vs Quresh and Another [1967]

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. He, in particular, referred Court to holding no. (ii) where it was sta

ted that it was not necessary that probate of the will be granted before the executor could be made a valid party to the suit as a

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necessary for Court and counsel to spend such}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1258195 } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2241246\charrsid11429739

valuable time to resolve the aforesaid objection. The Registrar is, therefore, directed to make necessary arrangements for the scheduling conferencing of both this application and the pendi} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid15362900

ng appeal between the parties. }{\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\insrsid2241246\charrsid11429739 } {\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\insrsid1258195

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1258195 Each party to bear its costs.

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day of June 2006.

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\lsdsemihidden0 \lsdunhideused0 \lsdpriority70 \lsdlocked0 Dark List Accent 3;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority71 \lsdlocked0 Colorful Shading Accent 3;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority72 \lsdlocked0 Colorful List Accent 3;
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\lsdunhideused0 \lsdpriority62 \lsdlocked0 Light Grid Accent 4;

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