

UGANDA / JUDGMENT

Prince Ssemaggala and 2 Others v Kizza Kyeyune (Miscellaneous Application No. 116 of 2025) [2025] UGHCLD 96 (23 June 2025)

[2025] UGHCLD 96

COURT

HC: Land Division (Uganda)

BEFORE

Echookit, J

CASE / FILE NUMBER

Miscellaneous Application No. 116 of 2025

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THE REPUBLIC OF UGANDA

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

MISCELLANEOUS APPLICATION NO. 116 OF 2025 (ARISING FROM CIVIL SUIT NO. 0550 OF 2024)

1. PRINCE ABUL ALQASIM SSEMAGGALA

2. KIMENYITHADEO

3. KASULE JOSEPH

APPLICANTS

VERSUS

HANNAH KIZZA KYEYUNE RESPONDENT (One of the Administrators and Beneficiaries of the Estate of the Late John William Kyeyune)

Before. Hon. Lady Justice DR. CHRISTINE A. ECHOOKIT

RULING

INTRODUCTION:

- [1]The Applicants brought this application under Section 98 of the Civil Procedure Act, Order 6 rules 28, 29 and 30, Order 7 rule ¹ (a) and Order 52 rule 1 of the Civil Procedure Rules for orders that;
 - a) Civil Suit No. 550 of 2024 be dismissed
 - b) In the alternative the suit be rejected and struck out.
 - [2] The grounds of the application are contained in the supporting affidavit of Prince Abul Alqasim Ssemuggala the 1st Applicant, and briefly are that;
 - a) The Respondent has no cause of action against the Applicants.
 - b) The plaint in Civil Suit No. 550 of 2024 discloses no cause of action against the Applicants and thus needs to be rejected by court on that ground.
 - c) The Respondent has never owned the suit land comprised in Kibuga Block 1 2 Plot 397 land at IVlengo, Kisenyi and thus has no locus to sue the Applicants.
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- d) The Respondent and her co-administrators to the estate of the late John William Kyeyune did not file or exhibit an inventory within the time stipulated by law.
 - e) The Respondent's suit is based or founded on an inventory which was filed out of time, making it illegal and invalid.
 - [3] The Respondent filed an affidavit in reply. The Respondent's affidavit was supported by the affidavits of PAULA MUSOKE KYEYUNE and ELIZABETH TENDO KYEYUNE, her co-administrators, confirming that the suit property was given to the Respondent by the estate, The said supporting affidavits ought to have been titled 'Supplementary Affidavit' instead of 'Affidavit in Reply'.
 - [4] In relounder the Applicants aver that although the Respondent filed Civil Suit No. 505 of 2024 as an administrator of the estate of her late father John William Kyeyune, she claims the suit property in her individual capacity That the suit land comprised in Block 12Plot397 land at IVlengo, Kisenyi has never been given to the Respondent.

HEARING AND REPRESENTATION:

- [5] The Plaintiff was represented by tM/s Bamwite, & Kakuba Advocates The Respondent was represented by IVI/s Najjuma, Nakalule & Co. Advocates. No submissions were filed by either party and so this court will rely on the affidavit evidence of the parties and applicable law, to decide this application

ISSUES TO BE DETERMINED BY COURT:

- [6] Issue 1: Whether High Court Civil Suit No. 550 of 2024 should be dismissed for not disclosing a cause of action?

DETERMINATION OF THE ISSUE BY THIS COURT:

71 In the locus classicus case of Auto Garage Vs Motokov (1971) EA 51 court held that;

"For a suit to disc/ose a cause of action it must show that the Plaintiff enjoyed a right; the right was violated; and that it was the Defendant who violated the right."

[B] When court is considering the issue of cause of action, it must look at the plaint and its annexures. It must also be assumed that the facts as alleged in the plaint are true. (Narottam Bhatia and HermantiniBhatia Vs Boutique Shazim Ltd. SCCA No.16 of 2009. Kapeka Coffee Works Ltd Vs NPART CACA No. 3 of 2000).

Order 7 rule 1(e) of the Civil Procedure Rules (CPR) is mandatory and provides for particulars to be contained in a plaint i.e. facts constituting the cause of action and when it arose; and that a plaint can be rejected where it does not disclose a cause of action or is frivolous and vexatious (Order 7 rule 11(a) and (e)).

That the Plaintiff enjoyed a right;

- [9] The 'lil Applicant in his affidavit in support of the application and in rejoinder averred that although the Respondent in her affidavit in reply stated that she filed Civil Suit No. 550 of 2024 in her capacity as a co-administrator, she actually claims the suit properly in her individual capacity. He further stated that the Respondent has never owned the suit land comprised in Kibuga Block 12 Plot 397 land at Mengo, Kisenyiand thus has no locus to sue the Applicants; and that the Respondent and her co-administrators to the estate of the late John William Kyeyune did not file or exhibit an inventory within the time stipulated by law.
- [10] In reply, the Respondent avers that she filed Civil Suit No. 550 of 2024 in this Court as one of the Administrators and beneficiaries of the Estate of her late father, the late iohn William Kyeyune. That the administrators erroneously thought that the suit property was Plot 404 which was a road reserve and only realized later the actual plot number was 97. That she took possession of the suit property and placed tenants lhereon long

before she recovered the duplicate certificate of title for Plot 397 from Stanbic Bank formerly Grindlays Bank wherein there was a mortgage.

- [11]The Respondent being a daughter of the late John William Kyeyune is a lineal descendant of the deceased The term 'lineal descendant' as provided for under Section 2 of the Succession Act Cap. 268, means a person who is descended in a direct line from the deceased and includes a child, a grandchild of the deceased and any other person related to the deceased in a direct descending line up to six degrees downwards.
- [12]Paragraph 4(a) of the plaint shows that the Plaintiff presented herself as a coadministrator. Paragraph 4(d) and (e) shows that the estate property was distributed among beneficiaries of the estate by the administrators and Plot 397 was given to the Respondent.

From the fore-going, it is evident that the Plaintiff/Respondent enjoyed a right

That the right was violated, and the violation was by the Defendant;

- [13] The Respondent averred in her affidavit in reply that the 1st Applicant fraudulently tampered with Powers of Attorney meant to allow him to register the suit property into the Respondent's names by putting a proviso allowing him to sell her property. That the 1st Applicant fraudulently used Powers of Attorney issued by the administrators to deal in the Respondent's beneficial share or estate property. That the 2nd Applicant who was the Respondent's tenant on the suit premises fraudulently purchased the same with full knowledge that the Respondent was owner. That the 3^d Applicant fraudulently executed and witnessed a sales Agreement dated the 21st day of February, 2024 allegedly signed by tVlusinguzi Rogers. That the 3^d Applicant placed a forged signature of Advocate Qz-N4usinguzl Rogers on a sales Agreement dated 21st day of February, 2024.
- [14] It is apparent to me, therefore, that the Plaintiff has established the presence of a cause of action. A beneficiary of the estate of a deceased person is entitled to inquire into the estate property that she feels has been fraudulently or erroneously dealt with, especially when the suit property was allegedly apportioned to her.

In the premises, it is only proper that the head suit is heard to determine the issues properly before court.

CONCLUSION:

In the final result, this application is dismissed and I order that;

- a) Civil Suit No. 550 of 2024 be and hereby proceeds to trial.
- b) The Applicant shall bear the costs of the application.

It is so ordered.

Dated at Kampala tfris.....1.3 ,-l t t vne day of. ²⁰²⁵

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Hon. Lady Justice Dr. Christine A. Echokit Judge.

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