

Sanyu v Mawanda & 4 Others
(Miscellaneous Application 2997 of 2024)
[2025] UGHCLD 21 (24 January 2025)
 [2025] UGHCLD 21

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

1 / 9

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

Introduction:

-

1. This was an application by Notice of Motion brought under Article 26, 28 & 126 of the 1995 Constitution of Uganda as Amended, Section 98 of the Civil Procedure Act and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules (CPR) for orders that:
 - i) The 1st Respondent in his own capacity and as a representative of the estate of the Late NAKINTU AGNES ELEMERA and or her estate be struck out of the suit for lack of Locus standi.
 - ii) A declaration that the 1st Respondent was illegally added to the suit vide M. A No.1202 of 2023 while all parties to the suit were very well aware that he is not a beneficiary to the Estate of the Late NASSANI SSENTAMU.
 - iii) Costs of the application be provided.

Background;

2. The Applicant brings this application to have the 1st Respondent struck off the suit for locus standi. The late Nakintu Agnes Elemera instituted Civil Suit No. 185 of 2019 in the High Court of Uganda Family Division for revocation of letters granted by the High Court of Nakawa to Namulwana Christine Nyanzi for the estate of the late Yokana K. Nyanzi. The late Nakintu Agnes sought to revoke the said letters of administration on grounds that she and other beneficiaries were left out in the process of obtaining letters of administration.
- 3. The late Namulwana Christine Nyanzi had as well instituted Civil Suit No. 613 of 2018 in the High Court of Uganda at Land Division for tress pass where the late Nakintu Agnes was a defendant. The said suits were consolidated but unfortunately, Namulwana Christine Nyanzi, the plaintiff in Civil Suit No. 613 of 2018 and Nakintu Agnes Elemera the plaintiff in Civil Suit No. 185 of 2019 passed on. Namulwana Christine Nyanzi and Nakintu Agnes Elemera were accordingly replaced with their representatives for purposes of continuity and determination of the suit.
- 4. The applicant applied to be joined onto the suit as a defendant which application was granted. The Applicant now brings this application to have the 1st respondent struck off the suit in his personal capacity and as a representative of the estate of the late Nakintu Agnes Elemera.

Applicant's evidence;

- 5. The application is supported by an affidavit deponed by **SANYU EDISAH**, the applicant which briefly states as follows;
- i) That I am the sole beneficiary to the estate of the late Nassani Ssentamu who was a son to the late Yokana Nyanzi. That on 12th August 2018, my paternal aunt

Namulwana Christine Nanyanzi filed Civil Suit No. 613 of 2018 without my knowledge against tenants and my late mother Nakintu Agnes for trespass.

- ii) That subsequently my late mother filed Civil Suit No. 185 of 2019 at the High Court Family Division seeking cancellation of the letters of Administration obtained by my late paternal aunt Namulwana Christine Nanyanzi and I was never made a party to both suits.
- iii) That at all material times my late mother NAKINTU AGNES only cohabited with my late father the late NASSANI SSENTAMU and were never legally married. That while suing my late aunt, my late mother rightly averred in paragraph e of the plaint in Civil Suit No. 185 of 2018 that I am the only child to the late Nassani Ssentamu and the 1st Respondent was never mentioned anywhere in both suits.
- iv) That the 1st Respondent and I only share a mother who was cohabiting with my late father and that doesn't entitle or qualify the 1st respondent to claim a share in the estate of the late Yokana Nyanzi and Nassani Ssentamu.
- v) That upon my mother's death the 2nd Respondent applied to Court vide MA No. 2012 of 2023 and accordingly Mawanda Moses Mulangira was added as an administrator of the estate of the late Nakintu Agnes well knowing that both my late mother and the 1st Respondent had no beneficiary interest whatsoever in the suit land.
- vi) That on 8th August 2024, I accordingly applied to be added as a party in the above-mentioned suits to protect my interest and the same was granted by consent on 26th August 2024.
- vii) That the 2nd 5th Respondents very well knew that the 1st Respondent and my late mother were not entitled to the estate in issue but continued to involve them in the matter yet I am the only surviving beneficiary to my late father's estate and my late mother Nakintu Agnes and the 1st Respondent are not beneficiaries thereto.

Respondent's evidence;

6. The application is responded to by affidavit in reply deponed by **MOSES MAWANDA**, the 1st respondent which briefly states as follows;
- i) That I was appointed a representative of my late mother NAKINTU JANE at the request of the plaintiff in the main suit Kayongo Godfrey.

- ii) The at the preliminary stage, I shall raise preliminary objections to dispose of the application to wit; that the suit in Land Division No. 613 of 2018 is no longer in existence thus the applicant relied on a nullity, the application amounts to approbation and reprobation and that I was joined onto the suit as a result of a consent judgement and the same must be obeyed unless set aside or varied.
- iii) That my late mother had an interest in the estate of her late husband, Nassani Ssentamu and by implication his father Yokana Nyanzi the reason she filed CS No. 185 of 2019 which was consolidated with CS No. 613 of 2018 at Land Division.
- iv) That when my late mother Jane Nakintu died, the 2nd Respondent wished to proceed with the suit and he filed an application to appoint me as a legal representative since my mother filed CS No. 185 of 2019 and if I am removed, her grievances therein would not be addressed.
- v) That there is consanguinity by blood, adoption and long period of living together for a long time with the late Nassan Ssentamu. That I was born and lived with the duo and I only left their home when aged 5 and placed under the care of my mother's sister, Regent Janet Nabawanuka. Hence as an adopted child of Nassani Ssentamu I have an interest in the estate.
- vi) That the suit is based on possession and I have been on the suit property since birth while the applicant left the land for more than 30 years when in a marriage hence I have adverse possession which is not the case for the applicant.
- vii) That my status was recognized by the estate of Yokana Nyanzi and when there was a discussion between the estate and the squatters, I attended the meeting in my own right.

Representation;

7. The applicant was represented by Counsel Enid Akampurira who was holding brief for Kabakurungi Elly of M/S K. Elly Advocates & Solicitors, Counsel Senbuya Magulu Dauglas for the 2nd Respondent, Brenda Tusime Wandera for the 3rd

Respondent whereas the 1st respondent was represented by M/s John F. Ssengooba & Co. Advocates. The 2nd and 3rd respondents had no objection to the application therefore did not file any affidavits and submissions. The applicants and 1st Respondent filed submissions which have been considered in the determination of this ruling.

8. Issues for determination;

Whether the 1st respondent has locus standi to maintain Civil Suit No.185 of 2019 which was consolidated with Civil Suit No.613 of 2018?

Resolution and determination of the issues;

- 9. Before I delve into the merits of this application, I wish to address the preliminary objections raised by the 1st Respondent in the affidavit in reply to wit;
- i) That Civil suit No. 613 of 2018 in land Division is no longer in existence thus the applicant relied on a nullity. The late Namulwana Christine Nyanzi filed Civil Suit No. 613 of 2018 in this Honorable Court while the late Nakintu Agnes Elemera filed Civil Suit No. 185 of 2019 in the High Court family Division. Both suits were consolidated

therefore hypothesis that Civil Suit No. 613 of 2018 is no longer in existence is rather untenable.

ii) That the application amounts to approbation and reprobation and that the respondent was joined onto the suit as a result of a consent judgement and the same must be obeyed unless set aside or varied.

The doctrine of approbation and reprobation reflects the principle whereby a person cannot both approve and reject an instrument most commonly described as blowing hot and cold. *(See; *Energco (U) Co. Ltd v Geoffrey Rubaramira & Attorney General* CACA No. 183 of 2013)*

The 1st Respondent contends that he was joined onto the suit by a consent judgement that has never been set aside or varied. I note that the Respondent was joined onto the suit as a legal representative to the late Nakintu Agnes Elemera who was the plaintiff in Civil Suit No. 185 of 2019 and a defendant in Civil Suit No. 613 of 2018. The application at hand is about Locus standi which only deals with instituting or the capacity to bring a certain action before Court of law and has nothing to do with defending.

In otherwards, if the late Nakintu Agnes Elemera had no locus to institute Civil Suit No. 185 of 2019, the 1st Respondent as a legal representative can defend Civil Suit No. 613 of 2018. The said objection is misconceived and thus over ruled.

10. The term locus standi literally means a place of standing. It means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding. *(See; *Njau & others v**)

City Council of Nairobi [1976-1985] 1 EA 397 at 407).

- 11. To have locus standi, a claimant must have sufficient interest in the matter to which the claim relates and this depends on the relationship between the matter brought before court and the person bringing it.
- 12. Generally, the requirements for locus standi are these; the plaintiff must have adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought, the interest must not be too remote, the interest must be actual and not a hypothetical one.

- 13. Locus standi is thus not just a procedural question but a question of substance concerning the sufficiency of a litigant's interest or claim in the proceedings.
- 14. In Civil Suit No. 613 of 2018, the late Namulwana Christine Nyanzi in her capacity as the administrator to the estate of the late Yokana K. Nyanzi sued Nakintu Jane and 3 others for trespass. Under paragraph 4 (a)

"The plaintiff is the administrator of the estate of the late Yokana K. Nyanzi and the undisputed owner of all that land comprised in Kyadondo Block 180 Plots 2387, 2389 and 2390 formerly Plot 2 at Kira Kitukutwe Wakiso District which forms part of the estate of the deceased."

- 15. In Civil Suit No. 185 of 2019, Nakintu Agnes Elemere v Namulwana Nyanzi Christine (Administrator of the estate of the late Yokana K. Nyanzi), paragraph 3 of the plaint states;
"The plaintiff brings this action as a widow of the late Nassani Ssentamu (a brother to the defendant) and her claim against the defendant is for; (in part)
- *b) An order for revocation and annulment of letters of administration of the estate of the late Yokana K. Nyanzi granted to the*

defendant by the High Court of Uganda at Nakawa on 1st September 2011.

- *e) A declaration that the plaintiff and other beneficiaries are entitled to the estate of the late Yokana K. Nyanzi through her late husband.*
- *h) A declaration that property comprised in land situate at Kikutukwe formerly Block 180 plot 2 (measuring approximately 2 hectares) is property that belongs to the estate of the late Nassani Ssentamu and not to the estate of the late Yokana K. Nyanzi.*
- 16. The above suits were consolidated, unfortunately, the plaintiffs in both suits passed on. The late Namulwana Christine Nanyazi, plaintiff in Civil Suit No. 613 of 2018 was replaced with the 2nd Respondent who applied to have the 1st Respondent joined to Civil Suit No. 613 of 2018 consolidated with Civil Suit No. 185 of 2019 which the Applicant now challenges on grounds that the late Nakintu Agnes as well as the 1st Respondent do not have interest in the suit property as well as the estate of the late Nassani Ssentamu and that of the late Yokana K. Nyanzi.
- 17. The Applicant contends that the late Nakintu Agnes Elemere and her late father, Nassani Ssentamu were just cohabiting and

the 1st Respondent is not a biological child to the late Nassani Ssentamu.

- 18. It is no doubt that both the late Yokana K. Nyanzi and Nassani Ssentamu died intestate and it is still no doubt that the late Yokana K. Nyanzi was survived by only two children that is to say Nassani Ssentamu and Namulwana Christine Nyanzi (both deceased) and those were the direct beneficiaries to the said estate as his children.

- 19. It is still no doubt that the late Nassani Ssentamu was survived by one biological child, Sanyu Edisa (the Applicant) who he had with the late Nakintu Agnes Elemere. The late Nassani Ssentamu and the late Nakintu Agnes Elemere were never legally married in accordance with the laws of Uganda. Further still, the 1st Respondent Mawanda Moses was not a son to the late Nassani Ssentamu. The late Nakintu Agnes instituted Civil Suit No. 185 of 2019 at family Division as a "widow" of the late Nassani Ssentamu.
- 20. Section 14 of the Succession (Amendment) Act 2022 provides for the distribution of an estate of an intestate to a spouse, dependent relatives, lineal descendants and a customary heir. The same act defines a spouse to mean a husband or wife

married in accordance with the laws of Uganda or another country recognized in Uganda, lineal descendant to mean a person who is descended in a direct line from the deceased and this includes a child, grandchild or any person related to the deceased in a direct descending line up to six degrees downwards and a customary heir to mean a person recognized under the rites and customs of a particular tribe or community of a deceased person.

- 21. The late Nassani Ssentamu and the late Nakintu Agnes Elemere were never legally married but cohabiting a fact that has not been rebutted. Claiming to be a widow to the late Nassani Ssentamu did not accord Nakintu Agnes legal rights to institute Civil Suit No. 185 of 2019 thus she had no locus standi to institute the said suit in the first place as the said section envisaged a spouse, lineal descendants and a customary heir as the only people that can benefit from an estate of an intestate thus braced with the locus to challenge any dealings with the estate contrary to their interest in the same.
- 22. The 1st Respondent on the other hand, is not a son to the late Nassani Ssentamu thus has no legitimate claim in the said

estate nor can he claim through his late mother since she was never legally married to the late Nassani Ssentamu.

- 23. I am alive to the fact that the 1st Respondent was joined onto the said suit as a legal representative of the estate of the late Nakintu Agnes Elemere who held no concrete stakes in the estate of the late Nassani Ssentamu to accord her locus standi to institute the said suit and the 1st Respondent cannot seek to legitimize his claims in the estate in a suit he was only added as a legal representative. The suits in question were for and against the late Nakintu and he can only prosecute and or defend the same in that regard.
- 24. Locus standi is not a matter of procedure but rather substantive law which even the rules of Court are powerless to change.

- 25. The late Nakintu Agnes Elemera in Civil Suit No.185 of 2019 stated that the late Nassani Ssentamu was gifted the suit land comprised in Kyadondo Block 180 Plots 2 (now 2387,2389 & 2390) at Kira Kitukutwe in Wakiso District through a gift inter vivos however, the said gift deed was never attached onto the plaint yet it formed the basis of the plaintiff's claim. This Court

considers these conclusory allegations with no factual support thus insufficient to sustain a claim.

- 26. One of the basic considerations which underpin the principle of locus standi is that court's time should not be wasted on hypothetical and /or abstract issues, or at the instance of mere busy bodies who have no genuine grievances. (See;Fenekansi

Kiwanuka v Malkit Singh Sondh HCMA No. 163 of 2004)

- 27. The late Nakintu Agnes Elemera had no logical claim in both the estate of the late Nassani Ssentamu and that of the late Yokana K. Nyanzi thus having no locus to institute the said suit.
- *28.* Be that as it may, Civil Suit No. 185 of 2019 sought to revoke letters of administration to the estate of the late Yokana K. Nyanzi, however, it's a principle of law that letters of administration may be revoked when they become inoperative as it is stated in Section 234(2) (d) of the Succession Act cap 162. Death is one of the aspects where courts of law have concluded that letters of administration have been rendered inoperative.

(See; Re- Estate of the late Muhumuza Frank HCT-05-FD-MA-0324-2022)

- 29. In the circumstances the action in regards to revocation of letters of administration, is a moot and the same is over taken

by events since Namulwana Christine Nyanzi the Administrator to the estate Yokana K. Nyanzi has since passed on and as it stands the said estate has no administrator.

- 30. Therefore, this court is of a finding that Civil Suit No. 185 of 2019 is hereby struck out for lack of locus standi.
- 31. The 1st Respondent shall only defend Civil Suit No. 613 of 2018 which is based on an action for trespass.
- 32. I make no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

24 th/01/2025

Delivered Electronically via ECCMIS on the 24th of January

2025.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2025/21/eng@2025-01-24>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/sanyu-v-mawanda--4-others-miscellaneous-application-2997-of-2024-2025-ughcld-21-24-january-2025-unknown-topic-unknown-court-2025--6a3ea4d83b1caa91297e5281>

Prepared on 13 October 2026 · Esheria