

UGANDA / JUDGMENT

Tinkibasa v Tukahirwa & Another (Miscellaneous Application 7 of 2023) [2024] UGHC 839 (5 September 2024) [2024] UGHC 839

COURT
High Court of Uganda

BEFORE
Emokor, J

CASE / FILE NUMBER
Miscellaneous Application 7 of 2023

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

5 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

Miscellaneous application No.0007 of 2023 10 (Arising from Civil Suit No. 0049 of 2015)

TINKIBASA CONSTANSIO:::::::::::::::::::::::::::::::::APPLICANT

VERSUS

15 1. TUKAHIRWA BEN

2. AHIMBISIBWE VITO:::::::::::::::::::::::::::::::::RESPONDENTS

BEFORE: HON. JUSTICE SAMUEL EMOKOR

20 RULING

The Applicant brings this application by Notice of Motion under **Section 222** (now **Section 218**) of the **Succession Act** **Section 98** of the **Civil Procedure Act**, **Order 52 Rule 1, 2, and 3** of the **Civil Procedure Rules** seeking orders that the Respondents be granted Letters of Administration for the Estate of the late 25 Tumubwine Joy and Kafungwira Julita respectively for purposes of making them parties to the intended appeal arising from Civil Suit No 0049 of 2015 and that provision be made for costs.

The grounds upon which this application is premised is that the Applicant sued Kafungwire Julita and Tumubwine Joy both now deceased before the Chief 30 Magistrates Court of Kabale at Kabale vide Civil Suit No. 0049 of 2015 and that shortly after the deaths of the said deceased persons the judgment in the said suit was delivered in their favour. That the Applicant is dissatisfied with the said judgment and intends to appeal against it.

5 That the Respondents who are biological children of the said deceased persons are in occupation and use of the suit land to date at the Applicant's detriment and are unwilling to act faster in obtaining Letters of Administration for the said deceased persons Estate and yet they are in active use and occupation of the Suitland. That it is necessary that the Respondents are granted Letters of 10 Administration for purposes of representing the deceased in the intended appeal by making them parties thereto.

The application is supported by the affidavit of the Applicant.

This application proceeded exparte on the basis that the Respondents despite being properly served with the application did not file a reply to the same. On

- 15 record is an affidavit dated 18/12/2023 deponed by one Ntamba Darius a Court process server who avers to effecting service upon the Respondents and annexed to his affidavit are 2 photographs of the Respondents being served the first through his wife and the 2nd Respondent was served personally. This Court upon being satisfied that proper service had been effected upon the Respondents fixed
- 20 the matter for hearing.

Mr. Twesigye Abraham who appeared for the Applicant proceeded by way of Written Submissions.

I have studied in detail the affidavit deponed in support of this application. I have also perused the submissions of Counsel and the authorities made reference to. I 25 do not find it necessary to reproduce verbatim the averments of the Applicant nor

the submissions of Counsel since it is a part of the Court record.

As a result, I will proceed to determine the application.

5 The averments of the Applicant that he sued the late Kafungwire Julita and the late Tumubwine Joy in the Chief Magistrates Court at Kabale vide Civil Suit No. 0049 of 2015 and that the Respondents are their biological children is not rebutted. The averments of the Applicant that Civil Suit No. 0049 of 2015 was decided in favour of the deceased persons and that the Respondents are in 10 occupation and utilization of the suit land is also not rebutted.

Furthermore, the averment that the Respondents are not acting faster in obtaining Letters of Administration for their deceased parents is also not rebutted.

The Court in **Samwiri Massa versus Rose Achen (1978) HCB 297** held that 15 where facts are sworn in an affidavit and they are not denied or rebutted the presumption is that such facts are admitted.

I therefore in whole accept the averments of the Applicant as being true.

Section 222 (now Section 218) of the Succession Act as amended provides:

"*When it is necessary that the representative of a person deceased is made a party*

- 20 *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*
- 25 *that cause or suit and until a final decree shall be made in it, and carried into complete execution"

5 In **Okway John Kimbo versus Oddi Nurru and Another HCCS No. 0031 of 2013** the Court observed that:

"A grant of this nature is made where owing to the special circumstances of the case the urgency of the matter as appears from the affidavit is so great that it would not be possible for the Court to make a full grant in sufficient time to meet*

10 *the necessities of the estate of the deceased. It is in the nature of the grant of administration ad litem, limited for the purpose of filing or prosecuting a suit or defending a suit with no powers to grantee to distribute the estate under grant"

I am alive to decisions in which Courts have held that the law does not compel any one to be a legal representative and that Respondents could not be compelled 15 to be legal representatives to the deceased.

See (1) **Ssalongo Nuwanga George versus Nasser Abdu Ssebagala HCMA No. 0578 of 2021** (2) **Galukanda Kiganda Michael versus Rechael Nakirya Kibirige & 03 others HCMA No. 0023 of 2023**.

The distinguishing factor in this case is that the instant Respondents are direct 20 beneficiaries of the orders in Land Claim No. 0049 of 2015 and they are in active occupation and utilization of the suit property.

There is no evidence that the Respondents are taking any steps to process Letters of administration for the Estate of their late parents as was the case in **Galukunda Kigundu Michael versus Rechael Nakirya Kibirige and 03 others [supra]**. The 25 decision taken by the instant Respondents not to oppose this application by entirely not participating in these proceedings either by filing a reply or entering physical appearance would mean that the application is unopposed.

5 In my view it could be erroneous to presume that the Respondents are opposing the application without the slightest indication that they intend to do so.

Indeed, to hold so would be an affront to the law.

I am inclined to draw an analogy in the present case with the provisions of **Order 8 Rule 3** of the **Civil Procedure Rules** that provides:

10 *"Every allegation of fact in the Plaint if not denied specifically or by necessary implication or stated not to be admitted in the proceedings of the opposite party shall be taken to be admitted..."*

In view of the foregoing therefore the Respondents do not challenge the grant of the orders sought in this application and there is no bar to the same being granted

15 I so hold.

The instant application is therefore hereby granted with the following orders issuing:

- 1) Tukahirwa Ben and Ahimbisibwe Vito are hereby appointed Administrators ad litem for purposes of representing Kafungwire Julita and Tumubwine
- 20 Joy in the intended appeal arising from Civil Suit No. 0049 of 2015.
- 2) Each party shall bear their own costs.

It is so ordered.

Before me,

..... 25 Samuel Emokor Judge 05/09/2024

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/ughc/2024/839/eng@2024-09-05>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/tinkibasa-v-tukahirwa-miscellaneous-application-7-of-2023-2024-ughc-839-5-september-2024-and-others-unknown-topic-unknown-court-2024--6a3ea4da3b1caa91297e6c6b>

Prepared on 14 October 2026 · Esheria