

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 52 OF 2008

(From Land Claim No. 003 of 2008)

(Before Grade I Magistrate Kisoro)

BIZIMANA DAVID & 2 OTHERS:.....APPLICANTS

VERSUS

KAMARI JOHNSON:.....RESPONDENT

BEFORE HON MR. JUSTICE J.W. KWESIGA

JUDGMENT

This is an appeal arising from the Ruling of the trial Magistrate on a preliminary objection to the suit involving a land dispute. The claimant/Respondent filed a statement of claim seeking courts declaratory Judgment that he is the Lawful owner of the land in dispute, order restraining the Defendants/Applicants from trespassing on the Suitland, general damages for trespass and costs of the suit.

The claim or pleadings appear to have been drawn by the litigant who is not a legally qualified or otherwise possessed with the necessary skills in drawing pleadings. His introductory paragraph in the statement of claim is that he sued as a hold of a power of Attorney from his mother, the administrator of the estate of his father. The cause action stated is that the Defendants trespassed on the suit land, part of his father's estate to the prejudice of the deceased's family to which he belonged. The written statement of Defence averred that the Defendants were to prove that they bought the land from the rightful owners and annexed photocopy agreements that were to be relied on at the trial. The preliminary objection raised the following matters:-

- (a) That the claimant had no cause of action or Locus Standi to sue the Defendants.
- (b) That the Suit was wrong in law in that it was brought in the names of the alleged Attorney rather than the mother who is allegedly the donor of the powers of Attorney.
- (c) That the suit was time-barred.

This was a ruling the overruled the preliminary objection and ordered the Proceedings to continue to allow the court, no doubt to

pronounce itself on the substantive case to determine the issue of ownership and trespass. The Defendant's Advocate relied on the decision Tsekoko Ag. J. (as he then was in the case of M/S Ayigihugu & Co. Advocates Vs Munyankindi (1988-1990) HCB 161. Where it was held that a holder of a power of attorney ought to take proceedings in the name of the owner of the property the donor of the powers of Attorney. A judgment deciding the rights of the parties cannot be based on a plaintiff who shows no cause of action. The presiding Magistrate held in the ruling rightly that both the claimant and his mother were beneficiaries of the estate of the late Gakwafu. Whether any of them had Letters of Administration or powers of Attorney from one to the other they had interest in the estate of the said Gakwafu and could sue in their own individual capacity. I agree with the holding above made by Tsekoko Ag. J (as he then was) however, the test is whether the plaintiff had a cause of action.

In my view the error was not fatal to the plaintiffs cause of action. Order 1 rule 10 of the Civil Procedure Rules, permits that at any stage of the Suit if satisfied that the suit has been instituted

through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so the court may order for substitution or addition of parties as it thinks fit.

The Claimant's Advocate who is presumed to be more knowledgeable on the procedural Law paid no attention to these available avenues. I have, as my duty, as the first appellate court scrutinized and re evaluate the evidence on record and I have come to the same conclusion as the trial Magistrate that by virtue of the fact that the claimant was a beneficiary of the estate of the Late Gakwavu he had Locus Standi to sue anybody that interfered with or trespassed on the property belonging to the said Estate. The High Court has unlimited jurisdiction and pursuant to Section 33 of Judicature Act (Cap 13) leave is hereby granted to The Claimant to amend his statement of claim and the proceedings shall proceed, pursuant to the Magistrate's Court's Order.

Good advocacy and good practice demands that advocates don't appeal against interlocutory orders made in course of hearing, should wait and be considered in an appeal from the final decision to avoid a multiplicity of appeals. The interlocutory order did not

finally determine the dispute between the parties. Finally, regarding the issue of limitation and time bar is a matter of evidence which was blocked by the preliminary objection and this appeal. This court is empowered to exercise its unlimited jurisdiction and to administer Justice without undue emphasis on technicalities or procedural matters but the substantive justice. I have not found it necessary to make any pronouncements on the other issues raised because these go to the merits of the main suit whose evidence has not been heard. The objections are overruled it is ordered that the hearing of the suit proceeds on its merits.

Dated at Kabale this **22nd** day of **February, 2012**.

.....

J.W. KWESIGA

JUDGE

Rev. Bikangiso for Respondent in court.

M/S Habakurama for Appellants.