

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA.

H.C.MISC. APPLICATION NO. 1128 OF 2004

(Causing from the Summary HCCS No. 978/2004)

SSEZI MUSOKE (DECEASED) APPLICANT/DEFENDANT

Versus

THE ATTORNEY GENERALRESPONDENT/PLAINTIFF

BEFORE: HON JUSTICE MARY I.D E. MAITUM.

R U L I N G

This application is brought under 0.33 r r 3 & 4 CPR for leave to appear and defend suit No. HCCS No. 978/2005 filed by the Attorney General (A.G.) against the late Seezi Musoke. It is an application by a Mr. Teophil Ssemuyinde who is the Administrator of the estate of the deceased. It was brought by Notice of Motion .

The grounds for the application which is supported by an affidavit of Mr. Ssemuyinde are that the suit is brought against a wrong party and cannot be determined by summary procedure.

Counsel for the applicant contended that the deceased could not have entered into a contract with the A.G./Government as he died in 1999 according to Mr. Semuyinde's affidavit paragraph 4.

Mr. Lutakome further argued that the late Sezi Musoke never received Shs. 109,954,483/= from Government as compensation for his land, and that the Administrator General to whom the funds were paid is not the Administrator of the estate of the late Mr. Musoke.

Counsel argued that the suit was defective in law and that the Administrator of the estate of Musoke had a good and valid defence. Mr. Lutakome invited court to allow the applicant to file a defence.

H. Oluka for the Attorney General stated that he had noticed the defect in the plaint and had come to apply for leave to amend the plaint under O. 6 r. 18 CPR.

However Counsel Oluka admitted that the suit was brought against a wrong party and that there was no need to grant leave to the applicant to file a defence. Counsel conceded that compensation might have been paid to the wrong party, the Administrator General. He further submitted that his client, the Road Agency Formation Unit had also notice that the funds could have been paid to the wrong party. Counsel Oluka intimated that the matter could be settled between the true Administrator to late Musoke's estate and his clients.

I have perused the Notice of Motion and the affidavit of the Applicant Teophil Ssemuyinde in support. I have carefully heard and considered the submissions made by both Counsels.

It is my opinion tha the suit was filed against the wrong person. However, after hearing submission from Counsel Oluka for the respondent, I am of the view that it will not be necessary to grant leave to the applicant to defend a suit which in effect is not likely to take off.

Under the circumstances, I am not in a position to grant leave to the respondent, the Attorney General to amend the plaint as the application did not comply with 0.6 R 30 CPR.

I Order both the applicant and the respondents to settle the matter of compensation and to whom it may be rightly paid. In the event of the parties not reachign an amicable, settlement, the party agrieved may then origin a suit against the other.

The respondent shall meet the costs of today's proceedings. It is so ordered.

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Mary I. D. E. Maitum
J u d g e
27/4/2005