

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 275 OF 2001
(Arising out of Civil Suit No. 171 of 1982)

SOLOME NABYONGA (OBJECTOR) :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

EDWARD KAJUMBA :::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: THE HON. MR. JUSTICE E.S. LUGAYIZI

RULING

This ruling is in respect of an application for Court's orders that,

1. The property comprised in Block 180 Plots 1, and 4 situate at Ntenga Kyaggwe be released from attachment and sale.
2. Costs of the application be provided for.

The application was brought by way of Notice Motion under Order 19 rules 55 to 61 and Order 48 rule 1 of the CPR. It was accompanied by an affidavit that was sworn by the applicant. However, before Court explores the merits of the application it is proper to understand its background which is briefly as follows. After Christopher Kalibala and another jointly sued the respondent, Christopher Kalibala died. It seems the respondent and the remaining plaintiff was aware of that fact. All the same, the suit proceeded as if the deceased was still alive. Subsequently, the deceased and his co-plaintiff lost the suit. The respondent extracted a decree in his favour, attached the deceased's property comprised in Block 180 Plots 1 and 4 which is situated at Ntenga Kyaggwe and advertised it for sale by public auction in satisfaction of the decree. At that point, the applicant who had obtained Letters of Administration in respect of the deceased's estate and was managing the suit premises filed objector proceedings which are the subject of this ruling. That is the background to the application.

At the time of hearing the application Mr. Baingana relied upon the applicant's affidavit and submitted that the lower court entered the decree in question against the deceased in error, for at that time the deceased was already dead and his part of the suit did not survive him. In addition (Mr. Baingana argued that) the applicant is presently the owner of the suit premises by virtue of Letters of Administration dated 7th December 1999 which were granted to her under Administration Cause No. 200 of 1999. For those reasons Mr. Baingana prayed Court to grant the applicant the orders referred to earlier on.

Mr. Wakida who represented the respondent submitted that his client did not find it necessary to reply to the applicant's affidavit because that affidavit did not prove what it alleged. That is particularly so, with regard to the ownership of the suit premises and the death of the deceased. He therefore called upon Court to dismiss the application with costs.

In Court's opinion, the application which is the subject of this ruling raises four main questions, namely,

- (a) Whether Christopher Kalibala is dead?
- (b) Whether the civil suit which Christopher Kalibala filed against the respondent abated?
- (c) Whether the applicant has an interest in the suit premises?
- (d) The available remedies.

Court will endeavor to answer the above questions in that order.

With regard to the first question, the applicant in her affidavit dated 10th May 2001 deposed that Christopher Kalibala died in 1990. She produced Letters of Administration which the lower court granted to her in respect of Christopher Kalibala's estate to confirm the fact of the deceased's death. A copy of those Letters of Administration which is dated 7th December 1999 is part of the court record. That evidence was neither challenged nor contradicted by the respondent who did not reply to the applicant's affidavit. For that reason, the contents of the applicant's affidavit in the above respect are presumed to have been admitted by the respondent. (See Massa v Ochen [1978] 11CR)

In the circumstances, the answer to the first question is that Christopher Kalibala is dead. With regard to the second question, it seems it is enough for purposes of objector proceedings for the objector/applicant to prove that he or she has an interest in the property which is the subject of the objector proceedings. (See **Order 19 rule 56 of the CPR**). In her affidavit referred to above the applicant further deposed that judgement in respect of the civil suit which Christopher Kalibala and another filed against the respondent was handed down in 1995. However, at that time Christopher Kalibala was already dead. He died in 1990 and his suit did not survive him. That evidence was neither challenged nor contradicted by the respondent who did not reply to the applicant's affidavit. For that reason the contents of the applicant's affidavit in the above respect are presumed to have been admitted by the respondent. (See **Massa v Ochen - Supra**). In the circumstances, the answer to the second question is that the civil suit which Christopher Kalibala filed against the respondent abated.

With regard to the third question, the applicant in her affidavit referred to above further deposed that she is presently the owner of the suit premises and she is managing it under Letters of Administration which were earlier on referred to in this ruling. That evidence was neither challenged nor contradicted by the respondent who did not reply to the applicant's affidavit. For that reason the contents of the applicant's affidavit in the above respect are presumed to have been admitted by the respondent. (See **Massa v Ochen - Supra**). In the circumstances, the answer to the third question is that the applicant has an interest in the suit premises.

With regard to the fourth question, since Court has answered the first three questions in favour of the applicant that means that the application which is the subject of this ruling has succeeded. It is, therefore, hereby granted in the following terms.

1. The property comprised in Block 180 Plots 1, and 4 and is situated at Ntenga Kyaggwe be released from attachment and sale.
2. The respondent shall bear the costs of this application.

JUDGE

25/2/2002

Read before: At 9.06 am

Mr. Wakida for Respondent

Mr. Senabulya Court Clerk