

2 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

4 [FAMILY DIVISION]

MISCELLANEOUS APPLICATION NO. 295 OF 2023

6 [ARISING OUT OF MISC. APPN. NO. 816 OF 2022]

[ARISING OUT OF CIVIL SUIT NO. 226 OF 2022]

8 NASSIMBWA ROSE APPLICANT

(Administrator of the Estate of the late Male Nuwa Salongo)

10 VERSUS

1. KIBIIKYO SEKAMATE

2. SEBULIBA PETER

3. KAWUMA STEVEN RESPONDENTS

(Administrators of the Estate of the late Male Nuwa Salongo)

16 BEFORE: LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

RULING

18 This application is brought under O. 52 r 1 and 3 of the Civil Procedure Rules, S.98 of the Civil Procedure Act S. 33 of the Judicature Act for orders that;

20 a) The dismissal order of MA 816 of 2022 be set aside.

b) MA. 816 of 2022 be re-instated.

22 c) Costs be in the cause.

The application is supported by the affidavit of Nassimbwa Rose with brief grounds that;

1. The Applicant is one of the administrators of the estate of the late Male Nuwa Salongo.
2. MA. 816 of 2022 was filed to seek amendment in the original plaint to enable proper determination of the main suit.
3. MA. 816 of 2022 was fixed for hearing on 13/3/2023 at 12:00pm and the Applicant and other beneficiaries missed the hearing because they had gone to wait before HW Katushabe Prossy where a previous MA. 900/2023 had been heard, only to learn from their Counsel that the application was before Justice Keitirima.
4. By the time her Counsel appeared, the matter had been called in the absence of both parties and dismissed.
5. The application is brought without delay with all intentions of having all issues in Civil Suit No. 226 of 2022 heard and determined.

Representation and hearing.

The Applicant was represented by Counsel Kikomeko Swaibu. The Respondents were represented by Counsel Nsereko Denis. The Applicant and the Respondent were in Court. Counsel for the Applicant filed written submissions. The Respondent's Counsel made oral submissions as they were served late.

Issues for the determination of this Court.

1. Whether the dismissal order of MA. 816 of 2022 should be set aside.
2. Whether MA. No. 816 of 2022 should be re-instated,
3. Whether costs should be in the cause.

Determination of the issues by this Court

1. Whether the dismissal order of MA. 816 of 2022 should be set aside

The Applicant stated that she came to Court on the day of the hearing of MA. 816 of 2022. She was together with other beneficiaries of the estate. However, they

48 mistakenly waited to hear from HW Katushabe Prossy where a previous MA. 900 of
2023 had been heard, thinking her Worship was to hear MA. 816 of 2022.

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52 From her affidavit in support of the application, Nassimbwa Rose states *"We tried to
call over Counsel whom we were not seeing at Court his phone number was off.....
later on Counsel called me he told me that we inquire where Justice Keitirima
54 sits because it is where the matter is to be heard from"*. She also stated that by the
time her Counsel arrived at around 12.10pm he was told the matter was dismissed in
56 the absence of all parties.

58 In the instant case, the Applicant states she had mistakenly been waiting to go before
HW Katushabe Prossy, only to be informed that the matter was before Justice
60 Keitirima. In my view, this is plausible cause and the Applicant desires a chance to be
heard. There is a contention by the Respondent's Counsel that the application is
62 incompetent and defective as it was instituted by only Rose Nassimbwa one of the
administrators of the estate of the late Male Nuwa Ssalongo instead of 2 administrators
64 including Nababi Jane. The said Nababi Jane filed a notice of withdrawal from the
main suit on 21/9/2022 and did not give her Counsel to Rose Nassimbwa to bring the
66 application in MA. 295 of 2023 in her name.

68 I agree with the Applicant's Counsel that since the said Nababi Jane had withdrawn
from the main suit, the Applicant was right to bring this application in her name only
70 and did not need the consent of the said Nababi Jane. I also find no problem with the
law under which the application is brought, and the notice of motion is indeed the
72 proper way.

4 **2. Whether MA. No. 816 of 2022 should be re-instated.**

It is a requirement of the law that there should be merit in the cause intended for re-instatement. MA. 816 of 2022 seeks amendment of the plaint to incorporate new facts and to add a party as a defendant. The Respondent submitted that re-instatement would not be necessary as the Applicant has instituted another application No. 574 of 2023 seeking to add a party to the plaint. Hence, that any amendment to be done to the plaint should dispense with the issues that MA. 816 of 2022 was instituted for.

The Applicant clarified that MA. 574 of 2023 fixed for hearing on 7/11/2023 is intended to add a party and is to that extent only. It is different from MA. 816 of 2022 which seeks to amend the plaint to add several reliefs. It looks to me that since the scope of MA. 574 of 2023 is limited to adding a party to the suit, it is imperative that MA. 816 of 2022 be heard on its own merits as a party has a right to order his actions subject to law. In the premises, I find that the Applicant has satisfied Court that MA. 816 of 2022 deserves to be re-instated.

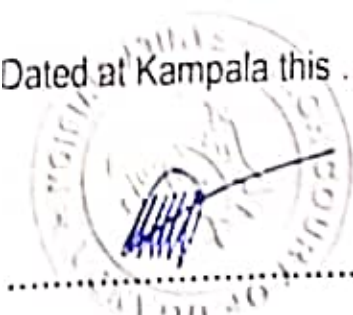
3. Whether costs should be in the cause.

In view of the above, I find that costs should be in the cause.

I therefore order that;

1. The dismissal order of MA. 816 of 2022 be and is hereby set aside.
2. MA. 816 of 2022 is hereby re-instated.
3. Costs be in the cause.

Dated at Kampala this 7th day of November 2023



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Christine A. Echokit

