

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISC. APPLICATION NO. 0665 OF 2023
(ARISING FROM CIVIL SUIT NO.0934 OF 2019)

EDITH MUYINZA MUKASA..... APPLICANT

V

DONOZIO MUSISI SSEKYAYA..... RESPONDENT

BEFORE: HON. LADY JUSTICE P. BASAZA- WASSWA

R U L I N G

Representation:

Mr. Ronald Bogezi with Eric Mukasa for the Applicant.

Ms. Banadawa Sawuya for the Respondent.

[1] This is a Ruling in an application brought by Notice of Motion under **Section 98 of The Civil Procedure Act¹, and Order 24 Rules 3 (1) & 12, and Order 6 Rule 19 of The Civil Procedure Rules², as amended (CPR)**. The Applicant; Ms. Mukasa seeks for the following orders:

- i) That she be appointed an administrator; *ad litem* to represent the late Major General Eric Mukasa for purposes of prosecuting the Head suit vide **HCCS No. 934 of 2019**.

M. Basaza Wasswa 12/5

¹ Cap 71

² S.I 71 - 1

- ii) That she be accordingly substituted as the plaintiff in the head suit, and that the plaint and/or pleadings be amended to that effect.
 - iii) That the costs of the application be provided for.
- [2] The application is supported by the affidavit of Ms. Mukasa and the grounds set out therein are:
- i) That the Late Major General Eric Mukasa instituted the head suit on the 28.10.2019 through the applicant (his sister) as his attorney
 - ii) That before the formal hearing of the suit commenced, the Plaintiff- Major General Eric Mukasa died on the 2.07.2020 and the progress of the suit has since stalled.
 - iii) That none of the family members has been issued with Letters of Administration yet the main suit is still pending and will most likely be dismissed for want of prosecution for failure to take the necessary steps to prosecute the same.
- [3] The Respondent: Mr. Ssekyaya filed an affidavit in reply opposing the application, the main thrust of which is that the Applicant has not demonstrated that it is necessary to appoint her as the representative of the deceased.

Analysis by Court:

- [4] **Order 24 Rule 3 (1) of the CPR** provides that where a sole plaintiff dies and the cause of action survives or continues, the court, on an application made for that

Mukasa Mukasa 14/5

purpose, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

Section 222 of the Succession Act³ as Amended, permits the appointment of an administrator *ad litem*, limited for the purpose of representing the deceased in that suit.

- [5] I have carefully considered all the arguments for and against this application, and I find that, **since the applicant was the lawful attorney of the late Major General Eric Mukasa in the head suit while he was alive, and since she is also one of the four (4) nominees by members of their family to administer his estate, she is a fit and proper person to be appointed as an administrator; *ad litem* to represent his estate for purposes of prosecuting the Head suit.**

Decision of Court:

- [6] In the result, this application is allowed in the following terms;
- a) The Applicant: **Ms. Edith Muyinza Mukasa** is hereby appointed an Administrator *ad litem*, limited for the purpose of representing the late Major General Eric Mukasa in the Head suit: **HCCS. NO. 934 of 2019**, and such other causes and suits which may have, or may be, commenced between the parties, or any other parties, touching the matters in issue in the Head suit.
 - b) The Applicant is accordingly made a party to the Head suit and the name of the deceased is substituted with her name.

Masekhane 14/5

³ Cap. 162

- c) The Pleadings in the suit shall be amended to that effect, within fifteen (15) days from the date of this Ruling.
- d) The Head suit shall proceed and is fixed for Hearing / Scheduling on June 20, 2023 at 10am.
- e) The Costs of the application shall abide the outcome of the Head suit.

I so order,

P. Basaza WASSWA 12/5

**P. BASAZA - WASSWA
JUDGE**

May 12, 2023