

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA-MAKINDYE
(FAMILY DIVISION)
MISC. APPLICATION NO. 189 OF 2018
(ARISING FROM CIVIL SUIT NO. 124/2016)**

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1. RESTETUTA KAYONDO
2. JONATHAN KIZITO
3. RICHARD GABUGA
- 10 4. HENRY MUYANJA
5. ROBOT MUKALAZI
6. MUSA NDIWALANA
7. ALBERT NKUGWA..... APPLICANTS
8. IMELDA OWOMWOYOGWE
- 15 9. JOSEPH SENDIWALANA
10. JIMMY LUYIMA
11. JOHN BAHEMUKA
12. STACY KAYONDO
13. LYDIA KAYONDO
- 20 14. JUBILEE KASOZI

VERSUS

GRACE N. KAYONDO..... RESPONDENT

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RULING

TO: HON. LADY JUSTICE KETRAH KITARIISIBWA KATUNGUKA

30 **Introduction**

[1] This Application is brought under **Order 6 rules 19 and 31 of the Civil Procedure Rules S.I. 71-1**, by way of Chamber Summons, seeking orders that the applicants be granted leave to amend their plaint to indicate and explain how the purported will and inventory are being contested and that costs of the application be provided for.

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[2] The grounds for this application are set out in the affidavit of, Henry Kayondo, but briefly are; that the applicants filed C.S No. 124/2016 against the respondent for among others an order for revocation of the grant of probate to the respondent vide Admin. Cause 457/2010; that it was established, upon further investigations

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by the new advocates that the purported will was not properly executed by the purported testator and witnesses; that it was further established that the purported will did not name all the children of the deceased; that it further emerged the purported will gives a wrong description of one of the deceased's properties and does not mention some of the deceased's properties; that the respondent undervalued the estate of the deceased in her petition for letters of probate; that it was further established that the late John Billy Kayondo had never used a thumb print to execute any of the documents and the applicants were later able to get copies of documents of his correct signature which were not in their possession at the time of filing the suit; that the applicants did not properly illustrate how and why they believe that the will is not the true last testament of the late John Billy Kayondo; that the respondent shall not be prejudiced by such rectification and that it was the mistake of the previous advocates who did not properly allude to the aforementioned facts.

Representation

[3] The Applicants are represented by Counsel Fedrick Ssemwanga of M/S Ssemwanga, Muwazi & Co. Advocates while the respondent is represented by M/S Birungi & Co Advocates and M/S Tusasire & Co. Advocates.

[4] The applicants were directed to file and serve the application on the respondent by 29th April 2019; the respondents were to file a reply by 13/5/2019; The respondents were served on 29th April 2019 and 30/04/2019 respectively; the reply was filed on 21/06/2019 when the application next came up for hearing. Counsel for the applicant applied that the reply be expunged from the record because it was filed out of time and without leave of court; Counsel for the respondent was absent while the respondent was in court; Court granted the application to expunge the affidavit in reply, ordered that the matter proceeds under O.9 r. 10 and Counsel for the applicants were directed to file written submissions by 25/7/2019, for court to consider the application for probity.

The case

[5] The gist of the application is that the applicants filed Civil Suit No 124 of 2016 seeking orders inter alia for the revocation of the grant of probate to the respondent vide AC 457/2010; that their previous counsel omitted certain facts that would enable the applicants illustrate how and why they believe that the will is not a true last testament of the late John Billy Kayondo and are thus desirous of bringing these facts to the attention of court.

The application as stated above is supported by the affidavit of a one Henry Kayondo.

[6] The issue for determination is; *whether this Application should be granted.*

Resolution of Issues

Whether this Application should be granted.

[7] Before determining the merits of the application, the court takes note of the fact that the affidavit in support of the application is sworn by a one Henry Kayondo who states that he is an applicant and depones the affidavit in that capacity. There is no applicant under MA 189/2018 named Henry Kayondo. There is nothing to show whether the said Henry Kayondo is Henry Muyanja as counsel of the applicant seeks to do in his written submissions which in any case would be evidence from the bar. There is also no authority given to the said Henry Kayondo who is not a party to the suit to swear the affidavit in support of the application. Where a party to a suit seeks to invite a stranger to support his/her case, the stranger must be so mandated. In the same vain where a party is swearing an affidavit in support of the application with more than one applicant including him/her such person should equally be legally mandated. Where there is no such authority, the affidavit is defective and incompetent; (see the case of **Kaingana v Daboboubou [1986] HCB 59.**

The affidavit in support of the application is incompetent as the deponent states that he is an applicant in the suit and yet there is no such applicant by the name Henry Kayondo. The deponent has no locus to depone the affidavit in support of the application and the application is therefore not properly before court.

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Court cannot be seen to allow such illegality by sanctioning such an affidavit. The application is not supported by any evidence and so cannot stand.

This application therefore fails and is hereby dismissed with costs.

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Dated at Kampala this 12th Day of September 2019.

KETRAH KITARIISIBWA KATUNGUKA
JUDGE

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