IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable

Civil Appeal No. 038 of 2017

In the matter between

1. OKULLU ANGELLO

2. ODONG KRESENCIO

3. KWOYELO C.P. OKELLO

4. OCIRA THOMAS **APPELLANTS**

And

LACEN OTIKA PATRICK **RESPONDENT**

Heard: 22 July 2019
Delivered: 29 August 2019

***Civil Procedure*:** *— Omnibus Applications — An omnibus application is one covering a wide range of aspects of the grievance of the applicant, in which the same or similar questions of law or fact are involved, where it is desirable that the multiple grievances are heard and considered together in order to avoid unnecessary costs or delay — an omnibus application may be allowed where there is not only evidence of economy to be achieved from a single trial but also that trying the multiple applications together can be achieved without prejudice — When a Court is of opinion that an omnibus application is bad for multifariousness, it ought to give the applicant an opportunity to amend it by directing separation of the applications.*

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] The appellants jointly and severally sued a one Tarasio Olaa for a declaration that they are the rightful customary owners of approximately 150 acres of land situated at Olangang village, Golo Parish, Latanya sub-county, Pader District, an order of vacant possession, a permanent injunction, general damages for trespass to land, *mesne* profits, and the costs of the suit. Their claim was that during the 1970s, the first appellant acquired the land in dispute from the now deceased Okello Lubule Omit who had acquired the land in 1953 while it was vacant unclaimed land. The rest of the appellants acquired their respective holdings of that land from the family of the first appellant. It came of the appellants' knowledge that in a suit he filed against a one Amone Phillips, the said Tarasio Olaa had included part of the land in dispute as forming part of the and he claimed from Amone Phillips. He was also in the process of fencing off the land as his. The appellants thus filed the suit to enable them assert their title to that part of their land claimed by Tarasio Olaa.

[2] In his written statement defence, the respondent, as attorney of Tarasio Olaa refuted the appellants' claim. He averred that in 1958 Tarasio Olaa acquired the land in dispute as vacant unclaimed land. He occupied and enjoyed quiet possession of the land until the year 2012 when Amone Phillips trespassed upon approximately 12 acres of it. Tarasio Olaa sued Amone Phillips, for the recovery of those 12 acres and judgment was delivered in his favour on 24th September, 2014. It is after the trial court had visited the *locus in quo* that the said Amone Phillips connived with the second appellant permitting the second appellant to construct a latrine and house of the land. The third and fourth appellants thereafter established gardens on the land. They were warned and vacated the land. The first appellant had never been in possession nor owned any part of the land. The land in dispute is distinct from that of Okello Lubule Omit acquired by the first appellant and there is no common boundary between the two tracts of land. He therefore prayed that the suit be dismissed since none of the appellants had *locus standi* in the matter.

[3] On 26th February, 2016, hearing of the suit was fixed for 28th September, 2016 but the defendant died on 19th March, 2015. When the suit came up for hearing on 28th September, 2016, neither party nor their respective advocates appeared and the trial court dismissed the suit under the provisions of Order 9 rule 17 of *The Civil Procedure rules*. The appellants sought re-instatement of the suit under the provisions of Order 9 rule 18 of *The Civil Procedure rules.* The defendant Tarasio Olaa being deceased at the time the application was filed (he died on 19th March, 2015), the appellants combined it with one under Order 24 rule 4 (1) of *The Civil Procedure rules*, seeking the substitution of the deceased defendant by the respondent, he having being the holder of a grant of letters of administration to the estate of the deceased.

The respondent's submissions in the court below:

[4] The respondent, although admitting that he was granted letters of administration to the estate of the late Tarasio Olaa on 23rd April, 2015 opposed the application contending; the application was belated since the suit was dismissed a year and five months after the grant; that being an omnibus application, it was bad in law and ought to be dismissed; The application for substitution should have been made after re-instatement of the suit; grounds for re-instatement were undisclosed. He contended further that he was a stranger to the suit since the powers of attorney he held were revoked by the death of the grantor Tarasio Olaa.

Ruling of the court below:

[5] In its ruling of 15th September, 2017, the court below decided that although the provisions cited in the application were correct, the application was not properly before court as an omnibus application. There had to be a suit in existence before a party to it could be substituted. Expediency cannot be considered where there is no suit in existence. An omnibus application may be considered when

filed in respect of an existing suit, but not otherwise. The application was thus dismissed with costs to the respondent. The applicant though was granted leave to appeal against the order.

The grounds of appeal:

[6] The appellant was dissatisfied with the decision and appealed to this court on the following grounds, namely;

1. The learned trial Magistrate erred in law and fact when he failed to appraise the law on substitution of parties and reinstatement of cases.
2. The learned trial Magistrate erred in law and fact when he held that there should have been two distinct applications, one for reinstatement and the other for substitution of a party.
3. The learned trial Magistrate erred in law and fact when he held that the omnibus application was not properly before court.

Arguments by counsel for the respondents.

[7] The appellants did not file any submissions. Counsel for the respondents, submitted that upon the death of Tarasio Olaa, the power of attorney granted to the respondent was revoked, yet the application was filed against the respondent personally. The defendant died after dismissal of the suit hence the appellants should have filed a fresh suit or applied for re-instatement of the one dismissed.

All the grounds of appeal are considered concurrently.

[8] It is settled law that court may set aside an order of dismissal if satisfied that the applicant was prevented by sufficient cause from appearing on the day the suit was fixed for hearing or from continuing the suit. On the other hand, under Order 24 rule 4 of *The Civil Procedure Rules*, when a sole defendant dies and the cause of action survives or continues, the court, on an application made for that

purpose, may cause the legal representative of the deceased defendant to be made a party and then proceed with the suit.

[9] Therefore, when it is necessary that the representative of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution (see section 222 of *The Succession Act).*

[10] Such a person may be only one of several legal representatives or may not be the true legal representative. The provision is intended to secure representation of a party dying pending a suit. It will be invoked where no hardship will be caused, and there can be no hardship where a party dying during the pendency of a suit is fully represented for the purpose of the suit, but only for that purpose, by a person whose name is entered on the record in place of the deceased party. A person whom the plaintiff alleges to be the legal representative of the deceased defendant, and whose name the court enters on the record in the place of such defendant, sufficiently represents the estate of the deceased for the purposes of the suit, and in the absence of any fraud or collusion the decree passed in such suit will bind such estate.

Omnibus Applications

[11] The appellants chose to combine the two applications in one as an omnibus application, similar to consolidation of suits. An omnibus application is one covering a wide range of aspects of the grievance of the applicant, in which the same or similar questions of law or fact are involved, where it is desirable that the

multiple grievances are heard and considered together in order to avoid unnecessary costs or delay. Omnibus applications are thus permitted as a matter of convenience and economy in the administration of justice. They can be useful in combating caseload pressures, based on concerns of economy, convenience, and the avoidance of inconsistent decisions. Duplicative litigation ought to be discouraged. Just like consolidation of suits, omnibus applications ultimately benefit both parties and the court since it is clearly more convenient to conduct related litigation in a single proceeding rather than in multiple separate proceedings.

[12] The propriety of an omnibus application should be decided case by case, issue by issue based on the convenience of parties and the interest of justice. Courts may limit omnibus applications to particular issues. The bottom line is that an omnibus application may be allowed where there is not only evidence of economy to be achieved from a single trial but also that trying the multiple applications together can be achieved without prejudice. Just as the purpose for consolidation of suits is to save time, costs and effort to make the conduct of several actions more convenient by treating them as one action *(see Hon. Ababiku Jesca v. Eriyo Jesca Osuna, H.C. Misc. Applications Nos. 04, 31, and 37 of 2015 (consolidated); all arising from Election Petition No. 02 of 2011),* omnibus applications are designed to meet the ends of justice by saving the parties from multiplicity of proceedings, delay and expenses.

[12] Omnibus applications are ideal when there are multiple applications arising out of the same suit by the same plaintiff against the same defendant, where avoidance of repetitive applications is sought. This is most especially so when the issues in the multiple applications are so closely related that a decision on one will necessitate another or have preclusive effects on the other(s). They are not ideal when the orders or reliefs sought are based on dissimilar premises or lead to diverging directions. Where different factual questions lie at the heart of each of the merged application, issues are more likely to be obscured than clarified.

[13] However, when the orders sought differ materially in their effect on the litigation or where the events necessitating the orders sought are widely separable in time and place, it may then emerge that the circumstances might embarrass the trial in which case the multiple applications may not be conveniently tried and decided together. This is most likely to arise where there are material differences in the grounds upon which relief may be granted in respect of each of the multiple applications consolidated and presented as one omnibus application, that would result in confusion or materially affect the fairness of the hearing or ultimately the trial.

[14] On the other hand, merging applications into an omnibus one because of their similarities stresses the factors of similarity and can consequently deflect attention from features that distinguish them from one another that may prejudice parties on one side or the other, or both. Individualised grounds for granting relief may be submerged or obscured due to preoccupation with common issues. The urge to extract common issues leads to a pro-applicant shift in results. Omnibus applications can no doubt be found which have been dismissed or struck out for multifariousness. However, the Court has inherent powers any stage of a proceeding to order to be amended any matter in any pleading which may embarrass the trial. The Court also has the power at any stage of the proceeding to allow either party to amend their pleadings.

[15] Just like in consolidated suits, where it appears to the Court that any number of applications joined in one omnibus application cannot be conveniently tried together, the Court ought to order separate trials rather than strike out or dismiss the application, otherwise substantial justice would be sacrificed to a wretched technicality. When a Court is of opinion that an omnibus application is bad for multifariousness, it ought to give the applicant an opportunity to amend it by directing separation of the applications.

[16] I find that the requirements for re-instatement are materially different from those for substitution of parties. The premises upon which each of the two applications are made are do dissimilar that they cannot be conveniently tried together. The disparities among the grounds required to be proved for relief to be granted in each of the two instances would actually affect the fair trial of the case and the evidence that the court would consider. The respondent would be confused and prejudiced by a single application which in one breath presupposes the existence of a suit which in fact is non-existent and at the same time seek an order that he is joined as a party to such a suit. I am therefore inclined to agree with the trial court. The remedy though is not in dismissing the application, but rather directing a severance by way of amendment, and it is so directed.

[17] Concerning the argument relating to the matter being *res judicata,* the concept applies to a valid, final, judgment on the merits by a court of competent jurisdiction is conclusive on the parties in any subsequent litigation of the same cause of action, whether the matters comprising such cause actually were litigated or could have been litigated. it does not arise in the circumstance of this appeal.

Order :

[18] In the final result, the appeal has succeeded in part. The costs of the appeal are to abide the result of the two separate applications.

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Stephen Mubiru

Resident Judge, Gulu

Appearances

For the appellant : Mr. Henry Kilama Komakech.

For the respondent : M/s Owor Abuga and Co. Advocates