



**IN THE EAST AFRICAN COURT OF JUSTICE AT
ARUSHA FIRST INSTANCE DIVISION**



*(Coram: Yohane B. Masara, PJ; Audace Ngiye, DPJ; Charles Nyachae,
Richard Muhumuza & Richard W. Wejuli, JJ)*

APPLICATION NO.10 OF 2022

(Arising from **Reference No.18 of 2019**)

NYIRAHABIMANA ANNONCIATHEAPPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDARESPONDENT**

21st JUNE, 2022

RULING OF THE COURT

1. On 31st March 2022 Mrs. Nyirahabimana Annonciathe (“**the Applicant**”) filed this Application against the Attorney General of the Republic of Uganda (“**the Respondent**”) pursuant to Rule 20(1) & (2) of the East African Court of Justice Rules of Procedure 2019 (“**the Rules**”). The Application was supported by the Affidavit of Mr. Singirankabo Jean de Dieu, sworn on 21st March 2022.
2. The Application sought Orders for the Applicant to be granted the right to be added in Reference No. 18 of 2019 as a legal representative of her deceased husband, Hategekimana Silas, who passed away after the filing of the Reference. She also prayed that costs be in the cause.
3. The Application was heard in the course of hearing of Reference No. 18 of 2019 on 6th April 2022. The Court allowed the Respondent to file an affidavit in reply and the Applicant to file an affidavit in rejoinder.
4. The Applicant was represented by Mr. Emmanuel Butare, learned Advocate, while Ms. Maureen Ijang, Senior State Attorney, Mr. Sam Tusuubira, State Attorney and Mr. Hillary Ebila, State Attorney, represented the Respondent.
5. The Application is premised on grounds that:
 - a) **The Applicant is the surviving spouse of the deceased who had filed the Reference with the Court and died before it was determined; and**

b) Rule 20 (1) & (2) of the Rules provide that when a party to a suit dies, and the right to sue survives, the legal representative(s) of the deceased party has to be brought on record before the Court can proceed further in the suit.

6. The Applicant produced an autopsy report dated 1st September 2019 in evidence that Hategekimana Silas died. She did also produce a marriage certificate to establish that she was married to the deceased. In addition, she cited Articles 75 and 76 of the Succession Act of the Republic of Rwanda and sought to establish that in addition to being a wife to the deceased Applicant in Reference 18 of 2019, she also has the legal capacity to represent the estate of the deceased.
7. In reply, the Respondent opposed the Application and submitted that the orders being sought by the Applicant are not tenable under the provisions of the Rules.
8. It was the Respondent's contention that, whereas the Rules of this Court allow it to cause a legal representative of a deceased party to take over proceedings, no evidence has been adduced by the Applicant to prove that she is the legal representative of Hategekimana Silas. He further stated that before the Court can cause a person to be made a party to the suit, that person must be a legal representative within the law, which in the instant case must be a person with letters of administration duly granted by a court with competent jurisdiction. In other words, it is the Respondent's position that the Applicant must prove that in addition to being a wife she has the legal mandate to represent

the estate of the deceased by filing letters of administration duly granted by a court with competent jurisdiction. He further submitted that it is not in the purview of this Court to determine who a legal representative is.

9. In conclusion, the Respondent submitted that the Application is misconceived and bad in law and should be dismissed with costs to the Respondent.

10. In our considered view, the issue for determination is whether the Applicant should be admitted as a party in lieu of her deceased husband.

11. Having carefully considered the submissions on both sides and the applicable law in the Republic of Rwanda, especially Articles 75(1) and 76(1) of the Succession Act, it seems to us that the evidence on record does lend credence to the supposition herein that by virtue of her identity, the Applicant had been able to prove that she is a person who in law represents the interest of the estate of the deceased. The cited Articles provide as follows:

Article 75(1):

The surviving spouse is entitled to take part in succession of the deceased spouse's estate.

Article 76(1):

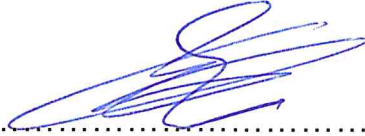
If one of the spouses dies, the surviving spouse is entitled to the entire property and fulfils the duty to take care of their children and that of the legitimate children of the *de cujus*.

12. With utmost respect, and in the absence of a contradicting provision of the law, we are constrained to observe that the Respondent's interpretation of Article 75(1) read together with Article 76(1) cited above is misconceived and not legally tenable. Within the context of the Rwandan legislation, we are unable to conclude that the Applicant was bound to attach letters of administration in the instant case. Also, it is a generally accepted principle that it is the party seeking to establish a fact who bears the burden of proving it. Accordingly, it is our considered view that denying the Applicant the right to become a legal representative of her deceased husband would be an absolute negation of justice.
13. In the result, the Applicant is hereby granted leave to substitute Mr. Hategekimana Silas in **Reference No. 18 of 2019**.
14. The costs of the Application shall abide the outcome of the Reference.
15. It is so ordered.

Dated and signed at Arusha this 21st day of June 2022.



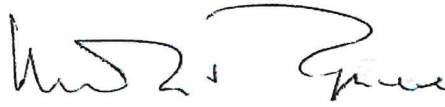
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Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



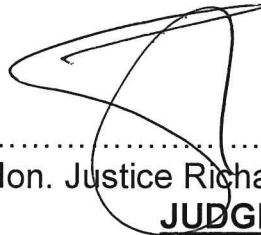
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Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE



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Hon. Justice Dr Charles Nyawello
JUDGE



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Hon. Justice Charles Nyachae
JUDGE



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Hon. Justice Richard W. Wejuli
JUDGE