



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 14 OF 2014

MICHAEL MUWAZI. 1ST DEFENDANT

DENIS KASULE SEKITTO.2ND DEFENDANT

OSCAR KASULE KABUYE.3RD DEFENDANT

VERSUS

FLORENCE KABUYE.1ST DEFENDANT

ALOYSIOUS SEBUNYA.2ND DEFENDANT

JOHN KALUNGI.3RD DEFENDANT

CAROL KABUYE.4TH DEFENDANT

LYNN KABUYE.5TH DEFENDANT

RULING

This application dated 22nd January, 2014 was filed by the Plaintiffs on 24th January, 2014. It mainly sought for an injunction restraining the Defendants or agents and servants from burying the remains of the Deceased in this case, John Katale Kabuye, in Langata or elsewhere in Kenya until the hearing and final determination of the suit.

As the application pended a hearing however, the issue of whether or not this court has jurisdiction to hear the suit, cropped up because the parties herein are virtually all Ugandans and the deceased was Ugandan.

The parties accordingly, by consent, agreed to address the court on the said issue of jurisdiction both international and between the Kenya High Court internal divisions. Both sides submitted on jurisdiction in writing and requested this court to determine the issue.

I have perused the submissions filed by both sides of the dispute. There is no doubt that to determine the issue of jurisdiction this court has to look into the issue of domicile. **Baron's Dictionary of Law** defines "**Domicile**" as follows: -

“The country that a person treats as his permanent home and to which he has the closest legal attachment. A person cannot be without a domicile and cannot have two domiciles at once. He acquires at birth a domicile of origin. He retains his domicile of origin until (if ever) he acquires a domicile of choice in its place. A domicile of choice is acquired by making a home in a country with the intention that it should be a permanent base”.

In arriving at the true intent of an individual a court will consider the time that individual has spent in a place or country, the things he has done or has expressed to do, his mental attitude towards the place and his intention to continue staying in that place or country.

In summary, therefore, the following aspects may assist to determine a person’s domicile of a place or country: -

1. Long period of residence.
2. Acquisition of property, especially permanent residential home for personal occupation.
3. Acquisition of passport or national identity card which spells out citizenship.
4. Making a Will subjected to the local law.
5. Acquisition of a local burial land.
6. Participation in local political process including voting or standing for election.
7. Payment of local taxes.
8. Membership of local social clubs and associations.
9. Development of local business interests of a permanent nature and local Business contacts.
10. Establishment of local banking, financial borrowings, including mortgages.
11. A formal written declaration of future intention to adopt locality as permanent home.

Taking into account the above factors, I note that it is common ground that the deceased, John Deo Kagimu Kabuye, a Uganda born, came to Kenya in 1981. He was accompanied by his two wives, Florence Kabuye and Idah Namata Kabuye. While living in Kenya, soon thereafter, he married a third wife Violet Kabuye. The record confirms and it is not in dispute also, that the deceased visited Uganda only once in 1986. The Applicant avers that the reason for visiting his former country, was to chair the Uganda Chamber of Commerce Board to which he had been appointed Chairman. He visited Uganda from time to time until 1989 when he stopped such visits up to the time of his death recently on 15th January, 2014. It is averred and not disputed that even in 1993 when one of his sons died, he did not find need to take the body to Uganda for burial. He instead buried the body in Langata in Nairobi after purchasing a permanent plot for a grave.

It is also clear from the record that the deceased was an important businessman but his businesses were almost entirely based and conducted in Kenya and not in Uganda. His children who assisted him in the business did so in Kenya. His business bank accounts and facilities were secured in Kenya. He paid his taxes in Kenya just like a Kenyan and there is no evidence on record that he had similar facilities in Uganda or that he paid taxes there. Indeed it is said that he was a major tax-payer in Kenya.

The greatest indications of his domicile intentions however, are demonstrated by the fact that the deceased applied and obtained Kenyan national identification (ID) and eventually obtained a Kenyan Passport. He voluntarily and knowingly used these papers until his death. He apparently lived and conducted himself not like a Ugandan citizen but a full Kenyan. In all, he so lived in Kenya for a period

of 33 years and subjected himself to Kenyan national and county laws. It is on record also that he expressed his wish to be buried in Kenya before he died. This a clear intention probably explains why, although it said he had a piece of land in Uganda, he never attempted to develop it.

I have considered this issue before me. The facts shown above clearly confirm that John Deo Kagimu Kabuye's domicile was not Uganda where he was born but Kenya where he migrated to. He adopted the country as his own. The applying for and obtaining of the Kenyan National Identity Card and passport, merely confirmed his lifelong intention and sealed his domicile. He chose for himself the Kenyan Laws do apply to him when alive and later when he passes on.

In the above circumstances the conclusion of the court is that it has jurisdiction to any suit related to the deceased personally and in relation to his properties.

It is observed that the counsel for both sides in this suit agree that this court has jurisdiction to hear this matter which concerns the place where the deceased should be buried, the dispute being whether or not the body should be buried in Langata Cemetery or not.

The parties also sought to know whether the suit should be heard in the Civil Division or Family Division. No materials were placed before me on that issue. For the purpose of deciding that issue once and for all, I will invite the parties to submit on that when they submit on the main issue before the court. In the meantime I authorize that the suit be urgently fixed for a hearing. Orders accordingly.

Dated and delivered at Nairobi on this 26th day of March 2014.

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D A ONYANCHA

JUDGE