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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(FAMILY DIVISION)

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MISCELLANEOUS APPLICATION NO. 458 OF 2022
(ARISING FROM CIVIL SUIT NO. 230 OF 2022)
(ARISING OUT OF ADMINISTRATION CAUSE NO. 980 OF 2022)
(ARISING FROM CONSOLIDATED CIVIL SUIT NO. 225 OF 2023)

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IN THE MATTER OF THE ESTATE OF THE LATE KATUMBA MATIYA
AND
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF LETTERS OF
ADMINISTRATION GRANTED TO SSENYIMBA RAPHAEL MAWAGGA
AND

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IN THE MATTER OF AN APPLICATION BY NAKIMBUGWE ANNET KATO (SUING
THROUGH HER LAWFUL ATTORNEY) NABAKA JOAN FOR CITATION TO RETURN
LETTERS OF ADMINISTRATION GRANTED TO SSENYIMBA RAPHAEL MAWAGGA

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1. NAKIMBUGWE ANNET KATO] (*Suing through her lawful attorney*)
2. NABAKA JOAN] APPLICANTS
VERSUS
SSENYIMBA RAPHAEL MAWAGGA RESPONDENT

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Before: LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

RULING

BACKGROUND:

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This is a citation seeking the return of Letters of Administration granted to Ssenyimba Raphael Mawagga on the 14th day of September 2021 in respect of the estate of the late Katumba Matiya formerly of Ssala Village, Kavumba Ward, Wakiso Town Council, Busiro County, Wakiso District. The citation was supported by a complaint on oath sworn by Nakimbugwe Annet Kato through her lawful attorney Nabaka Joan which contains the grounds of the citation.

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The Respondent filed an affidavit in reply opposing the application for revocation of Letters of Administration granted to him.

REPRESENTATION AND HEARING:

Counsel Mugumya Andrew with Luballe Jimmy represented the Applicant. The Respondent was represented by M/s Mark Mwesigye & Co. Advocates. The parties filed written submissions.

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ISSUE FOR THE RESOLUTION OF THIS COURT:

1. Whether there is just cause for directing the Respondent to bring and leave in this Honourable Court the Letters of Administration granted to him for purposes of the Applicant proceeding with the process of revocation of the same.
2. Whether costs of the application should be provided for.

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RESOLUTION OF THE ISSUES BY THIS COURT:

Issue 1: Whether there is just cause for directing the Respondent to bring and leave in this Honourable Court the Letters of Administration granted to him for purposes of the Applicant proceeding with the process of revocation of the same.

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I have perused the Applicant's complaint on oath, the Respondent's affidavit in reply as well as the submissions of the parties and the law applicable.

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A citation is an instrument issued under the seal of court by the registrar. It contains the reasons for its issuance and the interest of the party extracting it. The citation calls upon the party cited to enter an appearance and to take specified steps, failing which the court will grant representation to the citor or another person. The statement of fact set out in the citation ought necessarily to be supported by either the Applicant's statement on oath or an affidavit.

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In her complaint on oath, the Applicant stated that she is the biological daughter of the late Katumba Matiya who died intestate; that her younger brother Ssenyimba Raphael Mawagga secretly applied for Letters of Administration vide Administration Cause No. 0980 of 2020 at

5 the High Court at Kampala and was granted the same on 14th day of September 2021; that in his petition the said Ssenyimba stated that the deceased died testate and that Ssenyimba forged a Will wherein he appointed himself as the executor to the detriment of other beneficiaries; that the said Ssenyimba in his petition for Letters of Administration declared that he was an only child of the deceased whereas he was not.

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The Applicant further stated that the said Ssenyimba in his petition for Letters of Administration declared that the deceased had only one property comprised in Busiro Block 216 Plot 37 at Sala measuring approximately 5 acres, leaving out 3 other properties; that Ssenyimba has since chased and traumatized other beneficiaries and denied them access
15 and/or interest/share in the estate of their late father; that Ssenyimba has refused and/or ignored to distribute the estate to the Applicant and other beneficiaries and they have not been able to acquire their respective portions/shares in the land comprised in Busiro Block 216 Plot 37 at Sala; that Ssenyimba has since failed to exhibit a true and perfect inventory of the estate; that Ssenyimba's acts of acquiring Letters of Administration and giving the estate
20 property only to himself were high handed and fraudulent; that Ssenyimba has abused and unjustly used the Letters of Administration; and that all these acts warrant that the grant should be revoked.

The Applicant further stated that she and other beneficiaries lodged a caveat on the suit land
25 in order to protect their interest and prays that the Letters of Administration granted to Ssenyimba be revoked and returned to court.

In reply, the Respondent stated that he would raise a preliminary objection that the application is misconceived, frivolous and vexatious, and bad in law as it is not maintainable and should
30 be struck out; that the Applicant has not demonstrated a prima facie case and has not shown how she will be affected by a grant of Letters of Administration with a Will annexed, which Will bequeathed the suit property to him.

5 The Respondent also stated that he lawfully obtained the grant of Letters of Administration; that the late Katumba Matiya died testate after giving the suit land comprised in Block 216 Plot 37 to him the Respondent in 1980, which land he has been in possession of even after the death of Katumba Matiya in 1999; that the property the subject of Letters of Administration corresponded to the Will attached and did not touch on land measuring four acres situate in
10 Sala which is the share of the late Matiya Katumba Katereggga from his late father's estate (which land is available for administration and distribution); that any caveat on his land is an infringement on his right to freely use his property and that of people who bought from him

15 It is evident to me from the narrative of both the Applicant and the Respondent that there is contention about how the Respondent obtained Letters of Administration to the estate of the late Katumba Matiya. In the petition in Administration Cause No. 980 of 2020, the petitioner Ssenyimba Raphael Mawagga, who is the Respondent in the instant case, stated in paragraph 3 that the late Katumba Matiya had only one child the Respondent. In her complaint on oath, the Applicant states that the deceased had other children including the Applicant.
20 Paragraph 6 of the petition states that "in his last Will dated 10th of March 1994, the deceased appointed Ssenyimba Raphael Mawagga to be the executor of his Will." The Applicant in her complaint on oath asserts that the deceased died intestate and that the Will was forged.

25 There is also contention about the property of the deceased. The petition names only one property Block 126 Plot 37 as property belonging to the deceased. The Applicant in her complaint on oath states that the deceased had other properties as well. The Applicant asserts that the Respondent has sold off some of the properties of the estate without the consent and knowledge of the Applicant and other beneficiaries of the estate; but the Respondent states that what he sold was rightfully his.

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At this point, I would like to address the preliminary objection raised by the Respondent to the effect that the action by the Applicant is without merit and ought not to be entertained. As I
9 mentioned earlier, the above contentions clearly show that there is a major problem regarding

5 the circumstances leading upto the grant of Letters of Administration to the
Petitioner/Respondent and the determination of properties forming part of the estate of the
deceased. I am also aware that the estate of the late Katumba Matiya is a subject of many
suits which this court has consolidated at the instance of the parties. It would be irregular,
therefore, were court to ignore the contestations in this matter and the fact that the issues in
10 contention are also in the consolidated suit, when determining this application. That said, the
contentions contained in the complaint on oath of the Applicant raise serious issues that ought
to be interrogated in a proper suit. Counsel for the Applicant cited Wambuzi CJ in the case of
Robert Kavuma vs M/s Hotel International SCCA No.8 of 1990 cited with approval by Justice
Masalu Musene in Kigongo v Kakeeto & Anor (Miscellaneous Application No. 144 of 2017)
15 2017 UGHCCD 146 in regard to a prima facie case being one with a probability of success.
In the instant case, the allegations of fraud and fault on the part of either party cannot be
taken lightly. It is my finding that the issues raised are triable. Accordingly, I dismiss the
preliminary objection.

20 I am convinced that the matters in the instant application hinge on the validity of the Letters
of Administration issued to the Respondent in Administration Cause No. 980 of 2020. The
Applicant claims the Letters of Administration ought not to have been issued. The Respondent
asserts that he obtained the grant lawfully and that there is other property at Sala which was
not willed to him by the deceased, which the Applicant and others are at liberty to pursue for
25 the grant of Letters of Administration. Considering that there is contention in regard to the
property comprised in Block 126 Plot 37, it is only prudent and necessary, therefore, that the
said Letters of Administration are returned to court pending the determination of the real
dispute between the parties. In Re: Edward Matovu Mulubirizi & 3 Ors Miscellaneous
Application No. 566 of 2017 arising from Administration Cause No. 346 of 2017 (Estate of the
30 Late Muyingo Experito) High Court Family Division, Justice Godfrey Namundi was of the view
that the estate would be put at risk of being wasted, if the grant of Letters of Administration
was left under the custody of the Respondent. Whereas the facts of that case are different
from those in the instant matter, the principle is the same; that where there is serious

5 contention regarding the scope of the estate of the deceased, it is only right that any further
authority to deal in that estate is estopped until the dispute is resolved between the parties,
or else the estate may indeed be at risk of going to waste or being transferred to third parties.

10 The Respondent made submissions in regard to the law of revocation of Letters of
Administration. I agree that the principles on revocation are clear. Nevertheless, in the instant
matter, the issue is recalling the Letters of Administration and stoppage of any further dealing
in estate property based on the Letters of Administration granted. The Applicant is yet to make
a case for revocation of the said Letters of Administration, and this court cannot proceed to
revoke them in the absence of evidence to justify that action.

15 In the premises, I hereby order that the Respondent Ssenyimba Raphael Mawagga returns
and leaves in this Court the Letters of Administration Vide Administration Cause No. 980 of
2020, pending the determination of the consolidated suit. Consequentially, any further
dealings in the suit property is stopped until the determination of the consolidated suit.

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Issue 2: Whether costs of the application should be provided for.

The parties have both prayed for costs. This application is only one of the matters under the
consolidated suit. I find that it is best that costs are in the cause.

25 **CONCLUSION:**

Consequently, I make the following orders;

- 30 a) The Respondent Ssenyimba Raphael Mawagga returns and leaves in this Court the
Letters of Administration Vide Administration Cause No. 980 of 2020, pending the
determination of the consolidated suit and/or other procedure for revocation of the said
Letters of Administration.
- b) Consequentially, any further dealings in the suit property based on those Letters of
Administration is stopped until the determination of the consolidated suit and/or the
revocation of the grant.



5 c) Costs shall abide the outcome of the main suit.

I so order.

Delivered at Kampala this15th.....day ofJanuary..... 2024.

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Dr. Christine A. Echokit
Judge

15 The right of appeal explained.