

5 THE REPUBLIC OF UGANDA

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

10 MISC. CAUSE NO. 0018 OF 2023

IN THE MATTER OF SECTION 5(1) OF THE ADMINISTRATOR GENERAL'S ACT
AND

15 IN THE MATTER OF THE ESTATE OF MAWEMUKO BITULENSI (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR A CERTIFICATE OF NO OBJECTION BY
MUSISI RUTH NAKKAZI (NIECE OF THE DECEASED)

20 MUSISI RUTH NAKKAZI APPLICANT

VERSUS

ADMINISTRATOR GENERAL RESPONDENT

25 Before: LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

RULING

BACKGROUND:

30 This is an application for orders that the Administrator General be summoned to show cause why he does not issue a certificate of no objection for the estate of Mawemuko Bitulensi (deceased) to the Applicant Musisi Nakkazi Ruth the niece to the deceased; and in the alternative, the issuance of the said certificate to the Applicant; and costs of the application be provided for. The application is brought under Section 5(1) of the Administrator General's Act, section 33 of the Judicature Act and Order 52 rules 1 and 2 of the Civil Procedure Rules.

35 The Application is supported by the affidavit of Musisi Nakkazi Ruth the Applicant with grounds briefly: that the family of the deceased opened a file at the office of the Administrator General vide ME/AC/2053/2018 and were ordered by the Administrator General to hold a family meeting to reach a consensus as to who should administer the estate; that the family chose
40 the Applicant; but that up to-date the Administrator General has not issued a certificate of no

5 objection even though the Applicant has written to notify him of her intention to apply for the grant; and that, therefore, the said certificate should be dispensed with or in the alternative court makes such other order as it deems fit.

10 Muyomba Simon Peter of the Respondent, Administrator General swore an affidavit in reply to the effect that lineal descendants with their entitlement of 99% of the entire estate have preferential rights to administer the estate over and above the heiress with her entitlement of 1%; and that the Respondent is not bound by the resolutions made by the family members if not in line with the law.

15 The Applicant filed an affidavit in rejoinder to the effect that there is nothing to prevent a heiress from obtaining Letters of Administration; that the Applicant and other beneficiaries were never informed why the CAO's report was not complied with; that the beneficiaries have the first priority to choose who to administer the estate; and that the Respondent is guilty of illegality as the file has not been acted on for 2 years.

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REPRESENTATION AND HEARING:

Counsel John Fisher Ssengoba represented the Applicant. The Respondent was represented by Nakimuli Isabella Janet. The parties filed written submissions.

25 **ISSUES FOR THE RESOLUTION OF THIS COURT:**

1. Whether the application is properly before court and should be granted.
2. Whether costs should be provided for.

RESOLUTION OF THE ISSUES BY THIS COURT:

30 **Issue 1: Whether the application is properly before court and should be granted.**

Under Section 201 of the Succession Act, when the deceased has died intestate, those who are connected with the deceased either by marriage or by consanguinity are entitled to obtain Letters of Administration of his estate and effects in accordance with the Succession Act.

- 5 Section 5(1) of the Administrator General's Act requires an applicant for Letters of Administration, other than for Probate or in the event of a surviving spouse, to obtain a certificate of no objection from the Administrator General.

10 In the instant case, there is a short certificate of death of Mawemuko Bitulensi issued on the 29th day of September 2020. The certificate of no objection has not yet been given. The argument of the Respondent is that there was no follow up on the file vide ME/AC/2053/2016 at the Administrator General's office by any beneficiary since receipt of the CAO's report in 2016; and that the Respondent was only surprised to receive a notice from the Applicant's advocates as late as the 13th day of February 2023 of intention to apply for Letters of
5 Administration under Section 5(1) of the Succession Act by Namusisi Ruth Nakkazi. The Respondent also states that in any case there was no family tree in the CAO's report regarding the meeting of the family to indicate the basis for designation of the applicant.

I have perused Annex "A" to the Applicant's affidavit in support of the application. It is the report
20 of the CAO of Wakiso District Local Government and is dated the 10th day of February 2021. The said report states that the late Mawemuko Bitulensi died intestate on 27th day of May 2007 leaving no widow. He had 3 children, namely; Nakasi Lovincer, Namulindwa Joyce and Nabawanuka Alexandria.

- 25 a) Nakasi Lovincer - aged 81 years.
b) Namulindwa died leaving 3 children namely; Kasolo James – 47 years, Nalubwama Violet (deceased) and Kasule Sharifah.
c) Nabawanuka Alexandria died leaving one child named Namuddu who later also died.

30 The CAO's report attached minutes of a meeting of the family held on 8th day of February 2021, chaired by Lutalo John the Senior Assistant CAO and attended, inter alia, by Ruth Musisi Nakkazi, the Applicant, Nakasi Rovinsa (this must be the "Lovincer" in CAO's report) daughter of the deceased and D.K Senkumba brother of the deceased. On the same date of 8th February

- 5 2021, the family members signed a consent letter appointing the Applicant who is a niece as the heiress to the deceased. A one Darlington Ssenkumba Kampama (brother to the deceased) and aged 84 years was said to be the best person acquainted with the deceased's property.
- 10 The Respondent has clearly indicated that the CAO's report did not specify the basis on which the family designated the Applicant as the right person for grant of a certificate of no objection by the Administrator General. In my opinion, this issue is so glaring in view of the fact that there are surviving lineal descendants of the late Mawemuko Bitulensi.
- 5 Under Section 27(1)(a) of the Succession Act, the customary heir is entitled to 1% of the estate of the deceased while the spouse, dependent relatives and lineal descendants are entitled to 99%. As a matter of course, the priority should have been given to the lineal descendants to apply for a certificate of no objection and if granted, to go on to apply for Letters of Administration. This is because they have the majority interest of 75% in the estate of the
- 20 deceased, compared to the heiress who has only 1%.

Should there have been reason to disregard the priority interest of lineal descendants, the family meeting should have expressly stated so. One of the possible reasons could be mental illness if any, in which case proof of the same would be required. The other unlikely reason is

25 that the lineal descendants are of minority age, which is not the case in the instant matter; or are senile, which again seems unlikely considering that the only surviving daughter of the deceased though aged 81 years at the time, was able to attend the family meeting and to sign attendance thereto.

- 30 In the notice of 13th day of February 2023 marked annex "B" to the Applicant's affidavit in support of the application, the Applicant indicates that the only surviving child of the deceased is extremely advanced in age and cannot be involved in administration matters. The Applicant neglected the fact that the said surviving child had a sister called Namulindwa who is survived

5 by a son named Kasolo James aged 47 years in 2021 and now most likely around the age of
49 years. The said Kasolo James is the lineal descendant of the deceased as per the minutes
of the family meeting. Whereas the Applicant is referred to as the niece, it is not indicated
whether she enjoys lineal consanguinity or collateral consanguinity in respect of the deceased.
In the absence of such information and especially since the Applicant was not identified in the
10 minutes of the family meeting held on 8th day of February 2021 as belonging to the lineage of
the deceased, the Respondent was absolutely right to inquire into the justification of her choice
as the person to apply for a certificate of no objection. That she was chosen as heiress does
not automatically entitle her to apply for a certificate of no objection, in the absence of proof of
lineal connections in the circumstances of the instance case. Had there been no lineal
15 descendants of the deceased, the Applicant would most likely have stood a chance at being
considered for the grant of a certificate of no objection and consequently, letters of
administration.

In view of the above, this ground must fail. The Applicant is advised to consult with the other
20 beneficiaries of the estate of the late Mawemuko Bitulensi in order to have the process at the
Administrator's office completed in accordance with the law.

The case of Administrator General Vs Joyce Akello & anor [1996] HCB cited by the Applicant
is to the effect that the Administrator General's powers are not absolute and that court has
25 wide discretion to grant letters of administration to another person other than the Administrator
General. In that case, the consent sought from the Administrator General was for Donato the
father of the deceased. Court found that the Administrator General was not right in withholding
consent from Donato and should not have intervened on behalf of Sarah another woman of
the deceased.

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In the instant case, the Administrator General has not withheld consent at all. He is simply
saying that there was no follow up of the process at Administrator General's office since 2016
by any beneficiary of the estate; and that there has been no justification as to why it is a niece

5 and heiress to the deceased that is applying for that consent, not a lineal descendant. I do not agree with the Applicant that there is an injustice by the Administrator General for which a remedy must be sought under Article 50 of the Constitution. What the Applicant needs to do is to address the concerns of the Administrator General, which concerns are legitimate.

10 The Applicant claims to have served the Respondent with a notice dated 14th February 2023 of her intention to apply for a grant and that she did not get a reply in 14 days, hence this application. The said notice of 14th February 2023 is, unfortunately not attached to the application. What is attached is a notice of intention to apply for letters of administration by Namusisi Ruth Nakkazi dated 13th day of February 2023. If that is the notice referred to by the
15 Applicant (as it indeed seems so), then I must say that the said notice indicates the intention of the Applicant to petition court under Section 5(1) of the Succession Act if the Respondent does not issue a certificate of no objection.

With all due respect, I do not find any Section 5(1) of the Succession Act authorizing the
20 Applicant to petition court where the Administrator General does not issue a certificate of no objection within 14 days. The relevant law is Section 5(1) of the Administrator General's Act. Under Section 5(3) of the Administrator General's Act, the Administrator General may call upon the applicant for such particulars as he may reasonably require in order to determine whether to oppose or consent to the grant being made.

25 In the instant application, the snag arose simply because of lack of follow up of the process started in 2016 at the office of the Administrator General. Had the process been completed, the issues at stake may have been resolved by now. Hence, the beneficiaries of the estate are advised to resume the process at the Office of the Administrator General. On the same note,
30 the Administrator General is urged to advise and respond to the beneficiaries speedily since there is inordinate delay from 2016 when the process was first commenced.

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

The Applicant has prayed for costs to be provided for. In the circumstances that the estate is still grappling with the process leading up to administration, it would not be advisable to order costs upon it. In the circumstances, each party shall bear their own costs.


10 **CONCLUSION:**

Consequently, I order that;

- a) This application fails.
- b) The beneficiaries of the estate of the late Mawemuko Bitulensi should follow up the file vide ME/AC/2053/2016 at the Office of the Administrator General and the Administrator General shall act speedily to complete the process.
- c) Each party shall bear its own costs.

I so order.

Delivered at Kampala this 25th day of January 2024.


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Dr. Christine A. Echokit
Judge.

The right of appeal explained.