

5
THE REPUBLIC OF UGANDA

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

10
**MISCELLANEOUS APPLICATION NO. 1320 OF 2023
(ARISING FROM HCT-00-FD-AC-1570-2008)
(ESTATE OF THE LATE BALUNABA LWANGA (DECEASED)
AND**

15
**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF LETTERS OF PROBATE
AND ADMINISTRATION GRANTED TO ERIAB MUWANGA BY KATALAGA GEORGE
WILLIAM (GRANDSON)**

Before: **LADY JUSTICE DR. CHRISTINE A. ECHOOKIT**

RULING:

BRIEF BACKGROUND:

25
This application is brought to this Honorable court by way of Notice of Motion under Section 98 of the Civil Procedure Act, Cap 71, section 234 (1), 2(d) and (5) of the Succession Act, Cap 162 as amended and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71-1 for orders that:

- 30
- a) Letters of Probate and Administration issued to ERIAB MUWANGA (now deceased) in respect of the estate of the late BALUNABA LWANGA vide HCT-00-FD-AC-1570 - 2008 by the High Court of Uganda at Kampala be revoked for having become useless and inoperative through circumstance due to death of the executor/ administrator.
 - b) Letters of Administration in respect of the estate of the late Balunaba Lwanga be granted to the applicant, the applicant being a fit and proper person to administer the said estate.
 - c) The costs of this application be borne by the estate.

35
The application is supported by an affidavit deposed by Katalaga George William who is the applicant herein. The grounds stated in his affidavit in support of the application are briefly that the late Balunaba Lwanga died testate on the 11th day of June 1970 naming Muwanga Eriab as the executor of his will; that the late Muwanga Eriab obtained letters of probate on

5 the 11th day of November 2008 but died on the 20th day of October before fully distributing the estate as per the Will; that the death of the late Muwanga Eriab has rendered the Letters of Probate useless and inoperative; that the family members/beneficiaries agreed to the applicant as a fit and proper person to administer the estate of the late Balunaba Lwanga; and that the applicant has been since granted a Certificate of No Objection in respect of the
10 estate of the late Balunaba Lwanga.

HEARING AND REPRESENTATION:

The applicant was represented by Counsel Oundo Patrick. The applicant and the beneficiaries were in court. The applicant made written submissions.


ISSUES FOR DETERMINATION:

1. Whether there exists sufficient grounds for revocation of Letters of probate issued to Muwanga Eriab (now deceased) in respect to the estate of the late Balunaba Lwanga.
2. Whether the applicant is a fit and proper person to be issued letters of administration in
20 respect of the estate of the late Balunaba Lwanga.
3. Whether there is any remedy available to the applicant.

DETERMINATION OF THE LEGAL ISSUES BY THE COURT:

Legal issue 1: Whether there exists sufficient grounds for revocation of Letters of
25 Probate issued to Muwanga Eriab (now deceased) in respect to the estate of the late Balunaba Lwanga.

The applicant applied for revocation of Probate granted to Eriab Muwanga (now deceased) in respect of the estate of the late Balunaba Lwanga granted vide AC No. 1570 of 2008; and issuance of fresh Letters of Administration to him (Katalaga George William (grandson), being
30 one of 2 surviving beneficiaries to the estate of the late Balunaba Lwanga.

 The petitioner presented the death certificate of Balunaba Lwanga Serial No. 47674 dated 21/7/2023 in which he was reported to have died on 11/06/1970. The death certificate of

5 Muwanga Eriab Serial No. 1652041 of 27/4/2023 was also presented. He is reported to have died on 20/10/2011.


When I perused the petition vide Administration Cause No. 1570 of 2008, I discovered that the late Balunaba Lwanga was recorded to have died on 10/03/1968 and not on 11/06/1970
10 as reported by the applicant. Accordingly, I referred the applicant to NIRA for the correction of date of death and reissuance of a new certificate of death in respect of the late Balunaba Lwanga.

When the matter came up again for hearing on 16/01/2024, a death certificate bearing the
5 correct date of death viz 10th March 1968 was presented. The said death certificate is Serial No. 47787 of 20/12/2023. It was verified by court to be a true copy. Probate was issued to Eriab Muwanga in respect of the estate of the late Balunaba Lwanga on 11th November 2008. Before he could complete administering the estate, the said Eriab Muwanga died on 20/10/2011. A death certificate Serial No. 1632041 of 24/4/2023 was presented to court in
20 that respect and accordingly verified.

Under S. 234(2)(d) of the Succession Act, the said Probate can only be revoked the Probate is rendered useless and inoperative because of the death of the executor Eriab Muwanga.

25 **Legal issue 2: Whether the applicant is a fit and proper person to be issued letters of administration in respect of the estate of the late Balunaba Lwanga.**

In respect of issuance of Letters of Administration to the applicant Katalaga George William, Section 234(5) of the Succession Act allows court to grant Letters of Administration to another person where court determines that such a person is a fit and proper person to be granted
30 Letters of Administration under the Act.

 In the meeting at the Administrator General's Office held on 13th day of September 2023, the Administrator General noted that the family had a meeting wherein they appointed Kajojo

- 5 Steven Mukasa (nephew) to get a certificate of no objection. However, the Administrator General advised that where there are grandchildren, they take precedence over a nephew; hence the consent to appoint Katalaga George William (grandson).

Subsequently, a Certificate of No Objection was issued to Katalaga George William dated 2nd
10 October 2023 to the estate of the late Balunaba Lwanga. I have seen the original Certificate of No Objection on court record with Serial No. 39174. The only other beneficiary and grandson to the estate of the late Balunaba George is Katongole Eremiya. He consented to the grant of Letters of Administration to Katalaga George William.

- 15 In the premises, I am satisfied that the petitioner Katalaga George William has fulfilled the requirements for the grant of Letters of Administration to the estate of the late Balunaba Lwanga.

CONCLUSION:

20 I hereby order that;

- a) The Probate granted to Eriab Muwanga is accordingly revoked; it is rendered useless and inoperative by reason of the death of the said Eriab Muwanga.
b) Fresh Letters of Administration are hereby granted to Katalaga George William in respect of the estate of the late Balunaba Lwanga.
25 c) Costs of the application shall be borne by the estate.

I so order.

Delivered on this... 16th ...day of... January ...2024.

30


.....
Dr. Christine A. Echookit
Judge.

The right of appeal explained.