

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 173 OF 1987

ELINESTI BABUMBA & TWO OTHERS :::::::::::::::::::::::::::::::::::PLAINTIFFS

VERSUS

ESTER NAKASI KIZITO::: DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

JUDGMENT:

This suit arose from a contentious application for grant of Letters of administration of the Estate of the late Erifasi Kizito. It was brought in accordance with section 265 of the succession Act. The three Plaintiffs were the Petitioners for grant of Letters of Administration in administration cause No. 202/86. They petitioned for the grant as brother, nephew and niece of the deceased respectively. The caveator who claimed to be the widow of the deceased is the defendant in the suit.

In the suit, the Plaintiffs sought for:-

- (1) An order to remove the defendant's caveat.
- (2) An order granting to the plaintiffs letters of Administration and
- (3) Cost of the suit.

When the case came up for hearing before me on 8/4/92, the plaintiffs and their counsel appeared but neither the defendant nor her counsel appeared. No explanation was given for their absence yet there was evidence of due service of Hearing Notice on the defendant personally. A similar application for grant of Letters of administration of the Estate of the same deceased was filed by the defendant in the Chief Magistrate's court of Mengo under administration cause No. 79/86. The present Plaintiffs lodged a caveat against the grant of Letters of administration of the Estate

of the deceased in that application as a similar application was pending in the High Court. The application in the Chief Magistrate's court of Mengo was eventually dismissed for want of prosecution under **0.15 r. 6 of the CPR.**

In the instant case, after satisfying myself that there was satisfactory evidence of service of the Hearing Notice on the defendant, I allowed the application by counsel for the Plaintiffs that the hearing of this suit should proceed ex-parte under 0.9 r.17 (1) (a) of the CPR.

At the hearing, I was informed that the first plaintiff Erinesti Babumba had died in 1987 leaving only two plaintiffs. Hearing therefore proceeded with only two plaintiffs, Edward Bamujje, 2nd plaintiff, gave evidence as PW1. In his evidence Bamujje told court that at a meeting which was held after the death of the deceased, by elders and the children of the deceased, Erinesti Babumba, Ketu Namyalo and himself were selected to apply for Letters of Administration to Administer the Estate of the deceased Erifasi Kizito according to law. That an earlier such meeting had appointed him a customary heir of the deceased. That following the authorization by that meeting they approached the office of the Administrator General which gave them a letter of No objection dated 19/6/86. That armed with that letter of No objection, they petitioned for grant of Letters of Administration to enable them Administer the Estate of the late Erifasi Kizito according to law.

That the deceased was not married to any woman customarily or otherwise but that he was survived by nine children whom he got from six different women friends. That the defendant was one of those six women friends of the deceased and had mothered two children Kitengeza and Nabibubu Florence. That the defendant never stayed together with the deceased. That she stays at Bugerere. Bamujje further testified that a lady called Dorothy Nabazziwa also mothered three children for the deceased but that he never lived together with her. Ketu Namyalo PW2 corroborated the evidence of Bamujje (PW1) in all material particulars.

From the above evidence Mr. Balikuddembe counsel for the Plaintiffs prayed that the defendant's caveat be removed and the Letters of Administration granted to the two surviving plaintiffs to administer the Estate of the deceased Erifasi Kizito. That there should be no order as to cost.

Under section 6 of the Administrator General Act no grant of Letters of Administration shall be made to any person except an executor appointed by will or to a widower or a widow until the applicant has produced to the court proof that the Administrator General or its agent has declined to administer the Estate or proof that Notice of at least 14 clear days has been given to the Administrator General of intention to apply for such grant.

In the instant case, there is sufficient evidence that the Administrator General has declined to administer the Estate of this deceased. The Letter of No objection issued to the Plaintiffs from that office on 19/6/86 is evidence of that decline. It is on the court record.

It is the law that when considering grant of Letters of Administration, the widower or widow of the deceased takes precedence over all other relatives of the deceased. This is covered under section 6 of the Administrator General's Act.

In the instant case, there is contention for grant of Letters of Administration between the plaintiffs and the defendant who claims to be the widow of the deceased. Under the provision of the above section of the Administrator General's Act, the defendant should take precedence over the plaintiffs in consideration for this grant if only it can be shown that she is infact a widow of the deceased. Unfortunately no evidence was adduced to show that she was married to the deceased either customarily or at all or that she was cohabitating with the deceased at the time of his death. Having a child or children by the deceased is not enough to confer on the women widowhood. In the absence of the above type of evidence, the defendant's issue of widowhood is not proved. In the circumstances her claim must fail. Consequently the caveat which she had lodged against the plaintiffs' application must be removed and the Letters of Administration granted to the two surviving Plaintiffs. Judgment is therefore given to the Plaintiffs in those terms. No order is made as to costs of this suit.

.....G.M.O
KELLO
JUDGE

13/4/92