

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NUMBER 9 OF 2005

NAMULI PERUSI ::: PLAINTIFF

VERSUS

YOKANA SSALI ::: DEFENDANT

BEFORE: THE HON. AG. JUDGE REMMY KASULE

JUDGMENT:

Namuli Perusi, the plaintiff, sued Yokana Ssali, the Defendant, for revocation of Letters of Administration granted by this Court to the Defendant on 11th January 2005 in High Court (at Kampala) Administration Cause Number 1535 of 2004 in respect of the estate of late Kiggundu Ssali W. Paul.

The plaintiff proceeded ex-parte against the Defendant. This is after court had ordered on 10th June 2005, that the Defendant, who could not be traced to be served in the normal way, be served by substituted service by having the summons to file a defence advertised in the Bukedde Newspaper. The advertisement appeared in the Bukedde Newspaper of 20th June 2005, on page 18. The Defendant failed to file any defence to the suit within the fifteen (15) days prescribed by law.

An affidavit of service was filed on the court record. The suit thus proceeded ex-parte against the Defendant on 15th July 2005.

Though no formal issues were framed before evidence was taken, from the Plaintiff and the evidence adduced, the issues for determination by court appear to be the following:-

1. Whether or not Kiggundu Ssali Paul is dead and thus his estate has to be administered.
2. Whether or not the plaintiff has any Locus Standi in the administration of the estate of the said late Kiggundu Ssali Paul.

3. Whether or not the Defendant has any Locus Standi in the administration of the estate of the said late Kiggundu Ssali Paul.
4. Whether the Defendant fraudulently obtained the letters of Administration to the estate of the late Kiggundu Ssali Paul in High Court at Kampala Administration Cause No. 1535 of 2004.

The second issue is whether or not the plaintiff has any Locus Standi in the administration of the estate of the said late Kiggundu Ssali Paul.

Both the plaintiff and PW2 testified that the deceased was their brother, all of them having been born by the same father and mother, the late Yokana Ssali (father) and Alice Ssali (mother). The deceased had been survived by a daughter one Nantongo. She too had subsequently died. The deceased, Kiggundu Ssali Lwakisa Paul had no other children. There was also no widow She too had subsequently died. The deceased, Kiggundu Ssali Lwakisa Paul had no other children. There was also no widow surviving him. According to the plaintiff and PW1, both of them and their sister, Priscilla Nassali, are the immediate relatives of the deceased, as a brother Pw2, and sisters (plaintiff and Priscilla Nassali).

The evidence of the plaintiff and Pw2 as to the issue of consanguinity of the plaintiff with the estate of the late Kiggundu Ssali W. Paul is not in any way controverted.

The court therefore holds that as sister of the deceased the plaintiff has sufficient interest in the said deceased's estate. The plaintiff and the deceased are of the same consanguinity or kindred, both descending from the same stock and/or common ancestors: ***See: section 19 and 23 of the Succession Act, Cap. 162; and the first schedule to the said Act.***

The court therefore holds, on the second issue, that the plaintiff has Locus Standi in the administration of the estate of the said late Kiggundu ssali Paul. It is proposed to consider issues Numbers three and four together as both of them are closed connected with each other.

The third issue is whether or not the Defendant has any Locus Standi in the administration of the estate of the said late Kiggundu Ssali Paul.

Issue Number Four is whether the Defendant fraudulently obtained the letters of Administration to the estate of the late Kiggundu Ssali Paul in High Court at Kampala Administration Cause Number 1535 of 2004.

The identity of the Plaintiff is alleged by the plaintiff to be fraudulent. It thus ties up the two issues together.

In their testimony both the plaintiff and PW2 stated that they did not know one Yokana Ssali as a son of the deceased Kiggundu Ssali Paul. The deceased in fact never had a son as a child. They explained that they identified the Defendant as being one whose true names are Charles Lwanga, a son of the late Ignatio Lwanga, who was their elder brother, and also to the deceased; Kiggundu Ssali Paul. Ignatio Lwanga had predeceased the deceased.

In the petition for the application for letters of Administration in High Court Administration Cause Number 1535 of 2004, the applicant, Yokana Ssali, describes himself as son of the deceased, Kiggundu Ssali Paul: See: Paragraph 6 of the Petition.

The Defendant has not come forward to contradict the evidence of the plaintiff and PW2 that the deceased had no son at all as his child and that the correct names of the Defendant are not Yokana Ssali, but Charles Lwanga.

Even in the line of kindred or consanguinity the Defendant's relationship of being a son to the deceased's elder brother would not defeat in terms of priority that of the brothers (PW2) and sisters (plaintiff and Priscilla Nassali) of the deceased.

The plaintiff asserts that the Defendant obtained the letters of Administration through fraud.

The Supreme Court of Uganda had defined "fraud" as meaning actual fraud or some act of dishonesty: See: Supreme Court Civil Appeal Number – of - : **David Sejjaka V. Rebecca Musoke.**

Actual fraud means being deceitful or dishonesty.

The degree of proof of fraud required is one of strict proof, but no amounting to one beyond reasonable doubt. The proof must however be more than a mere balance of probabilities.

See: Supreme Court Civil Appeal Number 13 of 1992: *J.W. Kazorra V. Rukuba*: See: also High Court of Uganda at Kampala Civil Suit Number 119 of 1999 *Jackson Musoke Kikayira V. RoseMary Nalubega & Yahya Walusimbi* (Lady Justice S.B. Bossa: 13th May 2003).

The particulars of fraud alleged against the Defendant are as per paragraph 4(d) of the plaint:-
“4(d) The Defendant fraudulently petitioned for the above Letters of Administration, or by making untrue allegations of fact. Particulars of Fraud/untrue facts

- (i) Representing himself as son of the deceased whereas not.
- (ii) Alleging that the deceased had three children whereas he had no child at all.
- (iii) Alleging that the deceased was married to one Namukasa Margaret, whereas the deceased did not have a wife, and the Namukasa Margaret was wife) widow of Ignatius Lwanga, father of the defendant.
- (iv) Alleging that the deceased at time of his death had a fixed place of above (sic) in Wakiso, whereas he was resident of Kawuga Mukono and never lived in Wakiso at all.
- (v) Alleging that the deceased died on 26/7/97, where as he died on 14/7/87.
- (vi) Alleging that the deceased died of road accident and that he did not die of accident and was buried at Kawuga, Mukono.
- (vii) Presenting an LC letter alleging that the deceased was resident of Gayaza LCI whereas he was of Kawuga LCI.
- (viii) Presenting a Letter of consent of to the administrator General that the purported brother and sister had consented to the defendant to proceed to obtain the grant.

The particulars of fraud/untrue facts in (i) and (ii) have already been dealt with; only to add that both plaintiff and PW2 explained to Court that the deceased had had one daughter, Nantongo, but that the same had also subsequently died by the time the Defendant applied and obtained the Letters of Administration.

As to the assertion by the Defendant in the petition for Letters of Administration that the deceased was married to Namukasa Margaret, the plaintiff stated that the deceased had no wife. That one Margaret Namukasa was wife to Ignatio Lwanga, elder brother of the deceased. In this the plaintiff was supported by PW2.

The court finds that this particular of fraud is proved to its satisfaction.

In the petition the Defendant stated in Paragraph that: “The deceased at the time of his death had a fixed place of abode in Wakiso within the jurisdiction of this honourable court.”

Both the Plaintiff and PW2 contend that this assertion is false. They are emphatic that the deceased never stayed in Gayaza; Wakiso District. He always stayed at Kawuga, Kyaggwe, Mukono District. This is where his remains are.

As to the date and cause of death, the Defendant stated in Paragraph 4 of his affidavit in lieu of a death certificate, dated 3rd January, 2005,:-

That my late father died on the 27th July 1997 in a road traffic accident and he was buried in Mukono, Ngogwe.”

The plaintiff and PW2 are certain that the above is false. According to them the deceased died on 14th July 1987, died of fever, and was never buried at Ngogwe. Then both organized the burial as sister and brother of the deceased.

The court has no reason not to accept the evidence of the plaintiff and PW2 as to these particulars of fraud alleged against the Defendants. The court finds them proved to the requisite level of proof.

As to the particular of fraud/untrue fact of presenting an LC letter alleging that the deceased was resident of Gayaza LCI whereas he was of Kawuga LCI, neither the Plaintiff nor PW2 testified in respect of this assertion. The case takes it as not proved.

The court holds on the whole that the plaintiff has proved that the Defendant obtained the Letters of Administration to the deceased’s estate on the basis of a petition that was false in its material particulars. The Defendant thus used fraud to be the Administrator of the deceased’s estate.

Section 234 of the success Act provides that a grant of Letters of Administration may be revoked for just cause.

Just cause is established among other considerations, if the proceedings to obtain the Letters of Administration are defective in substance, or the grant was obtained fraudulently by making a false suggestion.

The Court finds in this case that the Defendant obtained the grant of Letters of Administration in Administration Cause Number 1535 of 2004 on the basis of proceedings that were defective in substance and/or were also based on false assertions, fraudulently presented to court. The applicant has established Just Cause for the revocation.

The evidence on record is that the deceased died registered as proprietor of the land comprised in Kyaggwe Block No. 220 plot 47 land at Ntulumuko, measuring 7.95 hectares. PW3 Kalanzi Peter, had caveated this land in 1990 so as to protect his interest as a resident on the said land.

In April 2005, PW3, saw one, calling himself Yokana Ssali on the land. PW3 went to the land office at Mukono and searched on the land. He found the same to have been registered in the names of Yokana Ssali of Kakiri, Wakiso District, and Administrator of the estate of the late Paul Lwakisa Kiggundu Ssali in **Administration Cause No. HCT-00-CV-1535 of 2004, High Court**. The transfer was through Instrument No. MKO 73517 dated 24.2.2005 at 9.00 a.m. A certified copy of the Certificate of title was tendered in evidence as Exhibit P2.

From the evidence of PW3 Court infers and concludes that the purpose of the Defendant acting fraudulently was to obtain the deceased land comprised in Kyaggwe Block 220 Plot 47.

It is the finding of the court that the plaintiff has proved her case against the Defendant. Accordingly Judgment is entered for the plaintiff against the Defendant for the following ordes:-

- a) The Letters of Administration granted to the Defendant in the names of Yokana Ssali in High Court of Uganda at Kampala **Administration Cause Number HCT-00-CV-AC-1535 of 2004** in the estate of Kiggundu Ssali Paul on the 11th day of January 2005, are here by revoked.
- b) The Defendant is hereby ordered to re-surrender the said Letters of Administration to the High Court as the same stand revoked.

- c) The Registrar of Titles/Commissioner Land Registration is hereby directed to Cancel the entry of Instrument Number MKO 73517 dated 24.2.2005 at 9.00 a.m. and the names of Yokana Ssali of Kakiri, Wakiso District, and Administrator of the estate of the late Paul Lwakisa Kiggundu Ssali ***Adm. Cause No. HCT-00-CV-1535 of 2004*** High Court, from the Certificate of Title, and to have the land revert to the names: Paul Lwakisa Kiggundu Ssali, as registered Proprietor.
- d) The plaintiff and her brother Enock Ssali and her sister, Priscilla Nassali, as the Immediate relatives of the deceased, are, either jointly or any one of them, representing the others, are to make due application to administer the estate of the deceased.

The plaintiff is awarded the costs of the suit.

Remmy Kasule

Ag. Judge

4th November, 2005