

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
HCT-02-CV-CS-0089-2002

1. **ADONG SUSAN**
2. **ONGOM GEORGE:.....:PLAINTIFF**
3. **ONGOM ROBERT**

VERSES

OTUCU RAYMOND:.....: DEFENDANT

BEFORE:-

HON JUSTICE AUGUSTUS KANIA

JUDGMENT

This suit was brought by Adong Susan, Ongom George and Robert Ongom against the defendant seeking the removal of a caveat lodged by the defendant against the grant of letters of Administration to the estate of the late Oluma Jimmy to the plaintiffs who are children to the deceased. The suit also sought for an order that a grant of the letters of Administration to the Estate of the deceased issue to the plaintiffs.

The brief facts of this case are that following the death of their father, the late Oluma Jimmy, his children applied for Letters of Administration to his estate vide Administration Cause No. LIR CO-CV-0086 of 2002. When the application was advertised, the defendant lodged a caveat prohibiting the grant of the letters of Administration on grounds that the application included his customary land. The applicant had no relationship what so ever with the deceased and as such the plaintiffs considered he had no legal claim to the estate of the deceased, hence this suit.

The defendant did not file s defence though he was duly served with the summons in the suit through Ms. Twontoo & Co Advocates whom he had designated as the address at which he was to be served. After fixing the suit for hearing, Ms. Twontoo & Co. Advocates, the Advocates for the defendant were duly served with the hearing notice but did not appear at the hearing. The suit accordingly proceeded ex-parte.

At the commencement of the hearing Mr. Odongo, learned counsel for the plaintiffs applied to strike out the name of the second plaintiff who was stated to be deceased and it was accordingly struck out leaving Adongo Susan and Ongom Robert as the only remaining plaintiffs.

The following issues were framed for determination namely:-

1. Whether the plaintiffs are entitled to apply for letters of Administration to the estate of the late Oluma Jimmy.
2. Whether the defendant was entitled to lodge a caveat forbidding the grant of letters of Administration
3. Remedies available to the plaintiff.

PWI Adongo Susan testified that she is a daughter of the late Oluma Jimmy who died on the 27/02/98. Before he died her late father charged her, Ongom Robert, the late Ongom George and Nyalior Denis with looking after his estate. Because Nyalior Denis was a child, the three of them applied for letters of Administration to the estate of their late father on 6/5/2002. The defendant who is a neighbour and in no way related to them lodged a caveat forbidding the grant of letters of Administration to them. The Caveat was tendered as an exhibit for the plaintiffs and marked P.1. It was also her evidence that they applied for letters of Administration after they had obtained a letter of No. Objection from the C.A.O of Lira District. She exhibited the letter of No objection and it was marked P.2.

The evidence of PW2 Ongom Robert was identical to that of PWI Adongo Susan in every material respect.

Mr. Odongo submitted regarding the first issue that as the children of the deceased the plaintiffs are entitled to apply for letters of Administration to the estate of the deceased. He cited the case of **Sarah Sebowa & 5 ors vs. Peter Sebowa (1991) HCB 95** for the proposition that the first persons entitled to apply for the letters of Administration to the estate of a deceased person are the widow and the children in that order.

The precedence as to who is entitled to apply for letters of Administration is also decided by the proportion of the share of the deceased's estate a beneficiary takes. This is laid down in

Section 27 of the succession Act where ordinarily a customary heir takes 1% a wife 15% lineal descendants 75% and dependant relatives 9%. In interpreting this sharing of the estate it was held in Nyendwoha Lucy vs. Nyendwoha Robert and Anr HCCA 1068/83 and Christine Male & Anr vs. Sylvia Mary Namanda & Anr (19820) HCB 140, that the person with the greatest interest in the estate is entitled to apply for letters of Administration, Section 202 & 203 of the Succession which cites persons entitled in priority to administer an estate of a deceased person are to the same effect. In the instant case the plaintiffs as lineal descendants entitled to 75% of the estate of the deceased are entitled to administer the estate of the late Oluma Jimmy. The first issue is answered in the affirmative.

With regard to the second issue both Adongo Susan and PW2 Ongom Robert testified that the defendant was in no way related to the deceased. Taking into account the provisions of sections 27, 202 and 203 of the Succession Act which spell out the classes of beneficiaries to an intestate's estate and the persons entitled to apply for letters of Administration and basing himself on the decision in Sarah Subowa & 5 Ors vs. Peter Ssebowa (Supra) to the effect that no total stranger is entitled to apply for letters of administration to the estate of a deceased person, I find and hold that the defendant not being in any way related to the deceased is not entitled to lodge a caveat forbidding the grant of letters of Administration to the plaintiffs. He indeed has no locus. The second issue must be answered in the negative.

Having found that as a stranger the defendant had no locus and right to lodge a caveat for bidding the grant of letters of Administration to the plaintiffs, Judgment is entered for the plaintiffs, the caveat lodged by the defendant is vacated and letters of Administration to the Estate of the late Oluma Jimmy are granted to the plaintiffs Adongo Susan and Ongom Robert.

The plaintiffs also prayed for general damages for the defendant's unlawful interference with the estate and blocking the legitimate Administration of the estate. General damages are at the discretion of the Court and their purpose is to place the plaintiff in as good a position as he/she would have been had the wrong complained of not occurred. According to the evidence adduced by the plaintiffs they applied for the letters of Administration on 6/5/2002 and the defendant lodged a caveat on the 15/5/2002 preventing the proper management and administration of the estate until now causing losses and damage and depriving the plaintiffs of their right to administer the estate. In these circumstances I consider a sum of shs 2,000,000/=

by way of general damages will meet the justice of the case. The plaintiffs will also take the costs of the suit.

Judgment is accordingly entered for the plaintiff on the following terms:-

1. The caveat lodged by the defendant is hereby vacated.
2. Letters of Administration to the estate of the late Oluma Jimmy are granted to the plaintiffs.
3. The defendant shall pay to the plaintiffs shs 2,000,000/= in general damages.
4. The defendant shall pay the costs of the suit.

Signed

HON JUSTICE .A. KANIA

1/6/2006