

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0 129-2004
(From HCT-05-CV-AC-0193-2003)

JANETI KATAMBIKWAPLAINTIFF

VS

AMWINE JOHN KYANGAMAINODEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

According to the submissions of counsel for the plaintiff the following reliefs are sought from this court:

- i. Cancellation/revocation of the letters of Administration.
- ii. Letters of Administration instead be granted to the plaintiff.
- iii. General damages.
- iv. The defendant be made to account for the proceeds from the estate.
- v. Costs of the suit.

The background to this suit is as follows. Yosia Kashanje who was husband to the plaintiff and father to the defendant, respectively, died some time in 1981. He left several dependants and properties. On 11th July 2003 the defendant applied for letters of administration to the estate of the said Yosia Kashanje and attached to the application a will purportedly made by Kashanje on 15th August 1980. This court granted letters of administration to the defendant on 4th November 2003. On 1st November 2004 this suit was filed seeking the reliefs above and more after the defendant stopped the plaintiff from utilizing the estate properties.

According to the record the defendant was served with the summons, the plaint and other documents on 10th November 2004. The defendant not only refused to acknowledge receipt but also did not take the necessary steps. The defendant did not come to court even. Thus he locked himself out of court and hearing of the suit proceeded ex parte.

Three witnesses testified in court besides the plaintiff herself those were Kamugungunu Frank (PW2), Mutabazi Alphose (PW3) and Saburi Stephen (PW4). The sum of the evidence is that the plaintiff was widow to the late Yosia Kashanje and a dependant who was left in the home by the deceased, utilizing the estate. When Kashanje died no will was read but a will purportedly made by the deceased was filed in court together with an application for letters of administration by the defendant. According to PW1 besides herself three of the children are still alive, inclusive of the defendant. Yet the defendant's application for letters of administration mentions the surviving dependants as being only the defendant and Kamugungunu (PW2). The plaintiff and Kasande were thus omitted as dependants. The plaintiff further argues that having been granted letters of administration the defendant has not rendered any inventory to this court as ought to be the case but rather the defendant has sold part of the estate and put proceeds there from to his exclusive use. The defendant has also denied the plaintiff access to the estate.

No issues were agreed at the hearing but what seems to me to be crying out for resolution is whether the grant in light of the allegations was properly made and should thus be sustained, whether the defendant has done anything untoward since the grant justifying revocation and finally what reliefs are available in the circumstances.

Section 234 of the Succession Act relates to revocation of grants and states:

- 1) The grant of probate or letters of administration may be revoked or annulled for just cause.
- 2) In this section, "just cause" means —
 - a) That the proceedings to obtain the grant were defective in substance;
 - b) That the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;
 - c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;
 - d) That the grant has become useless and inoperative through circumstances or
 - e) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.'

Available evidence shows that the defendant did not include the plaintiff and one Kasande as members of the deceased's family. He did not mention their particulars either. Thus he contravened the requirement in S. 246 (b) of the Succession Act and for that matter the application and subsequent grant fall within the ambit of S. 234 of the Act. Section 278 of the Act requires an executor or administrator to exhibit to court an inventory relating to the assets and liabilities of the estate within six months. No such inventory was rendered. Given the above contraventions I find there is just cause for the letters of administration to be revoked. They are accordingly revoked.

Concerning the alleged transgressions of the defendant since he obtained letters of administration I find these were never proved in court. No specific instances were given. Suffice it to say that the matter is not beyond correction by a future administrator of the estate to whom full account should be given by the defendant herein. I add for emphasis that the plaintiff herein is at liberty to apply for letters of administration to the estate if she so wishes.

I give judgment to the plaintiff, who is entitled to the costs of the suit. The defendant is ordered to surrender the letters of administration to court for cancellation.

P. K. Mugamba

Judge

2nd February 2006