

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**H.C.C.SUIT NO. 1474 OF 2000**

**JULIET KALEMA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF/APPLICANT**

**VERSUS**

**1. WILLIAM KALEMA**

**2. RHODA KALEMA ::::::::::::::::::::::::::::::::::::::: DEFENDANT/RESPONDENT**

**BEFORE HON. JUSTICE ELDAD MWANGUSHYA**

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**JUDGMENT**

The Plaintiff, JULIET KALEMA is the widow of the late Martin Kalema who died intestate on the 7<sup>th</sup> day of August 1993.

The first defendant, WILLIAM KALEMA and the 2<sup>nd</sup> defendant, RHODA KALEMA are the deceased's brother and mother respectively. The late Martin Kalema was survived by the plaintiff as widow and two children, namely RHODA NABADDA (daughter) and MARTIN NTALE (son). Both children are now adults. Following the death of the deceased the plaintiff and both defendants were issued with a grant of Letters of Administration made by this court on the 8<sup>th</sup> November 1993 vide Administration cause No. 523 of 1993. The grant of Letters of Administration was exhibited as exhibit D.7.

On 25<sup>th</sup> October 2000 the plaintiff filed a suit against her Co-Administrators of the Estate seeking a declaration that the property known as Plot 22 B Nakasero Road Kampala and

comprised in Lease hold Register Volume 2805, Folio 7 is her matrimonial home and that the defendants had no right to alienate it from her late husband's estate by evicting her and letting it out to other people. She was also seeking a permanent injunction, general damages and costs of the suit.

In their written statement of defense filed on 1<sup>st</sup> December 2000, the defendants denied the plaintiff claim that the property was matrimonial property and made a counter claim against the plaintiff for intermeddling in deceased's estate and trespassing on the suit property. They prayed for special and general damages, a declaration that the plaintiff does account for her receipts from the suit property from September 1993 to the date of her vacation of the premises, an order that the plaintiff/ Defendant on counterclaim gives vacation possession of the premises to the administrators of the estate and costs.

In her reply to the defense and counterclaim filed on 14<sup>th</sup> December 2000 the plaintiff denied the claims in the counterclaim which she prayed court to dismiss with costs.

After court had recorded the testimony of the plaintiff a Judgment on admission was entered in respect of these issues. The gist of the Judgment entitled to occupy the suit premises and as matrimonial home. An appeal against that Judgment and as it will be shown in this Judgment the court of Appeal adjudicated on these issues and Mr. Walubiri Counsel for the plaintiff submitted that the judgment of the court of Appeal binds this court on the issues they adjudicated upon. The extent to which this court is bound by a judgment of the court of Appeal that was against a judgment of this court that was delivered after only the plaintiff had testified in the trial will be determined in the course of this judgment because the relevancy of the testimony of both defendants that was

adduced after the court of Appeal had given its judgment cannot be ignored. The conclusion of the Court of Appeal was in the following words;

“In the result I would allow this appeal. The orders of the trial court would be set aside. I would remit the file back to the trial judge to do the needful. The costs of the appeal would abide the outcome of the suit in the Court below”.

(Emphasis added).

My understanding of the above direction is that this court was to conclude the trial which entailed conclusion of the plaintiff's case and prosecution of the defendant's case including the counterclaim. When the trial of the case resumed the plaintiff closed her case and both defendants gave testimony in support of their defense and the counterclaim. It is only after the conclusion of the entire trial that a final Judgment on all the issues would be given including findings of fact that may have a bearing on what the court of Appeal has already adjudicated upon and of course in some aspects the judgment of the court of Appeal may have binding effect.

The first issue is whether the plaintiff is entitled to occupy the suit property as her matrimonial home. A brief background to this property is necessary. Mis property is known as plot 22B Nakasero Road, Kampala and is comprised in Leasehold Register Volume 2805 Folio 7. It is not in dispute that the registered proprietors of the land is Rhoda Kalema, the 2<sup>nd</sup> defendant in this suit. It is also not in dispute that during his lifetime the deceased was permitted by the second defendant to construct premises on this plot. According to the second defendant the premises were supposed t generate income for the family of the deceased. The deceased constructed two double storeyed semi detached houses much on their completion in 1991 were rented out. The deceased and the plaintiff were living in rented premises on plot no. 2457. At Block 244 Mbogo Road Kisugu where the plaintiff continued staying until September 1999 when she decided to move into the suit property from which the two defendants as co Administrators of the

deceased's estate sought to evict her. This suit was meant to protect her from eviction from premises which according to her as her matrimonial home.

The question as to whether the suit property was a matrimonial home is answered by the judgment of the Court of Appeal as follows:

“I think the use of the words matrimonial property in the pleadings was a misnomer. It is misleading and partly explains perhaps why the trial Judge found that the suit property was not constructed to be a matrimonial home. The law is not concerned with matrimonial property but with residential holding .....

So quite clearly the property was not matrimonial property and even if it was to be granted that the plaintiff was entitled to accommodation in residences constructed by her husband, she was not entitled to occupy two double storeyed houses that her husband had constructed purposely to raise revenue for his family. The second defendant who had permitted the deceased to make the construction testified to this fact. To me it is immaterial that from the time the deceased died it was the plaintiff collecting the rent because she is required to account for this rent as it was income from the estate. This judgment will direct as to how this income is to be accounted for.

The next issue is as to who the owner of the suit property is.

Already stated the suit premises were constructed on the 2<sup>nd</sup> defendant's land and she acknowledges that the premises belong to the estate of her late son, the diversion of the purpose for which they were built notwithstanding. However, the court of Appeal judgment recognizes the second defendant's proprietary interest as the registered proprietor of the property to her son and I believe her testimony. If she had intended to surrender her rights there was absolutely no reason as to why she did not transfer the title into the names of her son's name and there is no reason as to why her proprietary interest cannot be honored and protected.

As to whether the plaintiff has intermeddled and continues to intermeddle in the estate of the late Martin Kalema section 268 of the Succession Act provides as follows;

“A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor of his or herself an executor of his or her own wrong; except that-

(a) Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or his or her funeral, or for the immediate necessities of his or her own family or property; or

(b) Dealing in the ordinary course of business with goods of the deceased received from another,

Does not make an executor of his or her own wrong.”

It happens that the plaintiff is not only an administrator in the estate of the deceased but is also a beneficiary being the widow of the deceased. The only other beneficiaries in the estate are her two children. The court of appeal cited section 272 of the Succession Act which provides that “where there are several executors or administrators, in the absence of any direction to the contrary, the powers of all of them may be exercised by anyone of them who has taken out the will or taken out administration.”

The court went on to state as follows;

“there is no doubt in my mind that this section gives the appellant as the widow to make decisions concerning her late husband’s estate for her own benefit and those of her children. The deceased having left no valid testamentary disposition as to how the suit property should be administered, I think it would be wrong to fault the appellant’s decision to occupy the house. Her occupation of the second respondent’s proprietary interest.”

It is clear from the above that an administrator of an estate cannot be accused of intermeddling in an estate because of the authority he or she derives from the grant although ideally the administration of an estate is smoother when co Administrators take a collective decision. It was the failure by the plaintiff to consult with her co-Administrators that caused a wrangle in the estate has paralyzed the running of the estate but this purely administrative. Legally there can be no intermeddling in the estate. In the same token the plaintiff cannot be said to be trespassing on an estate where she is an administrator and beneficiary. She can only be asked to account for that part of the estate that she has controlled since the death of her husband. So both the third and fourth issues are answered in the negative.

Before I proceed to discuss the remedies available to either party I wish to point out that if it was not for the court case the final account of this estate should have been filed in accordance with S.278(1) of the Succession Act (cap 162) which provides as follows;

278(1) An executor or administrator shall within six months from the grant of probate or Letters of Administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.

(2) On the completion of the administration of an estate, other than an estate administered under the Administration of Estates (small Estates) special provisions Act, an executor or an administrator shall file in court the final accounts relating to the estate verified by an

affidavit two copies of which shall be transmitted by the court to the Administrator General.

3. ....

4 .....

5 .....”

As I have already noted the co-Administrators of this estate have not complied with provision. It is also to be noted that as the beneficiaries of the estate are now adults its distribution would put an end to all the wrangles because even the plaintiff would have the liberty to deal with any property that would be her share. The distribution of the estate and filing of the final account should take priority in the administration will and once that is done the estate not be necessary to order for vacation of the premises. The following orders will be made;

- 1) The plaintiff shall be required to give an account of all the income accruing from the suit property from the time the deceased died to the time she started occupying the property. She should then give an account for the income accruing from one of the houses from the time she took over the property to the time of this judgment.
- 2) The Administrators of the estate shall determine the monetary value of the 2<sup>nd</sup> defendants’ interest in the suit property and determine as to how she is going to benefit from this interest when the estate of the deceased is finally distributed.
- 3) No orders as to damages will be made.
- 4) Costs of this suit shall be met from the estate

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**ELDAD MWANGUSHYA**  
**9/11/2007**

