

**THE REPUBLIC OF UGANDA**

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

**HCT-00-FD-CS-0072-2007**

**Stella Maris Amabilis  
Michael Wandwasi**

**Plaintiffs**

**Versus**

**Esther Nabusakala**

**Defendant**

**BEFORE**

**THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**JUDGMENT**

1. The plaintiffs contend that they are the executors of the last will and testament of the late Sam Namuseke Masaba Wakoko, herein after referred to as the deceased, who died testate on the 16<sup>th</sup> day of October 2005 in London, United Kingdom. The defendant is the widow of the deceased.
2. The defendant, after the death of the deceased applied for and obtained letters of administration to the estate of the deceased from the High Court of Uganda at the Central Circuit, Nakawa on the 23<sup>rd</sup> December 2005. The plaintiffs applied for and obtained probate of the will of the deceased from this court at Kampala on the 3<sup>rd</sup> July 2006. When the plaintiffs attempted to administer the estate of the deceased they came to learn that the defendant had letters of administration. They chose to bring this action to determine who could rightfully administer the estate of the deceased.
3. The defendant opposes this action mainly on two grounds. Firstly that having obtained the letters of administration prior to the grant of the probate to the plaintiffs the grant to her remains valid until revoked and that no subsequent grant can lawfully be granted while her grant remains unrevoked. Secondly that the alleged will of the deceased was not a valid will as it is purported to have been written when the deceased was very ill and mentally unstable.

4. The plaintiffs called 3 witnesses to testify including the two plaintiffs. The defendant adduced no evidence save for the letters of administration admitted by agreement of the parties. The defendant failed to adduce any evidence to support her defence that the will in question was void as it was made while the deceased was seriously very ill and mentally unstable.
5. The essential issue to be decided in this case is which grant ought to remain given that no two competing grants can lawfully exist in respect of the same estate. Where a person dies without a will, that is, without living a valid testamentary disposition, such a person dies intestate. All property in such an estate devolves upon the personal representative of such an estate. The personal representative is the person granted letters of administration by a competent court. See Sections 24, 25 and 180 of the Succession Act.
6. It follows that where an estate is not an intestate estate, and there is a valid testamentary disposition, succession to such an estate, save in some limited circumstances not in issue here, cannot be by way of applying for and obtaining letters of administration.
7. In cases of testate succession, that is, in respect of estates for which there is a valid testamentary disposition, probate of the will must be applied for and obtained, for that estate to devolve onto the executor of that will. Probate is the grant of authority by a competent court to an executor named in the testator's last will to administer the testator's estate. See Sections 180, 182 and 189 of the Succession Act.
8. To apply for letters of administration to a testate estate is only possible in a limited set of circumstances not in issue in this case. The plaintiffs have adduced evidence through PW1, PW2 and PW3 to the effect that the deceased left a will which was proved before this court and in respect of which a grant of probate was made on the 3<sup>rd</sup> July 2006. For as long as this will has not been successfully challenged, and the burden of proof is upon the challenger, the grant of probate remains valid.
9. The letters of administration granted in respect of the same estate, whether earlier or later in time to the grant of probate can only have been granted in error as the estate in question was a testate estate. Section 234 of the Succession Act provides for the revocation of grants. It reads in part,  

'(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.’

10. The defendant in her application for letters of administration alleged that the deceased had died intestate vide paragraph 2 of the petition for letters of administration. This allegation was a fact necessary to justify the grant of the letters of administration, given that this petition was not for letters of administration with the will annexed. In this particular case the letters of administration could not have been granted had there not been an allegation that the deceased died without leaving a will. On the evidence before this court that allegation turns out not to have been correct. It was false or untrue. There was a will for which probate has been granted by this court.

11. Ms Eva Luswata Kawuma, learned counsel for the defendant, submitted that the defendant was unaware that a will had been left by the deceased. That is why she applied for letters of administration. According to Section 234 (2) (c) of the Succession Act ignorance or inadvertence does not save the situation. For as long as the allegation was untrue, whether made ignorantly as claimed in this case, it is sufficient to annul the grant.

12. On that point alone, there is just cause to revoke the letters of administration granted to the defendant on the 23<sup>rd</sup> September 2005. Accordingly I do revoke the said grant. The grant of probate issued by this court, by my brother, Mwangushya, J., on 3<sup>rd</sup> July 2006 shall remain the only valid grant with respect to this estate.

13. The plaintiffs had made allegations of fraud against the defendant based on a number of grounds set out in the plaint. These are:

‘(a) Knowingly concealing from the court the fact that the late Sam Namuseke Wakoko died intestate, leaving behind a valid will.

(b) Concealing from court that the fact that the late Sam Namuseke Masaba Wakoko appointed executors of his will, namely the plaintiffs.

(c) Concealing from the court the fact that the deceased was survived by more children other than those mentioned in the

Application for letters of administration; namely Sam Mayeku Wakoko, Timothy Wakoko and Amisi Wakoko who are named to the deceased's will.

(d) Concealing from the court the fact that the deceased left more property than mentioned in the Application for Letters of Administration, which she illegally continues to administer upto date, namely, [ *10 pieces of immovable property are specified in addition to 2 bank accounts and car.* ]'

14. On the evidence before this court it is not clear whether the defendant knew or did not know of the existence of the will as it was not read until several months after the burial of the deceased. It is possible that by the time the defendant applied for letters of administration, the will had not been read. Neither was it proved by the plaintiffs that the defendant knew of the existence of children of the deceased other than the children she produced. PW1, a son of the deceased who testified, had never lived with the deceased and defendant. The day he claimed he visited the home where the defendant lived with the deceased he testified that the defendant chased him away stating that he did not belong there. This is not conclusive that she knew PW1 was a son of the deceased though it may suggest she was aware that he was a son of the deceased.
15. With regard to the failure to set out in the application all the properties of the deceased, this in itself does not prove fraudulent intent. No evidence was adduced to show that this was done for a fraudulent purpose. I am therefore satisfied that the grounds of fraud set out in the plaint remain unproven.
16. In the result I allow this action. The grant of letters of administration issued to the defendant by the High Court at Nakawa is revoked. Ms Kawuma submitted, with regard to the issue of costs, in case this action succeeded, that the same should be borne by the estate and not any of the parties.
17. I would have been sympathetic to this proposal had the defendant not contested the action. The defendant never turned up in the court on the 2 occasions that this case came before me. I find no ground to justify denying the successful party costs in this matter. I award the costs of this action to the plaintiffs.

Signed, dated and delivered at Kampala this 24<sup>th</sup> day of February 2009

FMS Egonda-Ntende  
Judge