

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 232 OF 2009
ARISING FROM ADMINISTRATION CAUSE NO 0039 OF 2008

JOHN KYESWA :::APPLICANT

VERSUS

ADMINISTRATOR GENERAL :::RESPONDENT

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

RULING

The applicant brought this application under the provisions of s.5 of the Administrator Generals Act. He sought for a grant of letters of administration in the estate of Yokana Kyeswa, late of Gunda village, Buikwe sub-county in Mukono District.

The application was supported by an affidavit which was deposed by the applicant on 17/08/2009 in which he stated that he was the only surviving nephew of the deceased who was his uncle, the brother to his father Yonasani Sebudde. Further, that under a will of the Late Yokana Kyeswa, he was appointed the heir to his estate. A copy of the will in Luganda was attached to the affidavit as Annexure "A." The applicant's advocates later supplied a translation in English to court.

The applicant stated that on the 8/08/2008, he filed an application for a grant of a certificate of no objection with the office of the Administrator General under Ref. No. 2510. That since then the Administrator General's office had conducted several meetings in which it was established that the applicant was indeed the only surviving descendant of the deceased. The applicant averred that in spite of this, the Administrator General had declined to issue him with a certificate to indicate that he

did not object to his application for letters of administration. That as a result, his lawyers, M/s Mungoma, Mabonga, Wakhakha & Co. Advocates served a notice on the Administrator General to grant the certificate to the applicant within 14 days but he still declined to do so. The applicant finally averred that the refusal to grant him the certificate of no objection has occasioned him anguish, embarrassment and proved a hindrance to execution of his duties as the executor of the estate of his late uncle. He thus prayed that this court grant him letters of administration without requiring him to produce a certificate of no objection.

The applicant's advocates served this application on the A.G. on 20/08/2009. An affidavit of service dated the 24/09/2009 was deposed by Noah Ongala, a process server employed by M/s Mungoma, Mabonga, Wakhakha & Co. Advocates. Though the application was received by Mr. Mwanje Matthias, one of the Assistant Administrators General, the Administrator General did not file a reply to the application. Neither did he send a representative to court for the hearing. As a result, when Mr. Senkumba who represented the applicant appeared before me on the 25/11/2009, he applied to proceed *ex parte* in the application and leave was granted to him to do so.

In his submissions, Mr. Senkumba repeated the contents of the affidavit in support of the application and stated that a notice had been served on the Administrator General under s.5 of the Administrator General's Act but he did not respond to it. That under s. 5(1) of the Act, this court is empowered to grant letters of administration to the applicant if it is proved that notice of proceedings to grant letters of administration has been given to him and he has not issued a certificate of no objection. Mr. Senkumba submitted that a letter dated the 20/05/09 to the Administrator General (Annexure "B" to the affidavit in support) indicated that if that office did not issue a certificate of no objection within 2 weeks, the applicant would move court to grant him letters of administration in the estate without the consent of the Administrator

General. Mr. Senkumba submitted that the Administrator General's failure to respond to the notice given by the applicant's advocates showed that he was inconsiderate to the applicant.

Mr. Senkumba further submitted that the will of the deceased, Annexure A to the affidavit in support, had named the applicant as the heir of the deceased. That as a result he had the locus to bring this application and there was no just cause to deny him the office of administrator of his uncle's estate. He thus prayed that letters of administration be granted to him.

I perused the file in Administration Cause No. 0039 of 2008. It showed that the applicant first applied for a grant of letters of administration by a petition that was filed in this court on the 27/03/2008. In his petition, the applicant stated that he is the son of the deceased who left property comprised of land known as Kyaggwe Block 484 Plot 2 at Buikwe in Mukono District. The applicant named the value of the estate as being above shs 100m. Subsequently, on 28/04/2008, the applicant's advocates M/s Mungoma, Mabonga, Wakhakha & Co. Advocates wrote to the Assistant Registrar to inform him that a will of the deceased had been found and the applicant wanted to amend his application and instead apply for probate to that will. The advocates also submitted an advertisement of the applicant's petition which had appeared in Bukedde news paper on 7/04/2008. However, perusal of the will revealed that it did not name an executor. The Registrar thus advised the applicant's advocates to pursue a certificate of no objection to the application and pursue the grant for letters of administration.

I also perused the translation of the will that was supplied to court in this application. Though the applicant stated that he was the son of the deceased in his petition for the grant, it turns out from the will and this application that the applicant is really not the son of the deceased but a nephew, being the son of his brother

Sebudde. This is a material contradiction that should not be taken lightly because it shows that the applicant was not very truthful in his petition.

The will itself presents a problem. Though the applicant stated in his application that his application was for a grant of letters of administration in respect of the estate of one Yokana Kyeswa, the testator of the will was without a doubt a person called Yokana Kamyuka Mugalu. The applicant did not explain how the discrepancy in surnames came about or how it could be reconciled. In the circumstances one is left with no option but to conclude that Yokana Kyeswa and Yokana Kamyuka Mugalu are two different persons. Moreover, there is also no evidence to show that the John Kyeswa who is the applicant herein is the same Kyeswa who according to the will lived in Dolwe Islands because in his application the applicant stated that he is a resident of Gunda village, Buikwe in Mukono District.

The alleged will also has what appears to be an alteration in a most important particular, i.e. at the signature of the testator. The name of the testator was the last name entered in the will after the witnesses. There is a thumb mark above the name of the testator but next to the names of C. Kaigwa and Owek. Kyeswa. An arrow was then drawn from the name of the testator pointing to the thumb mark as that of the testator. There was no signature or thumb mark in the margin of the will to indicate the person who made this alteration and this is contrary to the provisions of s. 57 of the Succession Act.

By a letter dated 19/09/08, the Administrator General requested the Chief Administrative Officer at Mukono to call a meeting and establish certain facts about the estate of the deceased. I perused the minutes of that meeting which is said to have been held by members of the family of the deceased on the 25/09/2008 at the family home at Ssi, Gunda village. The minutes show that there were 6 persons present and their names are given in minutes. But apart from the LCI representative,

it is not shown how the rest of the 4 people (apart from the applicant whose relationship we know to be his nephew) were related to the deceased. It was resolved at that meeting that the applicant be given the authority to apply for letters of administration but the question still remains as to which relatives of the deceased authorised him to so apply.

Section 5 of the Administrator General’s Act provides as follows:

5. Notice of application for letters of administration to be given to Administrator General.

- 1) **No grant shall be made to any person,** except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorised in writing, authorising that person to administer the estate of a deceased person, **until the applicant has produced to the court proof that the Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear days’ definite notice in writing of his or her intention to apply for the grant.**

- 2)

- 3) On receipt of any such notice the Administrator General may call upon the applicant for such particulars as he or she may reasonably require in order to determine whether to oppose or consent to the grant being made.

In my view, s. 5(3) of the Act is very relevant to this application. I observed that the Administrator General, or one of the Assistant Administrators General, wrote a comment on the applicant’s advocate’s letter of 20/05/2009: “*Received but cannot issue a CONO without the consent of other beneficiaries.*” It appears that the applicant or his advocates had to respond to this comment entered by the Administrator General but they did not do so. The other beneficiaries to the estate were not disclosed to the Administrator General, however distant they were to the deceased. Neither were they disclosed to this court.

The minutes of the meeting of persons said to be family members of the deceased indicated that the land that is the most significant part of the deceased's estate was about 300 acres. The application before this court stated that the value of the estate was in the range of shs 100m. It would be imprudent of this court to grant letters of administration to the applicant herein in light to discrepancies that I have pointed out above without a certificate of no objection from the Administrator General and without any information about the other beneficiaries to the estate.

In the circumstances, the applicant is hereby advised to go back to the Administrator General and seek clarification about his comment on the Advocates letter of 20/05/2009. Perhaps that may resolve the issue and facilitate the applicant's access to a certificate of no objection and eventually to letters of administration. That being the gist of the applicant's case, I am unable to grant the letters of administration prayed for and the application is hereby dismissed.

Irene Mulyagonja Kakooza

JUDGE

09/02/2010