

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ORIGINATING SUMMON NO. 22 OF 2009

(ARISING OUT OF ADMINISTRATION CAUSE NO. 2031 OF 2008

SENTONGO HARRIET:.....: APPLICANT/PLAINTIFF

VERSUS

ESTHER GORIA NAMUSISI:.....: RESPONDENT

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO-----

RULING:

The applicant/plaintiff brings this originating summons under O.37 r 6 of the Civil Procedure Rules SI 71-1 in which she is seeking court for the determination of the following questions:-

- i) Whether it is necessary to grant legal recognition of the plaintiff's child as an orphan or beneficiary of the property and estate of the late Goria Charles.
- ii) Whether it is necessary for court to recall and revoke the Letters of Administration granted to the Defendant.
- iii) Whether the costs of the claim/suit should be provided for.

The application is supported by the affidavit of the applicant dated 9th November, 2009.

The grounds of the application are:-

1. That the plaintiff cohabited with Goria Charles (late) for seven (7) years and in the course produced a child by the names of Omalla Valenline.
2. That the defendant fraudulently obtained Letters of Administration and she has from time to time misused/mismanaged the property and estate of the late Goria Charles to the detriment of the plaintiff's son.

At the hearing of the application, the applicant was represented by Mr. Nabia George.

Under Order 37 rule 1 of the Civil Procedure Rules, any person claiming to be interested in relief sought as a creator, devisee, legatee, heir, or legal representative of a deceased person or as cestui que trust under the terms of any deed or instrument or as claiming by assignment, or otherwise, under such creditor or other person as aforesaid, may take out as of course an originating summons returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified and the circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions-

- a) any question affecting the rights or interest of the person claiming to be creator, devisee, legatee, heir or cestui que trust:

Mr. Nabia, counsel for the applicant submitted that, the applicant is seeking for court to declare the child, Omalla Gorla Valentine as an orphan and beneficiary of the estate of the late Charles Gorla as evidenced by Annexure "A", the Baptism Certificate and the photographs attached as Annexure "B" on the court file.

In view of the above, court is satisfied that the applicant is the mother of the child, Omalla Valentine, the son of Gorla Charles, deceased, who has brought this application for determination of whether the child is an orphan and a beneficiary of the estate of his late father, Gorla Charles (deceased). This is a fitting case to be brought by Chamber Summons.

Under order 37 r 8(2) "*...if the judge is satisfied that the facts as alleged are sufficient and the case is a proper one to be dealt with on an originating summons, he/she shall sign the summons and give directions for service upon persons or classes of persons and upon other matters as may be necessary*".

Consequently, the summons is issued to the defendant to appear in court on 28th March, 2010 at 11.00 a.m. and counsel for the plaintiff undertakes to serve the summons on the defendant. Costs for the application shall await the hearing and determination of the originating summons.

Margaret C. Oguli Oumo

JUDGE

26/2/2010

Present:

1. Mr. Nabia George
2. The applicant/plaintiff
3. Nalongo Nandaula-court clerk
4. Nyakwebara Elizabeth-Research Assistant.