

**THE REPUBLIC OF UGANDA**

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

**FAMILY DIVISION**

**IN THE MATTER OF THE SUCCESSION ACT CAP 162 SECTIONS 234 (1), 2(e), 235**

**ORIGINATING SUMMONS (ex parte in Chambers)**

**NO. 0023 OF 2009**

**(ORDER 37 r. 8 C.P.R)**

**BETWEEN**

**BHARAT KESHAVLAL SHAH:..... PLAINTIFF**

**AND**

**MANHARLAL KESHAVLAL SHAH:..... DEFENDANT**

**(Arising in the administration of the estate of the late Keshavlal Premchand Shah)**

**(Brought under O.37 r.1(a)(c)(f) & (h); r.2(a) & (b); r.6, r.7, 8,9,10& 12 Civil Procedure  
Rules and Section 98 Civil Procedure Act)**

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

**RULING:**

This is an application brought by Originating Summons by the applicant who is a beneficiary under the will of his late father Keshavlal Premchand Shah.

The application is supported by the affidavit of the applicant dated 2<sup>nd</sup> December, 2009.

The applicant is applying for the determination of the following questions;

1. Whether or not the respondent is still genuinely interested and capable to execute the functions of executor in accordance with the mandate for the Probate and the law as required of the executor under the Succession Act in Uganda which applies to the estate, and other laws as handed down by the courts from time to time.
2. Whether the allegations made against the respondent/defendant as particularly set out in paragraph (i)-(vi) of the affidavit above, are true and correct.
3. Whether the defendant objects to the cancellation of the grant of Probate made to the defendant by this court and substitute the defendant with the plaintiff or any other person as the court may deem fit.

The grounds of the application are that the defendant was

- i) Told to render a true inventory and credits of the deceased.
- ii) To render an account of his collections and dealings with the estate.
- iii) To distribute the estate among the beneficiaries.
- iv) To manage and maintain the real property situated in Kampala and is now in danger of getting wasted.
- v) To administer the estate in an honest and transparent manner.
- vi) To show any interest in carrying out his duties as executor under the probate in accordance with the mandate and the law applicable.

At the hearing of the Originating Summons, the plaintiff was represented by Mr. Lule and the application was for hearing ex parte.

**Brief facts:**

Counsel for the plaintiff submitted that the plaintiff's father died in Uganda, in 1968. That on the expulsion of the Asians by Idi Amin, the whole family left Uganda and some settled in Canada. That the applicant is a citizen of Canada and the father left assets in the United Kingdom and Uganda.

Counsel for the plaintiff contended that the father died testate – left a Will, naming his wife (plaintiff's mother) and 2 of his elder sons to be the executors but the mother and one of the sons have died leaving one. That the executors took up Probate from the High Court of Uganda in

1968 – see copy of the Probate attached as “B.S.3” and the Will is attached as Annexure “B.S.3”.

That since taking up probate, only one set of accounts has been filed in pursuance of the requirements of Probate. A copy is attached as “B.S.19”, filed in 1971.

That at the time of his father’s death, the plaintiff/applicant was a minor under the guardianship of the executors.

That the applicant attached to the application the following documents;

1. His Birth Certificate – “BS1”
2. His father’s Death Certificate – “BS2”
3. Probate-“ BS3”
4. Probate in respect of Assets in the UK – “BS4”
5. Copy of his father’s Will “BS5”
6. Proof of his identity- a copy of his current passport “BS6”.

That the applicant/plaintiff subsequently changed his first name Canada, which is different from the Will. A copy of the change of names is attached as Annexure “BS7”. The name was changed from Bhupendra to Bharat in 1994.

That 2 of the executors are now dead, that is his mother and the elder brother - see Annexures “BS8” and “BS9” which are their respective Death Certificates.

That his deceased father owned properties in Uganda, including property in Kololo at Plot 33 Bukoto Street (once their family home) – a copy of the Certificate of Title is attached as Annexure “BS10”.

That he also had a plot on Kampala Road known as Plot 24, Kampala Road. A copy of the Certificate of Title is attached as “BS 11”. That he owned an interest in a plot of land in Kawempe Industrial Area and a copy of the information relating to it is also attached as “BS13”. That in England there was an account whose exact particulars are not known; however there is correspondence on the existence of the account and copies of the correspondences are attached as

“BS 14, 15, 16 and 20”. That the applicant was able to access the information after his brother died recently in Canada, who was allowed access to these documents – see “BS17” and “BS18”.

Counsel for the applicant contended that the only statement of Accounts given to court was “BS 19” and the only living executor is in England.

Mr. Lule contended that under the application, the prescribed procedures the applicant satisfies the status under O37 r(1)(a)(c)91)® and r, 6, 7, 87, 10 and 12.

That under the rules the application has been by Chamber Summons *ex parte* and if the court is satisfied with the application it can direct service of the same to the respondent if he has any representation to make on his behalf.

Mr. Lule argued that under section 234(1) and (2) of the Succession Act, the circumstances under which the grant may be revoked gives jurisdiction to this court.

That in section 278, the obligations of an executor are laid down. That the applicant alleges that the executor has failed to live up to his obligations and responsibilities given to him under the Letter of Probate.

The law with regard to originating summons is in Order 37 of the Civil Procedure Act;

*“The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as 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 a assignment, or otherwise, under any 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 chamber 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 the following questions:-*

- a) *any question affecting the rights interest of the person claiming to be creation devisee, legatee, heir or cestui que trust;*
- b) *the ascertainment of any class of creditors, devisees, legatees, heirs, or others;*

- c) *the furnishing of any particular accounts by the executors, administrators or trustees and the vouching, when necessary of the administrators or trustees;*
- d) *the payment into court of any money in the hands of executors, administrators or trustees;*
- e) *directing executors, administrators or trustees to do, or abstain from doing any particular act in their character as executors, administrators or trustees;*
- f) *the approval of a sale, purchase, compromise, or other transaction; or*
- g) *any question arising directly out of the administration of the estate or trust.*

Having perused the application and the affidavit of the applicant and having heard counsel for the applicant, court is satisfied that that this is a fitting case for it to grant an originating summons.

**Margaret C. Oguli Oumo**

**JUDGE**

**2/02/2010**

1. Mr. Lule, counsel for the applicant
2. The applicant
3. Nalongo Nandaula, court clerk
4. Elizabeth Nyakwebara, Research Assistant.