

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY DIVISION CIVIL SUIT NO. 50 OF 2008

TIBAKANYA MARGARET

KAHUNDE FLORENCE

RUSOKE:.....PLAINTIFFS

VERSUS

A.S. KAMBAAPUULI:.....DEFENDANT

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

JUDGMENT:

The plaintiffs bring this suit for the following orders;

- a) An order for revocation of the grant of letters of Administration to the defendant in High Court Administration Cause No. 52 of 1989.
- b) An order for the account of the estate, showing the assets which have been handled by the defendant as administrator and the manner in which they have been applied or disposed of, together with a full inventory containing full and true estimates of all property in the defendant's possession be rendered.
- c) An order that the defendant makes good the loss or damage occasioned to the deceased's estate and to the prejudice of the plaintiff and other beneficiaries.
- d) Letters of Administration of the estate of the late Samuel Biguli be granted to the plaintiffs in substitution and instead of the defendant.

- e) The defendant's name be cancelled from the certificate of title and land register entries in the capacity of administration of the estate of the late Samuel Biguli under High Court Administration Cause No. 52 of 1989.
- f) Any consequential and other reliefs as this honorable court may deem fit in the circumstances.
- g) Costs of this suit.

At the hearing of the suit, the plaintiffs were represented by Ms. Sitnah Cherotich.

The defendant did not file a written statement of defense even after being served with summons and the matter proceeded ex-parte.

To prove their case, the plaintiffs called 4 witnesses including themselves.

Counsel for the plaintiffs filed written submissions, and I shall refer to it in my judgment.

Issue No. 1 – whether the letters of Administration should be revoked?

PW1, Tibakanya Margaret testified that their father died in 1984 leaving 4 children including the defendant, herself, the second plaintiffs and Kisemererwa, who passed away.

That after the death of her father, and without their knowledge, the defendant applied for Letters of Administration and was granted Letters of Administration to the estate of their late father. That in the petition for the letters of administration, a copy of which is attached on the court record, the defendant did not mention PW1 as a child of the deceased.

That after getting the grant, the defendant subdivided the deceased's land into plots 150, 157 and 158 and transferred 2 acres to one Mulindwa who was not even a child of the deceased. That Block 184, plot 150 was originally block 184 plot 28, and measured approximately 10 acres.

PW1 testified that, on several occasions, they asked the defendant to allocate them their shares but in vain and now they cannot even access their father's land as the defendant has denied them any shares.

PW2, Florence Kahunde Rose, testified that after the death of their father, they found that the defendant had obtained Letters of administration to the estate of their late father and they sought their share of the estate. That of the 10 acres of plot 28, Block 184, the defendant refused to give them anything.

PW2 testified that the defendant has done nothing regarding the estate. That the defendant has instead denied them access and in his application for Letters of Administration, he did not mention all the children of the deceased; instead he named one Tibanangwa who is not even a child of the deceased.

That the defendant did not obtain the consent of the family members before he applied for Letters of Administration and the reason they are in court is to seek for help so that they can get their shares and so that Letters of Administration granted to them and the defendant.

PW3, Muhindra, a cousin of the plaintiffs and defendant testified that, the late Samuel Biguli died and left 4 biological children and he had land comprised in block 184, plot 28, now registered in the name of the defendant.

PW3 testified that ever since he got Letters of Administration, the defendant had failed to distribute the estate and plot 28 has been subdivided into 150, 157 and 158 and the defendant gave two acres to him from plot 150, now registered in his names.

PW3 testified further that, he requested the defendant to distribute some land to their sisters (plaintiffs) but the defendant refused, claiming he could not give land to girls. That the defendant did not call a family meeting before he applied for Letters of Administration.

That plot 157 is 2 acres and plot 158 is 6 acres and both in the names of the defendant, who has the original titles.

PW3 testified further that, the defendant has not led the Letters of Administration well.

PW4, Lukwago Derrick, is the Local Council Chairman; he testified that he knew all the parties in the suit as they were neighbors in Nansana village and he knew the late Biguli, who died in the 1980's leaving 4 biological children and land at Nansana, now in the hands of the defendant and

the defendant's children are on the land and do not allow the plaintiffs access to the land and the defendant has done nothing on the land.

PW4 testified that, he has received complaints from the plaintiffs claiming that the defendant has refused to give them their share in the family property and that when he called the defendant, he refused to heed to his call and has not managed the estate of the late Samuel Biguli well.

Counsel for the plaintiffs submitted that, the plaintiff had proved their case on a balance of probabilities and it is in the interests of justice that they are granted the remedies sought since they had shown that the defendant obtained the letters of administration fraudulently. That is follows that the letters of administration granted to him ought to be revoked.

In section **234(1)** and **(2)** of the Succession Act, a court may revoke a grant of probate or letters of administration for a just cause.

Just cause means:-

- a. ... (not relevant)
- b. That the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case.
- c. ... (not relevant)
- d. ... (not relevant)
- e. that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with part xxxiv of this Act"....."

In the instant case, the defendant did not contact the family and in his application, he omitted to state that, PW1 was a child of the deceased. The defendant also included one Tibanangwa who is not a child of the deceased and has never filed an account or inventory as required under **section 234 2(a)** of the Succession Act.

In view of the above, court is of the view that, the defendant has obtained the grant fraudulently, in violation of **section 224 2 (b)** and has not filed an account and inventory under section **234 2 (e)** of the Succession Act.

Consequently, the grant made to the defendant in the High Court Administration Cause No. 52 of 1989 is hereby revoked for just cause.

Issue No. 2 – Whether the defendant should file an account showing the assets which have been handled by the defendant as administrator and showing the manner in which they have been applied or disposed of together with a full inventory containing full and true estimate of all property in the defendant’s possession should be rendered?

A grantee of Letters of Administration is supposed to file an account in court within 6 months of the grant and an inventory within one year of the grant. This is set out in **section 278 (1)** of the Succession Act.

In the instant case, the defendant has neither filed an account, nor an inventory on the court record, instead, he has subdivided the deceased land and given out some for example, 2 acres to Edward Mulindwa, his cousin from plot 28 and plot 150 which is now registered in the names of PW3 and yet the defendant has refused to give any share to the plaintiffs.

In view of the above, court is of the view that, the defendant has not fulfilled his responsibility as an Administrator, that is, to file an account, inventory and to distribute the property to all the beneficiaries. Instead he has excluded the plaintiffs, who are children and given land to others who are not even beneficiaries and has refused to give them access to their father’s land. Instead his children live in the land at Nansana to the exclusion of all others.

In view of the above, court is of the opinion that the defendant must rendered an account of the estate, showing the assets which have been through his hands as administrator and the manner in which they have been applied or disposed, together with an inventory containing a full account and true estimate of all the property in his possession.

The defendant should also make good any damage occasioned to the deceased's estate to the prejudice of the plaintiffs, and all the other beneficiaries and pay a sum of 20 million to the plaintiffs for the pain and suffering caused to them in that respect.

In addition to that, Letters of administration to the estate of the late Samuel Biguli are granted to the plaintiffs and the defendant is directed to return the original grant in Administration Cause No. 52 of 1989 to court within 14 days of the order.

The Registrar of Titles is directed to cancel the names of the defendant from the certificate of Titles and land registered entries in his capacity as Administrator of the estate of the late Samuel Biguli under High Court Administration Cause No. 52 of 1989.

The defendant is to pay the costs of the suit.

Margaret C. Oguli

JUDGE

6/10/2010

Present;

1. Ms. Cherotich Sitnah for the Applicants
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, Research Assistant.