

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
FAMILY CAUSE NO. 194 OF 2009**

ADMINISTRATOR GENERAL:..... PLAINTIFF

VERSUS

DANIEL SENFUKA AND MILTON MUKASA:.....DEFENDANT

BEFORE HON. LADY JUSTICE C.A. OKELLO

RULING:

This is an application to set aside an order of this court made on the 17th August 2009 by which HCCS No. 56 of 2008 was dismissed for non- prosecution. The application that is based on six grounds which shall presently examine, is brought under the ubiquitous Section 98 of the Civil Procedure Act, as well as under 0.9 rules 17, 18 and 29 of the Civil Procedure Rules. The evidence therein was by way of an affidavit in support sworn by Mr. Robert Ekirita Nashiero, an assistant administrator General.

The respondent filed an affidavit in reply opposing the application.

High Court Civil Suit No. 56 of 2009 from which the current application arose was filed by the applicant against the current respondents who hold letters of administration to the estate of Ananiya Kimu. The main orders prayed for in the suit are for revocation of letters of administration issued to the current respondents in Administration Cause No. 37 of 1992 and for an order issuing a fresh grant to the current applicant. Reasons pleaded for desiring revocation of the grant to the respondents/defendants are:

Failure of the respondent/defendants to file an inventory since obtaining Letters of Administration;

- The respondents/defendants insistence that the applicant/plaintiff pays to them the sum of shs. 53,531,491/= gratuity that the Ministry of Public Service paid to the applicant instead of them as administrators of the late Ananiya Kimu's estate.
- The applicant feared that the respondents would not pay other beneficiaries their fair shares of the gratuity.

The respondents' substantive defence was that they were entitled to payment of the gratuity qua administrators of Kimu's estate.

When the parties appeared before court for scheduling conference, they decided to try an amicable settlement of the suit. In fact, just before the suit was dismissed it had been fixed for receiving a polished up settlement terms. But come that date (14/9/2009) the parties and their respective Counsel were absent. At the same time, the much wanted consent terms for settling the suit, were not in the file. All the same, the suit was adjourned to 17/8/2009. When the parties and their Counsel failed to turn up in court, the suit was dismissed.

In the current application, Mr. Nashiero conceded in paragraph 6 of his affidavit that in the course of hearing the matter Counsel for the parties to the suit had informed court that consent had been struck and the terms would be recorded. He went further to state in paragraph 7 that the consent was signed and filed. However, the court fee stamp on the photocopy of the consent judgment annexed to Mr. Nashiero's affidavit, shows that the consent judgment was purportedly filed on the 19th August 2009, i.e. a day after the suit was dismissed and about a month from the date court, with consent of Counsel for the parties, ordered the consent to be filed.

The disingenuous Mr. Nashiero in several other paragraphs of his affidavit tried to shift the blame for his, and Me. Bwengye's failure to file the consent in accordance with court order made

with their consent, on court. E.G., in paragraph 10 of the same affidavit, Mr. Nashiero deponed (in contradiction to earlier assertion) that the consent judgment could not be filed because an unnamed Clerk informed him in July 2009 that Family Division was moving to new premises. The inference being that the Registry of the Family Division was closed to litigants from some date in July up to 19/8/2009 when it finally opened its doors enabling the parties to the main suit file their consent judgment.

The fact however is that the parties were supposed to have filed the consent judgment before or by Tuesday the 14th July 2009. The business of court on that Tuesday 14th July 2009 would have been to note the judgment and to endorse it if endorsement was necessary. Mr. Nashiero gave untrue reasons for his failure to attend court on 14/7/2009.

Be that as it may, Counsel for the parties were not served afresh for new hearing date that had been fixed for 17th August 2009. That was the date the suit was dismissed for lack of prosecution. In the result, I grant the application.

- (1) The order of this court dismissing HCCS No. 56 of 2009 is quashed and set aside.
- (2) The said civil suit is re-instated to enable the parties to file the consent judgment or for other developments.
- (3) Each party shall pay its costs of this application.

C.A. Okello
JUDGE
16/6/2010