

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**ORIGINATING SUMMONS NO. 8 OF 2011**

**MUKAMUSONI CHRISTINE :::::::::::::::::::::::::::::::::::::: 1<sup>ST</sup> APPLICANT**

**NTUNGWA ANTHANS :::::::::::::::::::::::::::::::::::::: 2<sup>ND</sup> APPLICANT**

**VERSUS**

**LUKANGIRA PATRICIA INGABIRE :::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE THE HON. JUSTICE B. KAINAMURA**

**RULING**

By Originating Summons under order 37 rr 1 (a) (6) (e) and (g) and 2 (a) and (b) of CPR, **Mukamusi Christine** and **Ntungwa Athanas** (herein referred to as the Applicants) requested that the Court makes the following determinations:-

- 1. Whether the rights and interests of the applicants as beneficiaries or cestui que trust of and under the estate of their father Rukarangira Alex have been greatly prejudiced accessions miscarriage of Justice through the grant of the Letters of Administration to the Respondent.*
- 2. Whether there are just causes to annul and revoke the Letters of Administration granted to the Respondent viz land at Kabanyi in the names of the Respondent's late husband Lukangira Philip which he had on behalf of his late father's family.*

3. *Whether the Administrators has converted to her own use and subjected to loss or damages to the prejudice of the beneficiaries by declaring property not belonging to her late husband's estate as inclusive to the estate.*

The Originating Summons is supported by the affidavit of Ntungwa Anthanas in which he depones ***inter alia*** that:-

1. *He is one of the beneficiaries of the late Rukarangira Alex who died in 1992 and whose estate was administered by his late brother Philip Lukangira late husband of the Respondent.*
2. *His late father Alex Rukangira left behind various properties which include land and cows at Kabanyi Luwero Block 704 plot 11 x 16, and Block 706 plot 11. At the time of his death, he had not got acquired land titles for the said lands.*
3. *His elder brother Philip Lukangira being the eldest son and heir had processed the land titles in his names.*
4. *After death of Lukangira Philip, the Respondent applied for and was granted Letters of Administration to his estate.*
5. *Upon obtaining the Letters of Administration the Respondent is threatening to evict the applicants from the land.*

In an affidavit in reply, the Respondent depones ***inter alia***:-

1. *That she is the widow of the late Philip Lukangira and the Administrator of his estate.*
2. *That the late Rukarangira Alex came to Uganda as a refugee and lived a nomadic life like all cattle keepers until he was settled by the late Philip Lukangira his son-on his land at Kabanyi where he died and was buried.*
3. *That during his stay the late Rukangira was allowed to graze his cattle on the land without limitation.*
4. *That her late husband had to make a substantial deposit on Block 704 plot 11 before he was allowed to bury his father late father Rukangira on the land. The land was bought from one Gavamukulya this was in 1997.*
5. *That Block 704 plot 16 was formerly owned by one Masembe Charles as Administrator of estate of Kalanzi Samson as was bought in 2001.*
6. *That Block 706 plot 11 was acquired through bidding from Green Land Bank. This was in 2002.*
7. *That late Philip Lukangira owned all the said property in person and for his children only.*

At the hearing of the application, the Applicants were represented by Mr. Urban Tibamanja of Tibamanja Urban Advocates while the Respondent was represented by Mr. G. Malinga of Ms D & G Associated Advocates represented the

Respondent. It was agreed that on top of the affidavits in support, evidence viva-voce be taken (037 rr 11)

The Originating Summons was supported by the affidavit of Ntugwa Anthans the 2<sup>nd</sup> applicant and further evidence was heard *Viva Voce* from eight witnesses. In his submissions, Learned Counsel for the Applicant Urban Tibamaya urged that what his clients sought from Court was an order that the Letters of Administration granted to the Respondent in respect of the land at Kasanya be revoked and issued to the Applicants. Or this he relied on **Section 221** of the **Succession Act**. The section provides:-

**S. 221        *Administration limited to property in which person has beneficial interest.***

***“Where a person dies leaving property of which he or she was the sole or serving trustee, or in which he or she had no beneficial interest on his or her account and leaves no general representation or one who is unable or unwilling to act as such Letters of Administration limited to that property may be granted to the person beneficially interested in the property or to some other person on his or her behalf.***

My reading of the above section is that it arises only where the deceased was the serving or sole trustee of trust property and the whole of the legal title had been

vested in him. Ordinarily the legal title was past on to his or her legal representative under a grant of Letters of Administration which would entitle the legal representative to appoint new trustees of the trust. In event the legal representative is unable or unwilling to act the Letters of Administration limited to the property may be granted to a beneficiary. It is quite clear therefore that this application does not fall under the category envisaged under the section and the applicant's case would fail in this record.

The above aside, the Applicants are applying for revocation of the grant issued by this Court to the Respondent in respect of the estate of her late husband Philip Lukangira. For the Applicants to succeed in this regard, they would have to proceed under **Section 234** of the **Succession Act**.

Revocation can only be on the following grounds:- the proceedings to obtain a grant were defective in subsistence or the grant was obtained fraudulently by relying on false statements or concealing from Court something material to the case or the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify a grant or an allegation was made in ignorance or inadvertently or the grant has become useless and inoperative through circumstances or the person to whom the grant was made has failed to file an inventory or account within the prescribed time or has failed one which is untrue in

a material respect. It is trite that an application for revocation should be based on the above grounds otherwise it fails.

Since the Applicants did not base their application on the above grounds, then their application for this reason alone fails.

In his submission Mr. Malinga drew Courts allegation to Section 59 of the RTA and the case of *Kampala Brothers Ltd Vs Damanico (U) Ltd SCCA No.22 of 1992* where the Supreme Court held a certificate of title in the names of a registered proprietor is sufficient proof of ownership of the land in question subject to the persons of Section 176 of RTA. I agree with Learned Counsel on this matter and should the Applicants wish to claim under adverse possession as Mr. Tibamanya stated in his answer in rejoinder, then this certainly is not the proper way to move Court.

Since the above effectively disposes of the case before me, i will not proffer any answers to the questions set out for determination in the summons and the summons is accordingly dismissed with costs.

**B. Kainamura**  
**Judge**  
**13.08.2012**