

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

MISC. CIVIL APPLIC. NO. 60 OF 2012
(ARISING FROM HCCS NO. 14 OF 2012)

1. WILSON TAYEBWA 2. PAT KEBIRUNGI 3. PERUTH KYAKUHAIRE 4. EUNICE KOMUHANGI 5. SAM NSHEMEREIRWE 6. HOPE KIRUNGI	} APPLICANTS/DEFENDANTS
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VERSUS

1. MARY KYATWOHA 2. JOHN BABIGAMBA 3. GERESOM BANGIRANA	} RESPONDENTS/PLAINTFFES
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BEFORE HON.JUSTICE B. KAINAMURA

RULING

This is an application by way of Chamber Summons Under 0.41 rr 1,2 and 9 of the CPR, S.98 of the CPA Cap 71 and S 33 of the Judicature Act Cap 3.

It seeks for an order of a Temporary injunction against the Respondents their agents, servants or any other person acting on their authority from intermeddling or otherwise interfering with the administration of the estate of the late **MOSES KYATWOHA** (Deceased) pending the hearing of the Main Suit or until further orders of Court.

The Applicant further seeks that a neutral Interim Administrator be appointed by Court to take over the administration and/or preserve the estate of the deceased

pending the hearing of the Main Suit or further orders of Court. The Applicants also sought for costs of the application.

The application is supported by the affidavit of **WILSON TAYEBWA** son of the deceased. The gist of the affidavit is that there is a pending application for Letters of Administration to the estate of the deceased filed by the Respondents vide ***Admin. Cause No. 883 of 2011***. The Applicants here in caveated the application for Letters of Administration which led the Respondents to file ***Civil Suit No. 14 of 2012*** to have the caveat vacated. **Wilson Tayebwa** further maintains that the deceased's estate is in danger of dissipation and that unless the Respondents actions, set out more particularly in his affidavit are not restrained the beneficiaries stand to suffer irreparably.

The Respondents, who oppose the application, filed an affidavit in reply. The affidavit is deponed by the first Respondent Mary Kyatwoha widow of the late Moses Kyatwoha. She depones that the deceased died testate, herself and the 2nd and 3rd Respondent are the appointed executors of the Will and that the application lacks merit as appointment of an interim administrator before a grant of Probate is alien to the Laws of Uganda and would be illegal.

For purposes of determining this application, i have decided to look only at the pertinent paragraphs in the affidavits filed as most of the matters deponed to in the affidavits are irrelevant for purposes of determining the application now under consideration.

In their submissions both Counsel for the parties agree that the principles for granting a temporary injunctions are now well settled – these being:-

- a) The Applicant must satisfy Court that he or she has a ***Prima facie*** case with a probability of success.

- b) He or she might suffer irreparably injury if its denied.
- c) And that if Court is in doubt that it will decide the application on the balance of convenience. See ***Gielila Vs Casman Brown (1973) E.A 358***

On the question of whether a ***prima facie*** case exists so as to warrant the issue of a temporary injunction, Learned Counsel for the Applicants is relying on the Applicants counter claim that the purported Will on which the application for Probate is premised is invalid, illegal *null* and *void* on account of it having been revoked by a subsequent marriage. The general rule is that where a person marries after making a Will, that Will is revoked by that marriage irrespective of whether the testator intended it or not. The revocation is automatic. To my mind, the determination of facts surrounding the first and subsequent marriage of the deceased with particular reference to the dates *vis-à-vis* when the Will is alleged to have been made, are critical to the Main case and point to the existence of ***prima facie*** case with a probability of success.

Accordingly i find that the first principle for granting a temporary injunction has been met.

In arriving at this conclusion, i have indeed steered clear of prejudging the Main Suit (***See Zain Internation Bv Vs Commissioner General of URA Misc. Appl No. 325/201***)

The next principle for determination is whether the Applicants will suffer irreparable loss. Under paragraph 12 of the affidavit in support of the Chamber Summons, Wilson Tayebwa the 1st Applicant lays out the unlawful acts and/or omissions being committed by the 1st Respondent. If these allegations indeed are true, they all generally point to intermeddling and otherwise interfering with the administration of the estate of the deceased before grant of probate or Letters of

Administration whichever is applicable. In her affidavit in reply, the 1st Respondent Mary Kyatwoho denies the allegations (see para 9 of affidavit).

I hold the view that the allegations set out in Mr. Tayabwa's affidavit para 12 which have not been sufficiently controverted are such that the Applicants will suffer irreparable injury which an award of damages cannot adequately atone if this application is refused. (*See Commodity Trading Industries Vs Uganda Maiza Industries & An [2001-2005] HCB 118*)

In the result i find that the second principle for granting a temporary injunction has been met.

Since the conditions for granting a temporary injunction are sequential and both the first and second conditions have been satisfied, I will not address the third condition as Court is in no doubt that a temporary injunction should issue.

In the circumstances a Temporary injunction is issued in the terms prayed in this application and it is so ordered.

Ordinarily, an order of this nature aims at maintaining the *status quo*. However in this case the Applicants have also applied that an Interim Administrator be appointed by Court to care-take the administration and/or preserve the estate of the deceased pending the hearing of the main suit. For this they rely on Section 218 of the Succession Act which provides:-

S. 218 **Administrator Pendente lite**

“The Court may, pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any Probate or

any grant of Letters of Administration, appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator other than a right of distributing the estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction”

An application under this section will be granted only when there is a dispute as to the validity of a Will or as to the right to administer. It is limited to the duration of the pendency of the suit and more importantly it does not give authority to the administrator so appointed to distribute the estate. However such an administrator may collect rent and manage other general affairs of the estate (***See Ignatins Willian Kajubi & Adah Nambasa Vs Canan Wanyama***. Jinja Civil Appeal No. 26 of 2002. (un reported))

Having considered the circumstances of this case, i am persuaded that this is an estate where an Administrator *Pendent Lite* should be appointed and accordingly the Administrator General is so appointed to assume administration of the estate of the late **Moses Kyatwoha** until this Court disposes of Civil Suit No. 14 of 2012.

Costs will abide the outcome of the main suit.

B. Kainamura
Judge
24.08.2012