

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL REVISION NO. 012 OF 2001

ASANATH MUHUMUZA::: APPLICANT

VERSUS

DAVID TURABAGYENYI:::RESPONDENT

BEFORE HON. MR. JUSTICE J.W. KWESIGA RULING

This Application for Revision of the Lower Courts decisions in Rukungiri Civil Suit 13 of 1984 and Civil Application 26 of 1999 was filed as early as 24th September 2001. Despite the fact that the record shows that the applicant made several efforts to fix the hearing dates for different reasons this application did not take off for a period of over 10 years. This unfortunate delay is regrettable. The case has been in hands of several Judicial Officers and Advocates who for this period did not give a resolution to the Actual dispute.

The instant application seeks a court order for setting aside the judgments in the above referred to suits which are on the same subject matter and one stems from the other and between same parties. The allegations in the Notice Motion filed by M/S

Ngaruye Ruhindi & Co. Advocates are paraphrased and consolidated into two:-

- (a) The Trial Court had no Jurisdiction in Law to try the case.
- (b) That the court acted illegally or with material irregularities or injustice.

The Application is supported by an affidavit sworn by the Applicant dated 4th September, 2001 with Annextures. On 28th February, 2012 she sworn an additional affidavit that had more annextures than the previous one. This additional filing was done with leave of this court after considering the fact that most of the factors of the case had changed due to delayed hearing and there was changes in legal representation over the period which justified the addition.

On the other hand, the Respondent represented by Rev. Bikangiso did not file any affidavit in rebuttal of the Applicants affidavit and therefore the evidence in support of the application stands unchallenged leading to the presumption that what the Applicant stated as her evidence is true or accepted by the Respondent. M/S Ngaruye Ruhindi, for the applicant and Bikangiso Ezera for the Respondent filed written submission which shall be referred to where appropriate.

The Applicant is a widow of the Late John Turyagyenda and the Respondent is the brother of the said Turyagyenda. The two brothers are sons of Late Kategaya who died in 1949. In Civil Suit No. 13 of 1984, before Grade II Magistrate's Court, the Plaintiff David Turyabagyenyi sued Turyagyenda seeking order for distribution of Kategaya's estate comprised of cows and land. This case was decided ex-parte.

In 1997, David Turyabagyenyi, filed another suit, by ordinary plaint which was named miscellaneous application No. 7 of 1997 against John Turyagyenda seeking:-

- (a) Judgment against the defendant, cancellation of Letters of Administration, sharing of the estate among the beneficiaries, granting letters of Administration to the estate of Kategaya to the Plaintiff. This subsequent suit was decided by the Chief Magistrate after the death of John Turyagyenda in favour of the Plaintiff, David Turyabagyenyi.

The proceedings appear grossly irregular for the following reasons. I have observed from the record;

- (1) John Turyagyenda was being sued as the Administrator of the estate of Kategaya who died in 1949. There is no evidence whether Turyagyenda was granted Letters of Administration, if so when and under which application or court.

(2) The Applicant in this Application was to be answerable in matters of Administration of the estate of Kategaya merely because she was the administrator of the estate of John Turyagyenda.

In my view these are two separate estates. The moment the Administrator of the estate of Kategaya died the estate remained without an administrator. The Letters of Administration, if they existed, which has not been proved would have had the duty of the beneficiaries to apply to administer the residue of the estate. Therefore any Judgment against the Applicant based on « the Administration of Kategaya's estate is invalid. It follows that a execution proceedings against the Applicant in the basis of such judgment would equally be illegal because the Applicant was not administrator of the estate of Kategaya.

Miscellaneous Application number 7 of 1997 which in form is an ordinary suit was irregularly handled. This was a suit that required filing of a written statement of Defence and calling of evidence by either party. These defective proceedings, if had been properly handled, would have taken care of what Bikangiso and company Advocates seek to be considered as evidence in their submissions. I have perused the trial record there is no evidence properly brought before court to prove that the applicant sold any part of Kategaya's estate. I did not find this a

tried issue it only finds its way in this by the advocates submissions which is not evidence.

M/S Bikangiso & Co. Advocates submitted that setting aside the irregular proceedings and Judgment would cause injustice to third parties who purchased part of Kategaya's estate pursuant to the invalid executions. I find this a most unfortunate contention in light of the well settled principals of Law that once illegality or irregularity has been brought to the attention of the courts of Law they cannot be approved, ignored or let to be perpetuated. The legality of the purchasers who these advocates seek to protect are not party to these proceedings and no consideration to them can be made to defeat the Applicant's rights and rectifications of the defective and irregular proceedings which is the duty of this court.

The Applicants' un challenged evidence in the affidavit dated 28th February, 2012 shows that there was no evidence of service of summons or hearing notice in Civil Suit 13 of 1984. Paragraph 9 of her affidavit shows that the Chief Magistrate acted irregularly to preside over execution proceedings in a case that had been decided by a Grade II Magistrate.

Paragraph 12 of applicants affidavit states that execution against the Applicant was irregular I have already examined and identified the irregularities above. The Applicant could not be liable as

Administrator of the estate of Kategaya the father of her husband by virtue of being the administrator of the estate of her husband's estate. These are two separate estates both in Law and fact. I find merits in her application to have the proceedings, judgments and consequential orders made in Rukungiri Magistrate's court Civil Suits 13 of 1984 and 26 of 1999 set aside. I accordingly order that they be and are hereby set aside.

Let each party meet its own costs and any party wishing to have the substantive dispute adjudicated, he or she should follow the Law and property bring the matter before the courts of Law.

Dated at Kabale this 24th day of September. 2012.

KWESIGA
JUDGE

In presence of:

Mr. Twikirize Timothy holding brief for Mr.

Ngaruye. Mr. Barebaki holding for Rev. Bikangiso.

Both parties are absent.

Mr. Joshua Musinguzi- Court Clerk.