

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

HCT -11-CV-CIVIL APPEAL NO.-008/2014

(ARISING FROM KISORO CIVIL SUIT NO. 008/2009)

(ARISING FROM ADMINISTRATION CAUSE NO. 17/2003)

NAOME NYIRAKAMANA:.....:APPELLANT

VERSUS

NYIRANSEKUYE RUTH & 4 OTHERS :.....:RESPONDENTS

BEFORE HONOURABLE MR. JUSTICE MICHAEL ELUBU

JUDGMENT

This is an appeal against the Judgment and orders of Her Worship Prossy Katushabe Grade I Magistrate Kisoro.

The background to this appeal is that the parties, appellant and all Respondents are biological siblings. They are children of Suluman Ntibisanganwa and Mariam Nyiramajeri.

Sulumani Ntibisanganwa passed away in 1991. His wife Nyiramajeri died a few years later.

Sulumani Ntibisanganwa is said to have left a Will executed in 1980 in which he left his matrimonial home and the bulk of his estate to the appellant. She had lived and cared for him since 1967 when she left school to 1991 when he died. The deceased was grateful for this and was showing his appreciation.

At the time all the Appellants' sisters (the Respondents No. 1, 2, 4 and 5) were married and living in their own homes. Their deceased father had indicated in the Will that some land should be set aside to be used by any of his daughters in the event that any of their marriages should fail. The sons had all been given their share of land in their father's lifetime. This Will is said to have been read at the burial of the father in 1987.

As it happens the marriage of the first Respondent collapsed. She returned to her father's home and demands a share of the estate and disputes the existence of a Will. The contention is that no Will was read at the burial and the Appellant is denying the children of the Late Ntibisanganwa a share of their father's estate.

In December, 2003 the Appellant petitioned for Letters of Administration for her father's estate which she was granted. The Respondents state they did not know she petitioned for the letters of Administration.

In 2007 a Citation to bring those Letters of Administration into Court for revocation was filed by the Respondents. The Appellant in response filed the suit from which this Appeal emanates.

The Appellants Suit in the Lower Court sought a declaration that she was the right legal representative of Ntibisanganwa Sulumani, a removal of the citation for revocation of the letters of administration, general damages and costs of the suit.

The Defendants (Respondents), though they did not counter claim, prayed for cancellation of the letters of Administration, the Suit property be shared equally among all beneficiaries, land given to the brothers (sons) be excised from the estate and costs of the suit.

The trial Court entered judgment in the following terms:

- The Letters of Administration were revoked.
- All beneficiaries of the Late Ntibisanganwa were entitled to share in their father's estate.
- That the Appellant should stay in her father's homestead but all others had free access to it.

- That the beneficiaries would select two administrators who would apply for Letters of Administration and distribute the estate amongst beneficiaries.

Being dissatisfied with the findings of the Lower Court the Appellant lodged this Appeal. The grounds of Appeal are:

- (i) The learned trial Magistrate erred in law and infact by failing to properly evaluate and analyse the evidence as many questions remained unanswered which resulted in a failure of Justice.
- (ii) The learned trial Magistrate erred to hold that all beneficiaries should share the estate.

The Appellant prayed the Appeal be allowed, judgment and orders of the Lower Court be set aside. That the Court make orders for distribution of the estate and the Respondents pay Costs.

Counsel for the Appellant, Mr. Wilfred Murumba argued each ground separately I propose to determine the grounds in the same order.

Ground I:

The Appellants submissions on the first ground of Appeal is that the learned trial Magistrate departed from the issues framed at the trial which

covered the prayers and introduced her own which were outside the pleadings.

The issues in the Lower Court were:

Whether the deceased died intestate?

Whether the defendants are entitled to a share of the estate and remedies.

The trial Court then framed an issue, ***“that whether the Letters of administration can be revoked?”***

The contention is that this had not arisen during the trial and the parties did not have an opportunity to address Court on it. Counsels’ contention is questions were left unanswered including the sale of the estate land by the 3rd Respondent, whether there is a valid Will, the fate of the home stead which the trial Magistrate held should be open to all the beneficiaries and lastly whether indeed there was a valid Will.

Rev. Ezra Bikangiso represented the Respondents submitted the trial Magistrate was well within her rights to frame the issue on the revocation of the Letters of Administration as this was canvassed both in evidence and submissions in the Lower Court.

It is his contention farther, that since the Appellant applied for Letters of Administration then the Will is immaterial as the estate was treated, by the Appellant, as that of an intestate.

This Court finds it is not in dispute that a Court has the power to amend and strike out issues as it deems fit for the Justice of the case (See: Order 15 Rule 5 of **The Civil Procedure Rules** which is to the effect that a Court may amend issues as it deems fit).

In this case the prayers were for the removal of the citation filed by the Respondents following the Appellants application for Letters of Administration. The citation, if it was successful, would result in the revocation of the Letters of Administration for reason that the Appellants application was bad in law. For this reason therefore the drafting of the issue on revocation by the trial Court ultimately covered her prayer in the lower Court that the citation be removed. It would also the Respondents prayer to cancel the letters of Administration.

At this Stage, it is not essential to consider whether the Will was valid or not because the Suit is about the application for Letters of Administration and the will does not form part of this. I will return to the Will later.

The grounds for the citation was that the appellant made an application without the consent of the other beneficiaries of the late Ntibisanganwa's estate, included as part of the estate land which falls outside of the estate and did not mention the other children of the late.

I have studied the application for Letters of Administration, No. 17/2003, made by filling out a standard application form at the Kisoro Court. In it the Appellant is mentioned as the only children of the late Ntibisanganwa. The other beneficiaries are left out.

Secondly from the evidence in the course of the trial in the Lower Court and especially during the visit to the locus, it was clear that ownership of many of the properties (strips of land) was contested. It was thus not clear or agreed whether all the listed properties made up part of the estate.

Thirdly there is no evidence of a family meeting being held before the application was made.

Against this background, was it correct for the Respondents to cite the Letters of Administration and seek a revocation?

Section 234 (i) of **The Succession Act Cap 162** provides that Letters of administration may be revoked or annulled for just cause.

Section 234 (2) '***Just cause***' means,

(a).....

(b) That the grant was obtained.....by concealing from Court something material to the case.

(c) The person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory.

On these grounds provided in Section 234 of **The Succession Act** it is clear that there is just cause against the appellant in this case to revoke Letters of Administration granted to her on 29th January, 2004. She omitted to mention the other beneficiaries even though it appears that she felt that she was sole beneficiary to the estate. She believes a Will was made making her sole beneficiary.

Secondly she was not exhibited an inventory.

On these two grounds alone although the appellant opposed the citation of the Letters of Administration there was just cause to revoke them and they are hereby revoked.

The other questions in this ground of appeal include the Will.

The Will is alleged to have been drafted on 22nd of November, 1980. One Charles Hakiza a nephew and Nyiramajeri, the wife of the Ntibisanganwa were witnesses. From the evidence it is not clear who drafted the Will and who kept it. Nyiramajeri is now deceased and Charles Hakiza is the only surviving attestator. The Will was supposedly read at the burial of the deceased by one Batte. All these key witnesses including the draftsman and custodian of the Will did not testify. There are several witnesses who attended the burial and state no will was read.

All the foregoing casts serious doubt on the Will and probably explains why the Appellant chose in such circumstances to apply for Letters of Administration. This Court cannot therefore act on an illegal will with such questions hanging against it.

From the locus in quo visit there is serious contention on the ownership of properties allegedly forming part of the estate. The trial Court, rightfully in my view, did not make a finding on these ordering the parties to file separate suits to determine ownership.

Ground II:

"The learned trial Magistrate erred to hold that all beneficiaries should share the estate."

It is clear that all the male descendants of the deceased Ntibisanganwa were given their share of the estate in his lifetime. The only contention is with regard to the girls and property allegedly sold but that belonged to the estate. The sale was by Petero Bitinduguru, a brother of the Appellant, who is the 3rd Respondent.

Firstly, with the regard to the homestead of Ntibisanganwa where the Appellant lives. The evidence is that she has lived in this homestead since her father's death in 1991. She had previously cared for both her parents from 1967 when she dropped out of school up to their respective deaths. In this time, again, she lived in the homestead.

This is indisputably the only place she calls home and the fact that she had lived there is not contested.

It is therefore the order of this Court that the Appellant shall have unconditional and unfettered right to this residence. The order of the trial Magistrate on the residence is set aside.

Lastly the parties are ordered to hold a family meeting under the Chairmanship of the Sub-County Chief of Nyundo to chose two beneficiaries who shall apply for Letters of Administration and distribute the uncontested parts of the late Sulumani Ntibisanganwa's estate to the beneficiaries entitled. I note that the male children have all received their share already and are therefore not beneficiaries for this purpose.

They shall file an inventory within six months as is required by law.

I see no sufficient cause to interfere with the order of the trial Court as to costs. Therefore each party shall bear its own costs.

Dated at Kabale this..08th..day of June 2015.

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MICHAEL ELUBU

JUDGE