

THE REPUBLIC OF UGANDA
IN THE HIGH COURT AT MASINDI
MISCELLANEOUS APPLICATION NO. 0052 OF 2018
KANYAMWENGE EZRAAPPLICANT
VERSUS
MUHUMUZA VICENT RESPONDENT

RULING BY GADENYA PAUL WOLIMBWA - JUDGE

This application is brought under section 98 Civil Procedure Act, Cap. 71, S.222 of the Succession Act and Orders 1 r. 13, 52 r. 1 & 2 Civil Procedure Rules.

The application seeks the following orders;

1. Granting limited Letters of Administration of estate of the late Daudi Kiparu, the deceased respondent/plaintiff in Civil Appeal No. 0036 of 2015 and Civil Suit No, 0052 of 2011 respectively, the nominee of the applicant as the legal representative of the said deceased respondent/plaintiff in the above suit.
2. Costs of this application be provided for.

The grounds of the application are:-

1. That limited Letters of Administration of the estate of the late Daudi Kiparu, the deceased respondent/plaintiff in Civil Appeal No. 36 of 2015 and Civil Suit No. 0052 of 2011 be granted to Kanyamwenge Ezra.
2. That it is essential to have on record the applicant who is the legal representative of the deceased respondent in Civil Appeal No. 036 of 2015 pending before this Honourable Court and to have limited Letters of Administration of the estate of the late Daudi Kiparu, the deceased in Civil Appeal No. 36 of 2015 and Civil Suit No. 0052 of 2011 be granted to Kanyamwenge Ezra the legal representative of the said deceased plaintiff.
3. That the circumstances of the case justify that this application be heard and disposed of exparte.
4. That it is fair, just and equitable that this application be granted.

The application is supported by the affidavit of Kanyamwenge Ezra, who has deponed as follows:-

- “2. That the deceased respondent/plaintiff was my uncle.**
- 3. That the deceased respondent died on the 8th of February 2018. (A photocopy of the death certificate is hereto attached and marked “A”).**
- 4. That in 2011 the deceased plaintiff instituted Civil Suit No. 52 of 2011 in the Chief Magistrate Court of Hoima at Hoima for a declaration that he is the lawful owner of the suit land located at Ndaragi II LCI Village, Kisukuma Parish, Kigorobyia Sub-county, Hoima District and that the defendant is a trespasser on the suit land.**
- 5. That the civil suit was determined in favor of the deceased plaintiff and the defendant filed an appeal vide Civil Appeal No. 36 of 2015 in the High Court of Uganda holden at Masindi.**
- 6. That the deceased respondent/plaintiff died on 8th day of February 2018 when Civil Appeal No. 36 of 2015 was still pending before this Honourable Court.**
- 7. That the said death of the deceased respondent/plaintiff has since put the progress of Civil Appeal No. 36 of 2015 to a standstill as it cannot proceed in the absence of the respondent.**
- 8. That I have been informed by lawyers M/S Kasangaki & Co. Advocates which information I verily believe to be true that I am entitled to invoke S.222 of the Succession Act by applying to Court for a grant of limited Letters of Administration to Daudi Kiparu for the purpose of enabling me to pursue Civil Appeal No. 36 of 2015 to its logical conclusion as a respondent therein.**
- 9. That it is just, fair and equitable that the orders sought for be granted.”**

The application was exparte.

Mr. Kasangaki, for the applicant rehearsed the grounds of the application and made reference to the affidavit of the applicant and requested me to grant the application. It is therefore not necessary for me to repeat the arguments of counsel. I will accordingly go straight to the merits of the application.

Consideration of the application:

The application was brought under section 222 of the Succession Act, which provides that:-

“When it is necessary that the representative of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, Letters of Administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issues in that cause or suit, and until a final decree shall be made in it, and carried into complete execution.”

According to Section 222 before a limited grant is given it must be established that either the Executor or the person entitled to apply to administer the estate of the deceased is unable or unwilling to apply for Letters of Administration. **The word ‘unable’ is defined as lacking the skill, means, or opportunity to do something (www.google.com). While the word ‘unwilling’ means “not ready, eager, or prepared to do something (www.google.com).**

Under “unable clause” of S.222 of the Succession Act, the person must be under a disability of some sorts that is preventing him or her from applying for Letters of Administration while under the “unwilling clause”, the person applying, is not under a disability but for some other reason is not able to apply for Letters of Administration.

Therefore, before a court appoints another person to act as an administrator for the estate of a deceased person’s estate, the applicant must satisfy the court that the person who would have ordinarily applied for Letters of Administration is either under a disability or that though not lacking in ability, has for some reasons not taken steps to apply for letters of administration.

Turning to the instant case, the applicant says that he is applying for a limited grant because;

“The said death of the respondent/plaintiff has since put the progress of Civil Appeal No. 36 of 2015 to a standstill as it cannot proceed in the absence of the respondent.”

The applicant again says that he been informed;

“by M/S Kasangaki & Co. Advocates to invoke S.222 of the Succession Act by applying to court for a grant of limited Letters of Administration to Daudi Kiparu for the purpose of enabling me to pursue Civil Appeal No. 36 of 2015 to its logical conclusion as a respondent therein.”

From the pleadings and affidavit, the applicant does not mention and name the person or persons who should have applied for Letters of Administration to the estate of the late Daudi Kiparu but have either deliberately refused to apply for them or are suffering from a disability in applying for them. That being the case, I am unable to make a finding that the applicant has made a case for which I should give him a limited grant in respect of the estate of the late Daudi Kiparu.

The application is accordingly denied with no orders as to costs.

J.W.

Gadenya Paul Wolimbwa

JUDGE

17/2/2020

*Only read in court
presence of ~~the~~ Mr Kasangaki
- counsel for the Appl.
Mr Tibanyenda - Court*

Check

J.W.

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