

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-00-01-CV-CS- NO. 71 OF 2019

5 MUZOORA JOHN BOB :..... PLAINTIFF

VERSUS

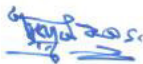
KABANYOMOZI GRACE:..... DEENDANT

BEFORE HON. JUSTICE VINCENT WAGONA

10 JUDGMENT

Introduction:

The plaintiff brought this suit against the defendant for: a declaration that the plaintiff is a son of the late Muhindu Sebastian and rightfully obtained a certificate
15 of no objection from the Administrator General under Serial No.26111 together with the defendant dated 17th May 2019; a declaration that he lawfully and rightfully petitioned for Letters of Administration Vide Admin. Cause No. 0028 of 2019 together with the defendant; a declaration that the caveat lodged by the defendant dated 11th June 2019 was illegally lodged and based on falsehoods,
20 unsubstantiated claims and null and void in law; an order that the caveat lodged by the defendant dated 11th June 2019 be vacated and or removed; that a permanent injunction restraining the defendant, her agents and any other person acting under her from intermeddling with the estate of the late Muhindu Sebastian and family members who have no beneficial interest and role in the management,
25 administration and control of the estate of the late Muhindu Sebastian be issued; general damages of UGX 100,000,000/=; and costs of the suit.



Plaintiff's Case:

The plaintiff contends that he is a son of the late Muhindu Sebastian while the defendant is a daughter of the late who died intestate on 24th November 2018. That after his death, the plaintiff and the defendant jointly petitioned the Administrator General for grant of a *Certificate of No Objection* under Tooro Admin. Cause No. 011 of 2019 which was granted on the 17th day of May 2019. That later the two filed a petition for grant of Letters of Administration in the High Court of Uganda at Fort Portal Vide Admin Cause No. 0028 of 2019. That the defendant lodged an objection to the petition denying the plaintiff's paternity by the late which claim is unfounded and unsubstantiated. The plaintiff contends that he is a son of the late and that the caveat lodged by the defendant is tainted with illegalities, falsehoods and misrepresentations and thus the same should be removed forthwith. The plaintiff asked court to enter judgment in his favour and all the reliefs sought therein.

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Defendant's Case:

The defendant's basis for lodgment of the caveat was that she contested the plaintiff's paternity by the late Muhindu and that unless a DNA test was conducted per the minutes of the family meeting of 24th February 2019, she could not accept the plaintiff as her brother. That after commencing the process for securing Letters of Administration, a family meeting was called by the Chief Administrative Officer of Bunyangabu District on the directions of the Administrator General and that in the said meeting of 24th February 2019, the issue of paternity arose where Rujumba Louis the brother of the deceased informed the members in the meeting that the late had informed him prior to his death that the plaintiff was not his son. That it was resolved in the said meeting that a DNA test be conducted on the plaintiff and that her sister, the defendant and the plaintiff agreed to have a DNA



test conducted and that if he was not found to be a child of the late, he had no interests in the estate. That they set a date of 4th March 2019 to travel to Kampala and conduct the test and the results were to be ready by 30th March 2019 to discuss the next course of action. That on 4th March 2019, the plaintiff did not show up and the family resolved that a *Certificate of No Objection* be granted to the defendant and Rujumbura Louis. That the *Certificate of No Objection* issued to the plaintiff by the Administrator General was done in error since the defendant did not participate and the plaintiff never presented any family minutes to that effect where he was appointed and confirmed by the family as such. The defendant also contended that the plaintiff forged her signature on the petition for Letters of Administration and thus the said documents were a forgery. That a one Rujumbura and the defendant were appointed by the clan to administer the estate of the late thus there was no connivance. That the baptism card and the birth certificate relied upon by the plaintiff are not conclusive as to paternity of the plaintiff by the late since they could be issued under the influence of someone and do not bear the signature of the late. The defendant asked court to reject the plaintiff's claim and dismiss the same with costs and that the resolution of the family should be adopted.

Issues:

1. Whether the plaintiff is a son of deceased Muhindu Sebastian and if so whether he is entitled and has a beneficial interest in the estate of the deceased.
2. Whether the caveat lodged by the defendant should be removed.
3. Remedies available to the parties.

Representation:

Mr. Joseph Muhumuza Kaahwa of M/s Kahwa, Kafuuzi, Bwiruka & Co. Advocates represented the plaintiff. Mr. Paul Seguya of M/s ASB Advocates represented the defendant.

5 **RESOLUTION BY COURT:**

Issue One: Whether the plaintiff is a son of deceased Muhindu Sebastian and if so whether he is entitled and has a beneficial interest in the estate of the deceased.

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The plaintiff who testified as PW2 stated in examination in chief that he is a son of the late Muhindu Sebastian and Olive Kabajungu Muhindu is his mother while the defendant was his sister. That he was born on 11th December 1978 and baptized on 8th March 1981 and the names of both parents appear on the baptism card and the birth certificate which were exhibited as PE1 and PE2. That since he was born, he lived with both parents and his father the late Muhindu never denounced him or disclosed to him that he was not his son. That he was surprised to learn from Rujumba Louis and other relatives who claimed that he was not a son of the late.

20 The defendant (DW2) denied the plaintiff's narrative and testified that before his death, Muhindu never told her that the plaintiff was his son. That in the two family and clan meetings that sat, it was resolved that a DNA test be conducted to establish the plaintiff's paternity by the late which he declined. DW1 a brother to the late Muhindu testified in chief that late Muhindu Sebastian mentioned to him before his death that the plaintiff was not his biological son. He stated in cross examination that there was nothing in writing to that effect but that his late brother verbally informed him about it. That the plaintiff's mother had two children, that is

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the plaintiff and Grace Kente who died and was buried at the bother's home because the father was not known to them. He insisted on a having a DNA based on what his brother told him.

- 5 Counsel for the plaintiff submitted that Section 70 of the Children's Act, Cap. 59, places the burden to prove parentage on the person alleging it. That Section 71 of the Children's Act is to the effect that a certified copy of an entry into the register of births outlining the name of the father or mother of a child is *prima-facie* and conclusive evidence of parentage. Counsel submitted that since the plaintiff who
- 10 testified as PW2 produced a birth certificate which was exhibited as PE1 and the baptism card as PE2, and the details in the certificate and the baptism card reflected the late as his father, that it is conclusive proof that he is indeed a child to the late and asked court to declare him as such.
- 15 **Issue 1: Whether the plaintiff is a son of deceased Muhindu Sebastian and if so whether he is entitled and has a beneficial interest in the estate of the deceased.**

- The point of contention is the plaintiff's paternity by the late Muhindu Sebastian.
- 20 The plaintiff claims that he is a child of the late Muhindu Sebastian, which is disputed by the defendant.

- Section 70 of the Children's Act provides that: the burden to prove parentage shall lie on the person alleging it. Section 71 (1) provides that: where the name of the
- 25 father or the mother of a child is entered in the register of births in relation to a child, a certified copy of that entry shall be prima facie evidence that the person named as the father is the father of the child or that the person named as the mother



is the mother of the child. It is trite that *prima-facie* means that the asserted position is accepted as correct until proved otherwise; it is a rebuttable presumption which can be rebutted through evidence. (See *Preston Jones v Preston Jones* [1956] 1 All ER 124).

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With the evolution of DNA testing, the position that a certified copy of an entry into the register of births outlining the name of the father or mother of a child is conclusive evidence of parentage, can no longer hold in the face of legal contestation. Science asserts that a DNA paternity test is nearly 100% accurate at
10 determining whether a man is another person's biological father. A DNA paternity test would be a clearer and more concrete process of proving paternity than witness testimonies or statements contained in registers or documents without more.

In *Elvaida Ndyabahika versus Adyeri Hope Florence*, Mukono High Court
15 **Miscellaneous Application No.69 of 2019**, where paternity was highly contested, Hon. Lady Justice Margaret Mutonyi while observing that paternity can be scientifically proven through DNA, cited Section 33 of the Judicature Act, that provides that: *The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms*
20 *and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.*

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The test as to whether a DNA should be ordered or not was considered by the Hon. Lady Justice Ketrah Kitariisibwa Katunguka in **SeruJogi Charles Musoke &**



Anor. Vs. Tony Nkuubi, Originating Summons No. 07 of 2019 arising from Admin. Cause No. 149 of 2010 where she cited with approval the Kenyan case of MMM v ENW M.A No. 7 of 2016, where court cited with approval the Indian case of BPs v CS Civil Appeal No. 6222 – 6223 of 2010 wherein the court observed that “. . . the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed . . . DNA should not be directed by court as a matter of course or in a routine manner, whenever, such request is made, whether it is not possible for the court to reach the truth without use of such test. . .” Lady Justice Ketrah Kitariisibwa Katunguka further noted that: “Courts have held that in exercising its discretionary power to grant or not to grant the relief (DNA testing), court should be convinced that the application is in good faith, and that it is not actuated or designed to economically exploit or embarrass or is otherwise an abuse of the process of court. (See MW v KC Kakamega High Court Misc. Application No. 105 of 2004).”

In this case, after considering the interests of both the plaintiff and the defendant, I find it in the interests of justice that a DNA test is conducted on the plaintiff to prove his paternity by the late Muhindu. This is based on ground that in the very first family meeting after the death of the late, the defendant and other relatives of the late contested the plaintiff's paternity by Muhindu. That Muhindu had revealed to his brother (DW1) that the plaintiff was not his son. In the circumstances of this case, I find myself unable to make a complete and final determination regarding whether the plaintiff is a son of deceased Muhindu Sebastian without the assistance of a DNA paternity test for confirmation. I therefore decline to make a declaration as to whether the plaintiff is a son of the late Muhindu Sebastian.



Issue 2: Whether the defendant lawfully lodged the caveat on the petition for Letters of Administration (Administration Cause No. 028 of 2019) and if so, whether the caveat should be removed.

- 5 Section 5 (1) of the Administrator General's Act provides that no grant shall be made to any person, except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorised in writing, authorizing that person to administer the estate of a deceased person, until the applicant has produced to the court proof that the Administrator General or his
- 10 or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear days' definite notice in writing of his or her intention to apply for the grant.

The import of the above provision is that no grant can be sealed by court on an

15 application for Letters of Administration by any other person other than an executor, a widower or widow without the consent of the Administrator General. In practice this consent is usually issued in form of a *Certificate of No Objection* stating that the Administrator General does not object to one's application for grant of Letters of Administration.

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The known procedure before such a certificate is issued in practice includes conducting a meeting with either relatives or those known to the deceased to agree on who is to be authorized to receive the Certificate of No Objection to apply for Letters of Administration. In this case, the evidence is that such a meeting was held

25 by the Chief Administrative Officer of Bunyangabu on 24th February 2019 in which it was resolved that a DNA test be conducted on the plaintiff to establish his paternity with the late and proposed to re-convene on 31st March 2019 after



securing the DNA results. The plaintiff in cross examination admitted attending the first meeting. The evidence is that the plaintiff later declined to go for the DNA test in Kampala and in the subsequent meeting it was resolved that the defendant and his uncle Rujumba should apply to manage the estate of the late; that the plaintiff later secured a *Certificate of No Objection* from the Administrator General authorizing the plaintiff and the defendant to apply for grant of Letters of Administration to the estate of their late father. In cross examination, the plaintiff who testified as PW2 admitted that he did not submit the minutes of the meeting to the office of the Administrator General prior to securing a *Certificate of No Objection*. PW3 an Attorney in the office of the Administrator General who testified that he organized a meeting between the plaintiff and the defendant over the management of the estate, admitted to not being in possession of any minutes to that effect.

I find that in this case the Administrator General went ahead to issue a *Certificate of No Objection* to the plaintiff and the defendant without confirmation that the two had been duly nominated as the fit and proper persons to apply for Letters of Administration. I thus find that the *Certificate of No Objection* (Plaintiff's Exhibit PE3) Serial No. 26111 dated 17th May 2019 issued by the office of the Administrator General was irregularly granted. I declare the same invalid, null and void.

Another aspect regarding the petition for Letters of Administration is that the defendant contended that her signature on the petition was forged. She relied on the evidence of a Handwriting Expert report which was exhibited as Defendant's Exhibit DE4 where the handwriting expert noted that the signature attributed to the defendant in the petition was not hers.



Under Section 43 of the Evidence when court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to the identity of handwriting or finger impressions, are relevant facts. Such persons are called experts. In **Ugachick Poultry Breeders Ltd Vs. Tadjjn Kara T/A ST Enterprises Ltd, Court of Appeal C.A No. 2 of 1997**, it was noted that when court is to form an opinion as to a specific art, science, trade or handwriting, expert evidence is admitted to enable the court to come to a proper decision.

In this case, Hashakimana Clare, a Handwriting Expert in the Directorate of Forensic Services made a report dated 27th September 2019 which was verified by his Senior Sebuwufu Erisa in which she indicated that she examined the handwriting of the defendant on the petition viz-a-viz other documents and arrived at the finding that the defendant is not the one who signed on the petition on the basis that the signature on the petition and other documents differed in terms of the handwriting skill, shape and design of letters for example K, A, B, y, Z, N and O, fluency of the letters and line quality, relative letter spacing and internal and external proportions and this report was admitted as DE4 and was not contested by the plaintiff.

In the light of the above evidence, the plaintiff fails to prove his case on the balance of probabilities that he lawfully and rightfully petitioned for Letters of Administration Vide Admin. Cause No. 0028 of 2019 together with the defendant. I am inclined based on the evidence of the defendant that her signature on the petition was forged, supported by the evidence of the Handwriting Expert, to find that, it has been established on the balance of probabilities, that the defendant's

signature on the petition for Letters of Administration filed by the plaintiff was forged. The court cannot condone this illegality brought to my attention (**Makula International Ltd Vs. His Eminence Cardinal Nsubuga Wamala, Civil Appeal No. 4 of 1981**) I thus strike out the Petition for Letters of Administration brought
5 by Administration Cause No. 0028 of 2019 and strike out the said Administration Cause No. 0028 of 2019.

It is thus the finding of this court that the caveat lodged by the defendant against the grant of Letters of Administration to the estate of the late Muhindu Sebastian
10 was lawful and justified in the circumstances of this case and I decline to make an order for its removal.

I find that the plaintiff has on the balance of probabilities failed to prove his case against the defendant. I will make no order as to costs as the parties are close
15 family members and awarding costs may deepen the feud.

In the result, the suit is hereby dismissed.

Issue 3: Remedies available to the parties.

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I make the following orders:

1. That the family resolutions, including conducting a DNA paternity test on Muzoora John Bob the plaintiff to ascertain his paternity by Muhindu Sebastian should be adhered to and the proper procedure for
25 obtaining Letters of Administration should be followed.



2. An injunction doth issue restraining any person from intermeddling with the estate of the late Muhindu Sebastian until an Administrator is appointed by Court to administer the said estate.

5 3. Administration Cause No. 0028 of 2019 is hereby struck out on ground that the signature of the defendant was forged.

4. Each party shall bear their own costs.

10 I so order.



Vincent Wagana

High Court Judge

15 Fort-portal

02.11.2022