

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION No. 112 OF 2021
ARISING FROM HCT-01-CV-LD-CS-002 OF 2016**

1. CONTINANTO KABATOORO RWAMASAKA

2. FRED RWAMASAKA BANEGE

3. SAM KATURAMU

4. SYLVIA TIBAKANYA RWAMASAKA :::::::::::::::::::: APPLICANTS

VERSUS

1. MWANGUHYA JOHNSON KADAMA

2. MUHANUZI KENETH :::::::::::::::::::: RESPONDENTS

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

RULING

This application is brought by notice of motion under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act (CPA) and Order 52 r.1 & 3 Civil Procedure Rules (CPR), for several orders that are in the form of Consequential orders arising from HCCS No. 002 of 2016. They include;

- a. That the Applicants/Plaintiffs' letters of administration earlier recalled by court be returned
- b. That the Defendants/Respondents' letters of administration be retained and/or revoked and/or cancelled by court
- c. That the Applicants/Plaintiffs be given vacant possession of the suit land declared to be part of the estate of the late Maliko Rutenta Rwamasaka
- d. That the Defendants/Respondents and all those claiming under them be evicted from the suit land

e. That the Defendants/Respondents pay costs of the application

The application is supported by the affidavit of Fred Banega Rwamasaka, the 2nd applicant who states among others that this court had recalled the letters of administration to the estate of the late Maliko Rutenta Rwamasaka but did not order for cancellation of the same. That from the time court passed judgment in Civil Suit No. 002 of 2016, the respondents have continued in possession of the suit land and that the administration of the estate of the late Maliko Rutenta Rwamasaka has become very difficult. He deposes that if the orders prayed for in this application are not granted, the judgment in Civil Suit No. 002 of 2016 would be rendered nugatory.

The application is opposed through the affidavit of Johnson Mwanguhya Kadaama, the 1st Respondent deposing that Justice Batema cancelled the grant of letters on 8/12/2015 and that there needs to be other proceedings to detail the procedure of issuing a fresh grant. That the suit land was already decreed by this court to belong to the estate of his late mother in administration Cause No. no. 27 of 1993 and it is not proper for the applicants to claim it. Further that there is a pending appeal and an application for stay of execution against the orders of this court in Civil Suit No. 002 of 2016 before the court which would be rendered nugatory if this application is granted.

Background

This matter has a very long history. The 1st applicant is a widow to the late Maliko Rutenta Rwamasaka and the 2nd, 3rd and 4th applicants are biological children of the deceased. The respondents are grandchildren of the 1st applicant, and born to the late Kabajerimani Gertrude, daughter to the 1st

applicant.

The applicants applied for a grant of letters of administration to the estate of the late Maliko Rutenta Rwamasaka vide administration Cause No. 067 of 2007. A caveat was lodged by the respondents against the grant and it was later resolved by consent of the parties that the 1st respondent be included in the grant as one of the administrators. On 23rd April 2013, this court made the grant to the 4 applicants and the 1st respondent.

Shortly after the grant, issues arose between the applicants and the 1st respondent over part of the land labeled as Rwengoma A III Zone, West Division in Fort Portal (the suit land). The applicants claimed that the said plot belonged to the estate of the late Maliko Rutenta Rwamasaka while the 1st respondent claimed that the said plot belonged to the estate of his late mother, Gertrude Kabajerimani. Mediation between these parties failed and on 8/12/2015, Justice Batema recalled the letters of administration earlier issued.

The applicants then filed Civil Suit No. 002 of 2016 against the respondents for among other remedies, a declaration that the suit land belongs to the estate of the late Maliko Rutenta Rwamasaka. They were successful and court decreed the respondents to have intermeddled in the estate of the late Maliko Rutenta Rwamasaka.

This application now seeks for several orders aimed at streamlining the administration of the estate of the late Maliko Rutenta Rwamasaka and to make the said administration effective.

Representation and hearing

The applicants are represented by Kayonga, Musinguzi & Co. Advocates. The respondents are represented by Atuhaire & Co. Advocates. The hearing proceeded by way of written submissions. Written submissions were filed on behalf of all the parties except for the 1st and 2nd respondents. I have considered the Advocates' submissions in this ruling.

Consideration by court

I will first deal with the objection raised by counsel for the applicants in his submissions in rejoinder. He submits that the respondents' affidavit in reply was filed out of time. He relied on the affidavit of service to argue that the notice of motion for this application was served on counsel for the respondents on 9th March 2022 but the reply was received by court on 22nd April 2022 way beyond the 15 days required by **Order 12 rule 3 of the CPR**. He prayed that the said affidavit ought to be struck out.

I note with concern that the affidavit in reply was filed 1 month and 2 weeks from the date of service of the same on counsel for the respondent. When the notice of motion in is signed by the registrar, it amounts to a summons to which if served within the stipulated time, the respondent ought to respond within 15 days as required by **Order 12 rule 3(2) of the CPR**. The requirement for timelines within which to respond to applications of this nature is to guide the speedy administration of justice. The requirement to respond to the motion within 15 days is mandatory. A party who does not comply with this requirement does not entirely lose the right to respond. He or she could apply for extension of time within which to respond or to be allowed to file out of time. The applicant is required to furnish sufficient reason for his failure to file the reply within the time specified by law.

The court may rightly exercise its discretion to overlook the failure to comply

with the rules of procedure, upon such conditions as it may deem fit to guard against abuse of its process. But there needs to be reason to. The respondent just filed his affidavit in reply without explanation, and without the leave to file out of time. Such an affidavit would be liable to be struck out.

I will however go ahead to determine the application on its merits.

I will deal with each of the prayers made by the applicants. I will however deal with **a** and **b** together, **c** and **d** also together.

That the Applicants/Plaintiffs' letters of administration earlier recalled by court be returned.

That the Defendants/Respondents' letters of administration be retained and/or revoked and/or cancelled by court

The gist of these two prayers appears to be in effect that the applicants seek for a revocation of the grant of letters of administration that were granted by this court on 23rd April 2014, to the applicants, jointly with the 1st respondent in respect of the estate of the late Maliko Rutenta Rwamasaka and instead granted to the applicants in exclusion of the 1st respondent.

Counsel for the applicant submitted that the original intention for the applicants to apply for letters of administration was to distribute the estate of the late Maliko Rutenta Rwamasaka but the 1st respondent who claims part of the estate has made this impossible. Even after the court judgment decreeing the suit land to the estate of the late Maliko Rutenta Rwamasaka, the respondents continue to occupy the part of the estate they claim. Further that there would be no reason to leave the 1st respondent as an administrator of the estate as his interests are clearly in conflict with the

estate. Counsel referred court to its inherent powers under **Section 33 of the Judicature Act** to offer remedies that may be necessary to determine all matters between parties and to avoid a multiplicity of proceedings.

It was further argued for the applicants that where a grant to two or more administrators is revoked and a fresh one made in respect to one or more of the original administrators, there is no need to prove afresh all the matters that were proved in order to obtain the original grant. He relied on the decision of my learned brother Justice Mubiru ***In the matter of an application for revocation of letters of administration and grant instead to Piwa Clare and Biywaga Joan (Miscellaneous Civil Application 53 of 2016)*** to support this argument.

In response, counsel for the respondents submitted that there is no existing grant of letters that is returnable to anyone. He notes that the grant of letters of administration to the estate of the late Maliko Rutenta Rwamasaka was cancelled by court on 8/12/2015. As such, there is nothing to return or to revoke. Further that the relief sought by the applicants herein for the revocation of the grant and making of a fresh grant is substantive in nature and the law provides procedures that should be followed before this is done.

It was also argued for the respondents that the court became *functus officio* after delivery of the judgment in Civil Suit No. 002 of 2016 and that granting this application would be to grant further reliefs in the said suit which power the court no longer has.

I have carefully considered the arguments of both counsel on these two issues. I need to note that much as the court recalled the grant of letters of administration to the estate of the late Maliko Rutenta Rwamasaka on 8th December 2015, I have perused the entire record of court and have not

found any order for the cancellation of the said letters. In paragraph 2 of the affidavit in reply, the 1st respondent deposes that the said letters were cancelled by Justice Batema on 8th December 2015. I have perused the record of the court on the said date and have not found the order for the cancellation of the letters. I will reproduce part of the record herein for ease of reference.

8/12/2015

Both parties present

Mr. Kayonga for 3 administrators

Mr. Atuhairi for Mwanguhya Kadaama

(ADR 1 hour)

Court: the letters of administration are recalled by court. The original must be deposited in court latest 11/12/15

Signed

Judge

8/12/15.

The respondents have not furnished any evidence of the alleged cancellation of the letters of administration and I find it difficult to believe them. The letters were merely recalled by court to prevent the same from being misused after the disagreements between the applicants and the 1st respondent had escalated.

Section 234 (2) (d) of the Succession Act, permits courts to revoke letters of administration that have become “inoperative.” A grant may have been properly made but for a reason that has occurred as a result of subsequent events, it may become necessary for the Court to revoke the grant for practical reasons. For example where an administrator becomes incapable of managing his affairs by reason of mental or physical incapacity, the grant

will be revoked, as it was ***In the Goods of Galbraith [1951] P 422*** or where for any other reason it has become impracticable to effectively to administer the estate.

The object of the power to revoke a grant is to ensure the due and proper administration of an estate and protection of the interests of those beneficially interested. The principle was enunciated ***In the goods of William Loveday [1900] P 154*** thus;

“The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto; and I can see no good reason why the Court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make a fresh grant” (emphasis mine).

There is only one way in which the name of an administrator of an estate may be removed from a grant and that is by revocation of the grant and the making of a fresh grant. A court cannot simply strike out the name of one administrator from a grant and continue on without revoking the grant. A fresh grant should be made because a grant is a public document and often must be produced to third parties as proof that the holder is the personal representative and thus enable him or her to administer the estate.

Turning to the application before me, I note from the record of court in administration cause no. 067 of 2007 that after the grant of letters of administration, disagreements between the applicants and the 1st respondent as the appointed administrators arose especially with respect to the suit land which the 1st respondent claimed as belonging to the estate of his late mother for whom he also holds letters of administration. Even after the court in Civil Suit No. 002 of 2016 decreeing that it belongs to the estate of the late Maliko Rwamasaka, the 1st respondent still claims that the same had been decreed to be part of the estate of his late mother. This indicates a clear conflict of interest between the interests of the 1st respondent and those of the estate of the late Maliko Rutenta Rwamasaka.

I do not agree with the submissions of counsel for the respondent that the applicants need to go through the procedure for obtaining letters of administration as laid out in the law afresh. I agree with the position advanced by my learned brother Justice Mubiru in ***In the matter of an application for revocation of letters of administration and grant instead to Piwa Clare and Biywaga Joan (supra)*** that where a grant to two or more administrators is revoked however, and a new grant is issued to one of the original administrators, a court does not require the continuing administrator to prove once more all of the matters which were proved in order to obtain the original grant. In this case, I agree with counsel for the applicants that it will not be necessary to go through the entire process of applying, advertising and so on.

Having found that the 1st respondent would have a clear conflict of interest in the administration of the estate of the late Maliko Rutenta Rwamasaka, I would accordingly revoke the grant of letters to the said estate that had been earlier granted to the applicants and the 1st respondent. I also make a

fresh grant of letters of administration to the estate of the late Maliko Rutenta Rwamasaka to Continanto Kabatooro Rwamasaka, Fred Rwamasaka Banega, Sam Katuramu, and Sylvia Tibakanya Rwamasaka. The administrators shall make a full and true inventory of the entire estate to this court within six (6) months from the date of this ruling.

That the Applicants/Plaintiffs be given vacant possession of the suit land declared to be part of the estate of the late Maliko Rutenta Rwamasaka

That the Defendants/Respondents and all those claiming under them be evicted from the suit land

Counsel for the applicants submits that while the court decreed the suit land to be belonging to the estate of the late Maliko Rutenta Rwamasaka, they are unable to take physical possession of the same because it is still occupied by the respondents and several other people claiming under the respondents. As such, the applicants cannot access the land to be able to distribute it to the beneficiaries of the late Maliko Rutenta Rwamasaka. It would therefore be proper for the court to give the order of vacant possession against the respondents or an eviction order against them.

It has been argued for the respondents that under **Section 191 of the Succession Act**, the right to the property of an intestate is vested in the person with letters of administration to the estate. Further that at law under **Section 39(2) and 3(3) of the Evidence Act**, statutory estoppel would act to bar the applicants from claiming the suit property after the same was decreed to be part of the estate of the late Gertrude Kabagerimani in Administration cause no. 27 of 1993.

With due respect to the submissions of counsel for the respondent, having decreed the suit land to the estate of the late Maliko Rutenta Rwamasaka in Civil Suit No. 002 of 2016 and found that the respondents are intermeddling in the said estate, it can only be logical that they are stopped from committing further acts that are not fit for the administration of the said estate.

Counsel for the respondents also argues that granting the orders prayed for in this application would render the appeal against the judgment in Civil Suit No. 002 of 2016 and the application for stay of execution of the same nugatory.

I have carefully examined miscellaneous application no. 104 of 2021 for an order for stay of execution of the orders of this court in Civil Suit No. 002 of 2016. This application was filed by the respondents on 6th December 2021 and duly signed by the registrar of this court on 14th December 2021. More than 6 months now, this application has never been served on the applicants. This is one of those applications that can be seen as intended to frustrate and delay the applicants' realisation of the fruits of their judgment. Relying on it to deny the applicants of a well-deserved consequential order would amount to allowing the respondents to commit further acts detrimental to the estate of the late Maliko Rutenta Rwamasaka and its beneficiaries.

I also note that from the time of the judgment in Civil Suit No. 002 of 2016, correspondences have been written to the respondents to vacate the suit land but in vain. From the foregoing, an eviction order is hereby issued against the respondents and everyone claiming under the respondents.

With respect to miscellaneous application no. 104 of 2021, I have already

found above that the applicants in the said application have not taken any action with a view of proceeding with it for close to 7 months now from the date it was signed by the registrar of this court. The said application abates. It is therefore closed with no order as to costs. The applicants therein are at liberty to file a fresh application for the orders prayed for.

This application succeeds wholly with the following orders;

- a. The letters of administration to the estate of the late Maliko Rutenta Rwamasaka issued on the 23rd April 2014 to Continanto Kabatooro Rwamasaka, Fred Rwamasaka Banega, Sam Katuramu, Sylvia Tibakanya Rwamasaka and Kadaama Mwanguhya Johnson are revoked.
- b. Letters of administration to the estate of the late Maliko Rutenta Rwamasaka are now granted to Continanto Kabatooro Rwamasaka, Fred Rwamasaka Banega, Sam Katuramu and Sylvia Tibakanya Rwamasaka.
- c. The newly appointed administrators shall make a full and true inventory of the entire estate to this court within six (6) months from the date of this ruling.
- d. An eviction order is issued against the respondents and everyone claiming under the respondents in respect to land in respect to land comprised in Rwengoma A III Zone, West Division in Fort Portal belonging to the estate of the late Maliko Rutenta Rwamasaka.
- e. Miscellaneous application no. 104 of 2021 is closed with no order as to costs

f. Costs of this application are awarded to the applicants

I so order

Date at Fort Portal this 29th day of June 2022.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties



Vincent Emmy Mugabo

Judge

29th of June 2022.