



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-FD-MA-0324-2022
(ARISING FROM HCT-05-FD-AC-0153-2021)

IN THE MATTER OF THE ESTATE OF THE LATE MUHUMUZA FRANK
AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF LETTERS OF
ADMINISTRATION FROM BOTH AYEBAIRE BETHIOUS AND SANYU PEACE AND
GRANT INSTEAD TO SANYU PEACE

AND

IN THE MATTER OF AN APPLICATION FOR VALIDATION OF THE INVENTORY
FILED OUT TIME AND/OR EXTENSION OF TIME TO FILE AN INVENTORY OUT
OF TIME

Before: Hon. Justice Nshimye Allan Paul M.

RULING

REPRESENTATION

The Applicant was represented by Advocate Bwengye Deusdedit from M/s Mubiru & Aruho Associated Advocates.

BACKGROUND

This is an *ex parte* omnibus Application brought under: Article 126(2)(e) of the Constitution of Uganda 1995, Sections 278(1) & 234(2)(d) of the Succession Act, Section 33 of the Judicature Act Cap 13, Sections 96 & 98 of the Civil Procedure Act Cap 71 and Order 52 Rules 1,2 & 3 of the Civil Procedure Rules SI 71-1; seeking orders that;

- a) The letters of administration of the estate of the late Muhumuza Frank issued to both Ayebare Bethious and Sanyu Peace *vide* HCT-05-FD-AC-0153 of 2021 dated 9th September, 2021 be revoked.

- b) A fresh grant be consequently made in respect of the estate of the late Muhumuza Frank to the surviving and original administratrix, Sanyu Peace.
- c) The inventory already filed out of time be validated and/or the time for filing an inventory be extended.
- 5 d) No order as to costs.

The Application is supported by the affidavit of the Applicant - Sanyu Peace.

GROUNDS

The grounds as stated in the notice of motion are as follows;

- 10 1. That the Applicant's brother, Muhumuza Frank died intestate on 3rd June, 2020.
- 2. That thereafter, both the Applicant and the deceased's wife – Ayebare Bethious, applied for and were jointly granted letters of administration of the estate of the Late Muhumuza Frank on 9th September, 2021 by Hon. Lady
15 Justice Jane Kiggunde – a judge of this Honourable Court.
- 3. That despite the law requiring the administratrixes to file an inventory within six months from the date of grant of the letters, the administratrixes being unrepresented by an advocate at the time of grant, did not know that they had a legal obligation to file an inventory within that time.
- 20 4. That the time of filing the inventory has expired but the Applicant has sufficient reason for not filing it in time since being the only surviving administratrix, only came to know of the legal obligation to file the inventory when she learned that the mother of her deceased co-administratrix, Ms. Natukunda Rosette, had applied for letters of administration of the estate of
25 her daughter, Ayebare Bethiuos *vide* Administration Cause No.313 of 2022 before this Honourable Court on 20th September, 2022.
- 5. That however, the Applicant has already filed an inventory on 6th October, 2022, albeit out of time.
- 6. That seven months after the grant and before the co-administratrixes had
30 filed an inventory or even distributed the estate, one of them – Ayebare Bethiuos died on 13th April, 2022.
- 7. That as a result of the death of one of the joint administratrixes, the grant has become inoperative, inefficient and abortive and hence necessitating this application for revocation thereof.

8. That the Applicant is still capable and willing to singularly, fully and properly administer the estate of the late Muhumuza Frank to the satisfaction of the interests of the beneficiaries thereto.

9. That although this honourable Court made this grant in the belief and hope that the late Ayebare Bethious would properly and fully administer the estate as one of the administratrixes, it has turned out that she cannot and will not administer the said estate because she is dead.

10. That since the grant of letters of administration is a public document and often must be produced to third parties as proof that the holder is the personal representative of the estate of a deceased person and thus entitled to administer the estate, it is necessary that this honourable Court removes the name "Ayebare Bethious" from this grant by revoking the said grant and issuing a fresh grant with only the Applicant's name "Sanyu Peace" thereon since she is the surviving and original administratrix.

11. That the late Muhumuza Frank left behind minor children, Muhame Elijah and Amany Timothy, aged thirteen and ten years respectively, and therefore the estate needs an administrator to hold the property in trust for them.

12. That this is a proper case for this Court to exercise its inherent powers to validate the filed inventory, revoke the inoperative grant, and issue a fresh grant to the Applicant alone.

13. That in order to ensure the due and proper administration of the estate and protection of the interests of those beneficially interested therein, it is in the interest of justice that this Application is granted.

SUBMISSIONS

The Applicant's written submissions were filed on 24th October, 2023, wherein counsel framed five issues for determination namely;

1) Whether the Application was properly brought as an omnibus Application?

2) Whether the joint grant issued by this Honourable Court on 9th September, 2021 *vide* Administration Cause No. HCT-05-FD-AC-0153 of 2021 can be revoked and a fresh grant issued instead to only the surviving/original administratrix, Sanyu Peace (sister) thereby removing the name of the deceased administratrix, Ayebare Bethious (wife) from the joint grant?

- 3) Whether the Applicant, being the surviving and original administratrix, is a fit and proper person to be entitled to a fresh grant and if so, on what terms?
- 4) Whether the time for filing an inventory ought to be extended and/or the inventory on Court record belatedly filed on 6th October, 2022 ought to be validated?
- 5) What remedies, if any, are available to the Applicant?

Regarding the first issue, counsel submitted that the Applicant came to Court with three intertwined grievances to wit; the joint grant of letters of administration issued to her and now the late Ayebare Bethious has become inoperative owing to the latter's death, the mandatory six months within which the administratrixes had to file an inventory have expired, and even though the Applicant filed an inventory, it was 7 months out of time. Counsel added that all these matters arise out of the same facts and raise the same legal issues and it is thus desirable to address the three grievances in an omnibus application. He relied on **OKULLU ANGELLO & 3 OTHERS VS LACEN OTIKA PATRICK HCCA NO.038 OF 2017** and **PATRICK MONI OMONY VS UGANA REVENUE AUTHORITY HCMC NO. 234 OF 2020**.

For issue 2, counsel submitted that a grant of letters of administration can be revoked for just case (see **ELIZABETH NALUMANSI WAMALA VS JOLLY KASANDE & OTHERS SCCA NO.10 OF 2015**) and that just cause includes where a person has become useless, inefficient, abortive and inoperative either because a co-administrator is no longer interested in administration or has died (see in the matter of **AN APPLICATION BY NABUNYA MARY FOR REVOCATION OF LETTERS OF ADMINISTRATION OF THE LATE YOSEFU MUKASA AND INSTEAD A GRANT TO NABUNYA MARY (DAUGHTER) HCMA NO.827 OF 2022**).

Counsel argued after the death of one administratrix, the initial grant becomes useless, inoperative and abortive (see in the **MATTER FOR REVOCATION OF LETTERS OF ADMINISTRATION AND FOR FRESH GRANT TO BE MADE TO ONEN (SON)**). Counsel further argued that the only remedy for a surviving co-administratrix is to apply to the same Court which granted the initial letters to remove the name of the deceased co-administratrix from the initial grant and remain with only that of the survivor (see **MATTER FOR REVOCATION OF**

LETTERS OF ADMINISTRATION AND FOR FRESH GRANT TO BE MADE TO ONEN (supra) and RWAMASAKA AND OTHERS VS MWANGUHYA AND ANOTHER HCMA NO.112 OF 2021). Counsel added that the only way a deceased co-administratrix's name can be legally removed from an initial grant is to revoke the joint grant and issue a fresh grant either to the surviving administratrix or alongside other applicants (see RWAMASAKA AND OTHERS VS MWANGUHYA (supra)).

On issue 3, counsel submitted that Court has powers to revoke the initial grant and issue a fresh grant to a person in the same proceedings without requiring that person to re-undertake the procedures they undertook to obtain the initial grant especially where that person was one of the original administrators (see MATTER FOR REVOCATION OF LETTERS OF ADMINISTRATION AND FOR FRESH GRANT TO BE MADE TO ONEN (supra)).

Counsel added that the Applicant is willing to continue administering the deceased's estate for the benefit of the deceased's minor children. Counsel further contended that the Applicant is fit for a fresh grant given that she is related by consanguinity to the deceased under Section 201 of the Succession Act.

Regarding the fourth issue, counsel relied on Article 126(2)(e) of the Constitution to argue that this Court has inherent power to enlarge time so as to achieve the ends of justice. He further submitted that an unrepresented party's ignorance of the correct procedure of doing an act is sufficient reason for extension of time within which such act should be done (see ATTORNEY GENERAL AND ANOTHER VS OKWI RICHARD HCMA NO.0036 OF 2019). Counsel submitted that since the Applicant was not represented when obtaining the grant of letters of administration, she did not know of the duty to file an inventory, which amounts to sufficient cause and is excusable.

For the last issue, counsel invited this Court to invoke its inherent powers to extend the time for filing of an inventory, remove the deceased co-administratrix's name from the initial grant of letters of administration and make a fresh grant to the Applicant, and validate the Applicant's inventory

which was filed out of time. He prayed for the Application to be allowed with no order as to costs.

DETERMINATION

5 I have read the notice of motion and its supporting affidavit, and I have considered the Applicant's submissions together with the authorities cited thereunder. I shall determine the issues framed by the applicant's advocate commencing with issue 4, then 2 and 3 together and lastly issue 1 and 5

10 Issue 4

Whether the time for filing an inventory ought to be extended and/or the inventory on Court record belatedly filed on 6th October 2022 ought to be validated?

15 In principle the Courts of law have power to extend time within which to file an inventory as is provided in Section 278 (1) Of the Succession Act. In this application the application seeks to extend time and or validation of an alleged inventory filed on 06th October 2022.

20 The evidence on Court record in paragraph 3 of the affidavit in support is to the effect that the applicant along with one Ayebare Bethoius were granted letters of administration to the estate of the late Muhumuza Frank on 09-09-2021. In paragraph 7 of the affidavit in support she states that her co-administrator Ayebare Bethoius died on 13-04-2022. In paragraph 4 and 5 of the affidavit in
25 support she admits that they did not file an inventory within the six month as stipulated by the law.

In my analysis of the above evidence, I note that the alleged inventory was filed after the demise of the co administrator, indeed the copy on Court record is
30 signed by the applicant as surviving administrator. The administrators carry out duties as a collective, upon death of one administrator, it would be prudent that the letters be made operative by application to Court to remove the deceased co-administrator, and seek an order to file an inventory rather than attempt to file one out of time after the passing of a co-administrator. In the case of

35 **ABUBAKER SEBALAMU GANYA VS YASMIN NALOWOGA SUPREME COURT**

CIVIL APPEAL NO 14 OF 2017, the Court was faced with facts where an inventory was filed out of time without first applying to Court to allow the late filing of the inventory. The supreme Court found that the inventory that was filed was not in accordance with the law.

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I therefore find that given that one co administrator died before the inventory and also given that no application was filed in Court to allow the late filing of the inventory, it follows that no inventory was filed in accordance to the law and the application to validate is denied since the circumstances of this case show that we are now dealing with inoperative letters of administration due to the death of the co administrator.

Issue 2 & 3

Issue 2 : Whether the joint grant issued by this Honourable Court on 9th September, 2021 vide Administration Cause No. HCT-05-FD-AC-0153 of 2021 can be revoked and a fresh grant issued instead to only the surviving/original administratrix, Sanyu Peace (sister) thereby removing the name of the deceased administratrix, Ayebare Bethious (wife) from the joint grant? and,

Issue 3: Whether the Applicant, being the surviving and original administratrix, is a fit and proper person to be entitled to a fresh grant and if so, on what terms?

In principle letters of administration may be revoked when they become inoperative as is stated in section 234(2)(d) Of The Succession Act Cap 162. Death is one of the aspects where Courts of law have concluded that letters of administration have been rendered inoperative.

The evidence on record shows that one of the persons appointed as administratrix over the estate of the late Muhumuza Frank on 9th September, 2021 – Ms. Ayebare Bethious, who was a wife to the deceased, passed away on 13th April, 2022 (see paragraph 7 and death certificate marked annexure E1 to the affidavit in support).

I thus hold that the death of Ms. Ayebare Bethious renders the grant of letters of administration over the estate of the late Muhumuza Frank issued by this

Court on 9th September, 2021 *vide* HCT-05-FD-AC-0153 jointly to Ayebare Bethious and Sanyu Peace inoperative and useless, and the said grant stands revoked.

5 I now proceed to determine whether a fresh grant can be made in the circumstances, and if so, whether the Applicant – Ms. Sanyu Peace, is a fit and proper person to be issued with the fresh grant.

10 In principle, due to the amendment of the Succession Act by insertion of **section 234 (5) of the Succession Act**, the Court may in the same process for revocation of letters of administration, grant letters of administration to another person that Court determines to be a fit and proper person to be granted letters of administration in the Succession Act.

15 The question now is whether the applicant is a fit and proper person to administer the estate of his late brother Muhumuza Frank as a single administrator.?

20 The evidence on Court record shows that the late Muhumuza Frank left children (see **paragraph 12 of the affidavit in support**) and the Applicant averred that she is still capable and willing to singularly administer the deceased's estate to the satisfaction of the interests of all beneficiaries (see **paragraph 9 of the affidavit in support**).

25 Considering the deceased co administrator Ayebare Bethious was the wife of the late Frank Muhumuza and they had children, and also considering that the applicant as administrator along with the Late Ayebare had already failed to carry out the duty to file an inventory, it is proper and befitting that a family meeting be held to determine the best persons to be granted letters of
30 administration to the estate of the late Muhumuza Frank under the guidance of the Administrator General who can issue a certificate of no objection. This will ensure that whichever people are chosen, be it the applicant and another will give priority to the best interests of the children in the estate of their father as provided by the law.

Issue 1

This is in regarding the omnibus application, there is no harm in an omnibus application, if the matters to be determined are related within the same facts and the end result is to avoid multiplicity of applications for Courts determination.

Issue 5

Remedies.

In the interest of justice it is proper that the surviving administrator of the estate of the late Muhumuza Frank , who is the applicant in this matter file an account of dealings in respect to the estate and also file a true inventory in respect of the estate to enable other administrators of the estate have a starting point in the management of the estate.

In conclusion, based on the determination of the issues above, I order that;

- 1) The grant of letters of administration for the estate of the late Muhumuza Frank issued on 9th September 2021 to Ayebare Bethious and Sanyu Peace under HCT-05-FD-AC-0153 OF 2021 are forthwith revoked.
- 2) The Applicant – Ms. Sanyu Peace shall submit to Court a full account and file a true inventory of all the assets and liabilities of the estate of the late Muhumuza Frank within fifteen (15) days from the date of this ruling.
- 3) The family members and beneficiaries of the estate of the late Muhumuza Frank will choose persons to apply for letters of administration under the guidance of the Administrator General's office.
- 4) The Applicant shall meet costs of this Application.



NSHIMYE ALLAN PAUL M.

JUDGE

01-12-2023