

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS CAUSE NO.570 OF 2023
(ARISING MISCELLANEOUS CAUSE NO.170 OF 2023)
(ARISING FROM HCT-05-CV-AC 329/2022)

IN THE MATTER OF THE ESTATE OF THE LATE BENON KABAGAMBE

- 1. KABAGAMBE GERTRUDE GLADYS**
- 2. KABAGAMBE PETER KAGANZI ----- APPLICANTS**
- 3. TUSIIME PRILLA KABAGAMBE**

VERSUS

STANBIC BANK UGANDA LIMITED ----- RESPONDENT

BEFORE: Hon. Justice Nshimye Allan Paul. M.

RULING

REPRESENTATION

The Applicants were represented by Adv. Jadson Agaba H/B for Adv. Denis Kwizera, while the Respondent was represented by Adv. Angella Twebaza of M/s Kalikumutima & Co Advocates.

BACKGROUND

The Applicants commenced this Application by notice of motion filed in this court on 30th November 2023, under Order 52 Rule 1 of the Civil Procedure Rules. The

Application was supported an affidavit deposed by Kabagambe Peter Kaganzi (the 2nd Applicant)

The Applicants are seeking orders that;

- 5 1. An order seeking to have the Respondent grant the Applicants access to Bank Account Number 9030001692983 at Stanbic Bank Uganda Limited, Mbarara branch be, granted.
2. Costs of the Application be granted.

10 **GROUND**S

The Application was premised on the following grounds listed in the motion;

- 15 i. The late Benon Kabagambe was at all material times the holder of bank account number 9030001692983 at Stanbic Bank, Mbarara Branch, through which bank account, he used to receive his pension from Mbarara District Local Government.
- ii. The Applicants herein are the executors of the estate of the late Benon Kabagambe.
- 20 iii. The said bank account held at the Respondent Bank is held under account name **KABAGAMBA BEN C.N**, while the grant of probate held by the Applicants was issued in the names of the estate of the late **BENON KABAGAMBE**.
- 25 iv. As a result of the discrepancy in the names of the late **BENON KABAGAMBE** on the grant of probate and the bank account, the Respondent has denied the Applicants access to the said bank account whereupon the applicants applied to this mountable court which ordered the respondent to avail the

applicants with certified copies of the bank statement of the Mbarara Branch bank account number 9030001692983 from October 2019 to 1st October 2022.

- 5 v. Pursuant to the order of this honorable court vide miscellaneous cause 170 pf 2023, the respondent availed the applicants with certified copies of the bank statement of Mbarara Branch bank account number 9030001692983 from October 2019 to 1st October 2022, wherein it is indicated that the said bank account was credited monthly by Mbarara Local Government District Treasury.
- 10 vi. It is just and equitable that an order directing the respondent to grant the applicants access to the late Benon Kabagambes Bank account.

SUBMISSIONS

The parties through their counsel, made oral submissions in court.

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Applicants' submissions

The applicant submitted that they are seeking an order directing the Bank to grant them access to the late Benon Kabagambe's bank account number 9030001692983 held by the respondents Mbarara branch.

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They submitted that the late kabagambe Benon had an account in the bank that was in the names of Kabagambe Ben c. N on which he was receiving his pension. they invited court to consider the banks certified bank statement in the names of Kabagambe Ben C.N that is attached as annexure E to the affidavit in support and shows monthly pension deposits from the Mbarara District Local government.

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They submitted that the names of the deceased pensioner in the letters of administration have a nexus to the bank statement attached to the affidavit as annexure E on which pension was paid.

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The Applicants then submitted that the court is empowered by Section 33 of the Judicature Act Cap 13 to grant remedies that are just and fair for the ends of justice. The Applicant prayed for an order directing the Bank to grant them access to the late Benon Kabagambe's bank account number 9030001692983 held with the respondent bank's Mbarara branch.

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Respondent's submissions

The Respondent framed two issues for determination;

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- i. Whether the Applicants are entitled to access Kabagambe Ben C.N.'s account number 9030001692983 held by the Respondent Bank using letters of probate to the estate of Kabagambe Benon?
- ii. What remedies are available to the parties?

The respondent submitted that at Kabagambe ben C.N and Kabagambe Benon are different persons. counsel cited the case of **ACHOLA CATHERINE OSUPELEM VS ELECTORAL COMMISSION ELECTION PETITION NO.002 OF 2018** for the position that when a new name is added, it automatically means a change of person or new identity. She contended that it is not for the respondent bank to investigate the same but can only be investigated by court. Counsel for respondent nonetheless

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admitted that they don't have a person claiming to be Kabagambe Ben C.N, stating that she leaves it to court.

Counsel submitted that in the event court is to grant the application, they prayed they are not condemned in costs since their denial of access to the account was done in pursuance to their duty to their customer.

DETERMINATION

Issue 1

10 **Whether the Applicants are entitled to access Kabagambe Ben C.N.'s account number 9030001692983 held by the Respondent Bank using letters of probate to the estate of Kabagambe Benon?**

15 It is trite that a person to whom probate was granted after the passage of **The Succession (Amendment) Act 2022 into law on 10th April 2022** shall carryout the duties and functions authorized by the grant of probate for a period not exceeding two years, as is provided in **section 258 (2) of The Succession Act as amended**. The evidence on court record shows that the applicants were granted Probate on 25th October 2022 (see Annexure B to the affidavit in support), this means they have
20 limited time as executors to execute their duty.

In principle an executor will among their duties search for property of the deceased and manage it with reasonable diligence as is provided in **section 279 of the of The Succession Act as amended**. Presumably the applicants in this application are
25 trying to manage the property contained in a bank account held in Stanbic bank

that is alleged to have been operated by their late father (see paragraph 4, 5 & 6 of the affidavit in support of the application)

The challenge that has necessitated this application is the fact that the letters of Probate that were issued by this High Court relate to the estate of the Late Benon Kabagambe, a name that was in the national identity card of the deceased as is averred in paragraph 13 of the affidavit in rejoinder and annexure F thereto. On the other hand the respondent bank does not have any client account in the name of Kabagambe Benon but rather has an account whose names are Kabagambe Ben C.N holding Account no 9030001692983 as averred by the respondent in paragraph 3 of the affidavit in reply. The bank based on the discrepancy in the names on the probate as compared to the account, to reject acceptance of the probate and deny the executors access to the account no 9030001692983. (see paragraph 4, 5 & 6 of the affidavit in reply)

The law that governs a change in name or correction of the same is contained section 36 of The Registration of Persons Act, 2015 states that:

“36. Change of name of an adult.

(1) Any person, being over the age of eighteen years or a widower, widow, divorced person or a married person, who wishes to change his or her name, shall cause to be published in the Gazette a notice in the prescribed form of his or her intention to do so.

(2) Not less than seven days after the publication of the notice, the person intending to change his or her name may apply in the

prescribed form to the registration officer of the registration center in which his or her birth is registered.

5 (3) **The registration officer shall, upon being satisfied that the requirements of this section have been carried out and upon payment of the prescribed fee, amend the register accordingly and shall sign and date the amendment.**" (Emphasis by bolding mine)

10 The late Benon Kabagambe now deceased cannot rectify any anomalies in his names with the bank because he passed on, and certainly the executors cannot correct the discrepancies in the names after the passing of the account holder. This is the dilemma that the executors and the bank face in this case.

15 In my opinion the banks ought to regularly update their account owners details especially the national identity cards since the Registration of Persons Act, 2015 is now operational. this is in line with the requirement for them under the Know Your Customer (KYC) policy, which that includes the capture of relevant information including national Identification number, Next of Kin, Tax identification Number all of which are contained in the Account open form or KYC form. Vigilance on this aspect by the banks would reduce cases of account's that were opened before 2015
20 that could possibly have names that don't tally with names on the National Identity Cards of customers issued under **The Registration of Persons Act, 2015.**

25 The applicants have adduced evidence in **paragraph 12 of the affidavit in support** that their father Kabagambe Benon was receiving pension money on account number 9030001692983 from Mbarara District Local Government. They have also

adduced evidence in **annexure E to the affidavit in support** which is a certified bank statement of account number 9030001692983 in the names of Kabagambe Ben C.N that shows that pension money was deposited monthly from Mbarara District Local Government on that Account.

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I find that the evidence on court record is sufficient to show that kabagambe Benon now deceased, and in whose regard probate was issued vide AC 329 of 2022 was a pensioner of Mbarara District Local government, had his pension paid to an account in the respondent bank, Mbarara branch account number 9030001692983 in the names of Kabagambe Ben C.N. This means that the evidence on record confirms that Kabagambe Benon and Kabagambe Ben C.N are one and the same person.

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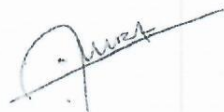
Issue 2

What remedies are available to the parties?

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In conclusion, the courts are enjoined to give remedies that promote justice as is provided in **section 33 of the Judicature Act**. In this case the late kabagambe Benon cannot take oath to confirm discrepancies in his name, but I have found from the evidence on court record in this application that there is sufficient evidence to show that Kabagambe Benon now deceased and in whose regard probate was issued vide AC 329 of 2022 was a pensioner of Mbarara District Local government and his pension was paid to an account in the respondent bank, Mbarara branch account number 9030001692983 in the names of Kabagambe Ben C.N.

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I therefore order that.

1. The application is granted
2. The Executors of the Estate of the late Kabagambe Benon vide AC 329 of 2022 be granted access to account number 9030001692983 in Stanbic Bank, Mbarara Branch in the names of Kabgambe Ben. C.N.
3. The letters of Probate of the Estate of the late Kabagambe Benon vide AC 329 of 2022 be registered with the respondent bank in respect to account number 9030001692983 in Stanbic Bank, Mbarara Branch in the names of Kabgambe Ben. C.N.
4. Each party will cater for its own costs.


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Nshimye Allan Paul M.

JUDGE

20-12-2023