

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
MISCELLANEOUS APPLICATION NO. 0105 OF 2022  
ARISING OUT OF ADMINISTRATION CAUSE NO. 0091 OF 2009

IN THE MATTER OF LETTERS OF ADMINISTRATION WITHOUT A WILL ANNEXED

AND

IN THE MATTER OF THE ESTATE OF THE LATE BWAMI KYENGERA HAMANI

1. NASEJJE KHADIJA
2. NKALUBO ISAAC
3. NAMUGGA HAMIIDA
4. SSEBAVUMA AHMED LUGOBE ..... APPLICANTS

BEFORE: Hon. Justice Isah Serunkuma.

RULING

This is ex-parte ruling is premised on the application brought under Section 98 of the Civil Procedure Act, Section 222 of the Succession Act, Section 33 of the Judicature Act and Order 53 rules 1, 2 & 3 of the Civil Procedure Rules. The applicants herein seek for orders that;

1. The name of the late Ssebugwawo Nasu. K be expunged from the grant of letters of administration for the estate of the late Bwami Kyengera Hamani issued on the 22<sup>nd</sup> October 2010.
2. That the estate of the late Ssebugwawo Nasu. K be administered by Nasejje Khadija, Nkalubo Isaac, Namugga Hamiida & Ssebavuma Ahmed Lugobe.
3. That costs for the application for and incidental to this application be paid by the estate.

The grounds upon which this application is premised are clearly laid out in the respective affidavits in support deponed by each of the applicants. The grounds laid out therein are similar and thus for avoidance of repetition, the same include;



1. That the applicants alongside the late Ssebugwawo Nasu. K were granted letters of administration for the estate of the late Bwami Kyengera Hamani on the 22<sup>nd</sup> October 2010. (Copy of the grant attached and marked “1”)
2. That on the 26<sup>th</sup> July 2012, Ssebugwawo Nasu. K died before the estate could be distributed in accordance with the law. (Copy of the death certificate attached as “2”)
3. That in the circumstances, the estate cannot be administered using the grant which includes the name of the now late Ssebugwawo Nasu. K yet there are properties that require transfer from the name of the deceased to the names of the administrators of the estate.
4. That on the 16<sup>th</sup> August 2022, all beneficiaries to the estate of the late Bwami Kyengera Hamani in a family meeting resolved that the name of the deceased be removed from the grant so that the estate is administered by the four living beneficiaries being Nasejje Khadija, Nkalubo Isaac, Namugga Hamiida, Ssebavuma Ahmed Lugobe.
5. That it is just, fair and equitable that this application be granted.

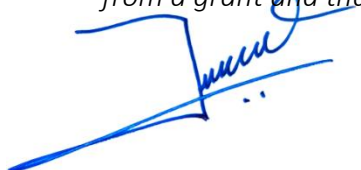
### ***Representation***

The applicants herein are all represented by counsel Zemei Suzan of M/s Zemei Aber Law Chambers.

### ***Submissions***

Counsel submitted that Section 234 of the Succession Act Cap 162 provides that the grant of probate or letters of administration may be revoked or annulled for just cause. Counsel submitted that as deponed by the applicants in their respective affidavits in support, they are desirous to have the estate of the late Bwami Kyengera Hamani administered in accordance with the law hence the family meeting held on the 16<sup>th</sup> August 2022. Counsel relied on the case of; ***In the Matter of an Application for Revocation of Letters of Administration and grant instead to Piwa Clare and Biwaga Joan; HCMA No. 0053 of 2016*** where justice Stephen Mubiru held that;

*“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 making a fresh grant. Court cannot*



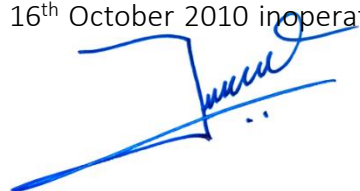
*simply strike out the name of one administrator from a grant and continue on without revoking the grant.”*

Counsel submitted that Section 234(2) (d) of the Succession Act permits courts to revoke letters of administration that have become “inoperative”. Counsel added that a grant may have been properly made but for the reason that has occurred as a result of subsequent events, it may become necessary for the court to revoke the grant for practical reasons. Counsel further submitted that the object of the power to revoke a grant is to ensure due and proper administration of an estate and protection of the interests of those beneficially interested. Counsel relied on the case of *The Goods of William Loveday* [1900] p154 which stated that;

*“The real object which the court must always keep in view is the due and proper administration of the estate and the interest 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”.*

Counsel submitted that in the circumstances of the instant application, the grant was jointly issued to the applicants herein and the late Ssebugwawo Nasu. K who subsequently died on the 26<sup>th</sup> July 2012 thereby making the grant inoperative by virtue of his death. Counsel further submitted that there is only one way in which the name of the late Ssebugwawo Nasu. K as an administrator to the estate of the late Bwami Kyengera Hamani may be removed from a grant and that is by revocation of the grant and making a fresh grant.

Counsel added that 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. In conclusion, counsel submitted that the death of the late Ssebugwawo Nasu. K incidentally rendered the grant issued by this honorable court on the 16<sup>th</sup> October 2010 inoperative thus incapacitating the surviving applicants’ ability to administer



the estate of the late Bwami Kyengera Hamani. Counsel invited this court to be pleased to grant this application in the interest of justice.

***Court's Analysis***

The issue to be considered before this court is; ***Whether the Letters of Administration vide Administration Cause No. HCT-12-CV-AC-0091-2009 can be revoked.***

I have perused the pleadings of the parties as well as their submissions and I have noted that this application was brought under Section 222 of the Succession Act Cap 162. Section 222 of the Succession Act only relates to administration of an estate only limited to a suit. I have also noticed that counsel noted the mistake and later amended the same in her submissions to Section 234 of the Succession Act.

Despite the fact that the matter is brought under a wrong legal provision, for purposes of administering substantive justice without undue regard to technicalities as per Article 126 (2) (e) of the Constitution of the Republic of Uganda, and, that no injustice shall be caused by the misquotation against the applicants, this court shall proceed to determine this application.

The law relating to revocation of letters of administration is provided in Section 234 of the Succession Act Cap 162 and for purposes of this application, sub section 2 (d) states;

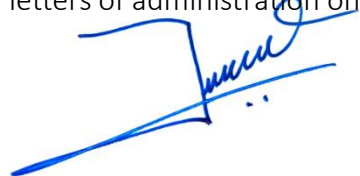
***"Revocation or annulment for just cause.***

***(1) The grant of probate or letters of administration may be revoked or annulled for just cause.***

***(2) In this section, "just cause" means—.....***

***(d) that the grant has become useless and inoperative through circumstances; or.....***

Furthermore, before this court can consider revocation of the letters of administration for just cause, it has to consider all the evidence brought before it. Each of the applicants has led evidence through their affidavits under paragraphs (2-5) of their respective affidavits in support of the motion. The applicants stated that they together with the late Ssebugwawo Nasu. K were granted letters of administration on the 22<sup>nd</sup> day of October 2010.



That however one of the administrators Ssebugwawo Nasu. K, died on the 26<sup>th</sup> day of July 2012. They seek an order from this court to grant fresh letters of administration by removing the name of the late. The applicants in their evidence claimed to have attached a certificate of his death to prove the same. However, this court has not seen any copy of the death certificate of the late Ssebugwawo Nasu. K as alleged by the applicants.

Section 101(1) of the Evidence Act is clear that,

*“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist”.*

This has not been the case with the current applicants. Whereas the object of the grant is to properly administer the estate of the deceased person, I am not satisfied that the applicants herein have convinced this court the truthfulness of the death of the late Ssebugwawo Nasu. K so as to invoke the revocation of the letters of administration granted on the 22<sup>nd</sup> day of October 2010. The applicants’ counsel didn’t furnish court with proof of death of the Late Ssebugwawo thus failing to prove their case. The applicants also brought the case before court under the wrong law.

In the result this application fails and it is dismissed with no orders as to costs.

I so rule.

Dated and delivered on this 27<sup>th</sup> day of October 2023.



Isah Serunkuma

JUDGE