



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
HCT-05-FD-MA-0081-2023**

5 **(ARISING OUT OF PROBATE AND ADMINISTRATION CAUSE NO. 315 OF 2021)  
IN THE MATTER OF THE ESTATE OF THE LATE ATWIINE SHARON  
AND  
IN THE MATTER OF AN APPLICATION BY THE EXECUTORS –  
TUSIIMIRE CONSTANCE AND MWESIGWA MBAGIRENTA**

10

**Before:** Hon. Justice Nshimye Allan Paul M.

**RULING**

15

**REPRESENTATION**

The Applicants were at first represented by M/s New Mark Advocates, but later changed to represented by Advocate Tumwebaze Eunice from M/s Tumwebaze Emmanuel Advocates & Solicitors.

20

**BACKGROUND**

This Application was commenced under Section 278(1) of the Succession Act Cap 16, Section 33 of the Judicature Act Cap 13, Sections 96 and 98 of the Civil Procedure Act Cap 71 and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1 seeking orders;

25

1. The Applicants be granted leave and extension of time to file an inventory and final account in Administration Cause No.315 of 2021.
2. The Provisional inventory filed in February 2023 be validated by this Honourable Court.
3. Any remedies that Court deems fit.

30

The Applicants are Tusiimire Constance and Mwesigwa Mbagirenta, the joint executors to the estate of the late Atwiine Sharon. The Application was supported by an affidavit deposed by Mwesigwa Mbagirenta on his behalf, and on behalf of the 1<sup>st</sup> Applicant, with her written authorization. Mr. Mwesigwa later deposed a supplementary affidavit.

## **GROUND S**

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

1. The Applicants obtained letters of probate as executors of the estate of the late Atwiine Sharon on 12<sup>th</sup> February, 2021 from this Honourable Court.
2. The Applicants started establishing and ascertaining all properties forming part of the late Atwiine Sharon's estate but before they could ably perform, were obstructed by unknown people claiming interest in estate property as creditors.
3. Some properties forming part of the estate of the late Atwiine Sharon were isolated and out of jurisdiction of this Court, such as Bank accounts from Kyambogo University Branch, NSSF account in Kampala and required technical and bureaucratic approaches and attempts.
4. Harmonizing all properties forming part of the estate of the late Atwiine Sharon and paying off debts to the creditors obstructed the timely filing of the provisional inventory and final accounts in Probate and Administration Cause No.315 of 2021 in this honourable Court by the Applicants.
5. The Applicants have accounted for all the properties forming part of the estate of the late Atwiine Sharon and settled all creditors to date.
6. That there is no inordinate delay in filing this Application and the provisional inventory for the purposes forming part of the estate of the late Atwiine Sharon.
7. It is just and fair that this Application is granted with the prayers sought by the Applicants.

## **APPLICANTS' SUBMISSIONS**

The Applicants' counsel submitted that this Court is empowered by Section 278 of the Succession Act to extend time within which to file an inventory and or validate the already filed inventory. counsel argued that the Applicants' functions as executors were hampered by creditors' demands, but the executors have since nearly paid off all the estate's debts. Counsel added that the executors have not yet been successful in collecting the deceased's NSSF savings, and have commenced legal action against NSSF. That notwithstanding, the Applicants filed a provisional inventory on 9<sup>th</sup> February, 2023. Counsel pleaded that the Applicants have proved sufficient grounds to warrant grant of extension of time to file an inventory.



## DETERINATION

I have read the affidavit in support and its supplementary, and considered the submissions made by the Applicants' counsel. This Application was exparte.

- 5 **SECTION 278(1) OF THE SUCCESSION ACT CAP 162** requires an executor to file an inventory with the Court which granted them probate, within six months; and a final account within one year from when the probate was granted.

In principle 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, which states that;

10 **278. Inventory and account.**

- (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of." (emphasis mine)
- 15
- 20

- This Court is enjoined to consider whether the Applicant's reasons for failure to file an inventory and account within the statutory timeframe are "sufficient and convincing" as to compel Court to invoke its discretion and grant an extension.
- 25

- The evidence on court record is to the effect that the Applicants' failure to file an inventory within the prescribed time was due to antagonism from creditors of the deceased's estate and some properties forming part of the estate were outside jurisdiction of this Court (**see paragraphs 5, 6 and 7 of the affidavit in support**). The executors also cited failure to access the deceased's NSSF savings as another hinderance towards filing an inventory and account in time.
- 30

The Applicants filed what they referred to as a provisional inventory in court on 9<sup>th</sup> February 2023 (**see annexure C to affidavit in support**) indicating that they paid off nearly all debts and evidence of acknowledgment of payment by creditors is annexed to the supplementary affidavit (**see annexure B to the supplementary affidavit**). Notably, the provisional inventory was filed out of the statutory time.

In my analysis I find that an inventory filed out of time without first obtaining an order of court to allow for extension of time within which to file an inventory is illegal (see **Abubaker Sebalamu Ganya vs Yasmin Nalwoga Supreme court Civil appeal 14 o 2017**).

I accept as sufficient the reasons put forward for failure to file an inventory as shown in paragraphs 4,5 and 6 of the affidavit in support, that some persons obstructed them claiming interest in the Late Atwine's estate, antagonism from creditors of the estate who they have since paid (see paragraphs 6,7 and 8 of the supplementary affidavit)

In conclusion, I allow this Application and order that;

1. The Applicants/executors are ordered to file an inventory within Thirty days from the date of this ruling.
2. The Applicants/executors are ordered to file an account within sixty days from the date of this ruling.
3. No order made as to costs

  
.....  
**NSHIMYE ALLAN PAUL M.**

**JUDGE**

**29-01-2024**