

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 110 OF 2023

(ARISING FROM PROBATE CAUSE NO.123 OF 2023) (In the matter of the estate of the Late Ezekiel Rwabucuju formerly of Mityekura cell, Kagaara parish, Nyakashagama subcounty Lyantonde District)

- 1. BWERERE YOWERI**
- 2. GEORGE KAMUNTU**
- 3. DAVID MUBANGIZI APPLICANT**

VERSUS

PAUL NAYEBARE RESPONDENT

RULING

Hon. Lady Justice Victoria N. N. Katamba

BACKGROUND

The Applicants were jointly appointed with the Respondent by the Late Ezekiel Rwabucuju as executors of his will dated 20th February 2020. The duo jointly petitioned this Honourable Court for Letters of probate vide Probate Cause No. 123 of 2023.

On the day issued by the Court for identification of the executors, the Respondent was unwell and admitted in a hospital. He was therefore not Identified.

It is the Applicant's case that since the Respondent recovered from sickness and was discharged from hospital, they have implored him on several occasions to appear in Court under the petition and be identified in vain. Owing to the above reason, the Applicants are aggrieved that the Respondent is bent at frustrating administration of the estate and that he is now illegally dealing in the estate by selling some of the deceased's cows in his capacity as heir to the deceased.

The Applicants are seeking the removal of the Respondent from the petition for noncompliance with the requirements of court before the grant can be issued.

In his reply, the Respondent stated that he has been sick for a long time and that some of the documents were simply sent to him for signature. He stated that whereas he signed the petition, he later realised that he was hoodwinked by the Applicants to be part of their fraudulent scheme to use him as a stepping stone.

The Respondent made a counter accusation that the Applicants have also sold off some of the estate cows and given out others without the consent of the family.

The Respondent also stated that the will is a forgery and invalid because it was witnessed by a one **Bwongvera**, the deceased father of a one Late George Kamuntu.

Furthermore, the Respondent stated that a beneficiary has lodged a caveat on the grant and that together with the above beneficiary and others, they have opened up an intestate Administration file to obtain a certificate of no objection and apply for letters of Administration. As a matter of fact, according to the minutes of the Administrator General's office that are attached to the affidavit in reply, the Respondent and the caveator are among the two persons that were appointed to apply to court for Letters of Administration of the estate of the Late Ezekiel Rwabucuju.

The Respondent also stated on oath that in conjunction with other beneficiaries, he has since distributed the estate properties amongst the beneficiaries and that for this reason, the instant Application is overtaken by events.

Representation

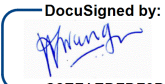
The Applicant was represented by **M/s Obed Mwebesa & Co. Advocates**.

The Respondent was on the other hand represented by **M/s Mwebaze Ndibarema Advocates**.

ISSUES

The Applicants framed one issue for determination to wit;

Whether there are justifiable grounds for removal of the Respondent from Probate Cause No. 123/2023?

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Determination by Court.

I have read and critically analyzed the pleadings and submissions of the parties in this matter whose details are on the record of this court and below is my decision.

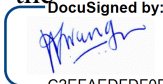
1. Whether there are justifiable grounds for removal of the Respondent from Probate Cause No. 123/2023?

The Applicants submitted that under *S. 185 of the Succession Act Cap. 162, it is provided that where several executors are appointed, probate may be granted to them all simultaneously, or at different times.*

The Applicants also submitted that contrary to *Section 38(b) of the Succession Act (Amendment) Act, 2022, the Respondent is intermeddling in the estate of the deceased by selling some of the estate's cows.*

In light of the above provisions of the law, the Applicants submitted that this Court should be pleased to find that the Application establishes sufficient grounds for the removal of the Respondent from the petition for probate.

For his part, the Respondent submitted that he was sick thus unable to attend court for the identification process.

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The Respondent traded a counter accusation against the Applicants whom he reported that they have also sold off some of the estate's cows and given out scores of others without the consent of the family. *He cited S. 189(1) and (2) of the Succession Act which provides that any executor or executrix who before the grant of probate misapplies the estate of the deceased person commits an offence and that under (3) s/he is liable to make good, to the estate and the beneficiaries, the loss or damage so occasioned.*

The Respondent also argued that no further proceedings should be taken on the petition because beneficiaries, **Kankyerengye Jenifer and Kyokuhaire Komusheshe Robinah**, have lodged a caveat on the petition.

In his submissions, the Respondent denied frustrating the process of pursuing the grant of probate. Contrary to the above, the documents that the Respondent attached to his affidavit in reply to the

motion send a different message. The documents confirm that the Respondent is involved in a competing process of pursuing Letters of Administration. The Respondent's acceptance to be among the three Administrators in an alternative process amounts to an admission of the claim that has been brought against him (frustrating the process of pursuing letters of probate).

More also, the fact that the Respondent has stated on oath that together with other beneficiaries, he has distributed the estate properties of the Late Ezekiel Rwabucuju without lawful authority, confirms that there exists a justifiable ground for his removal from Administration. This also demonstrates that he is not fit to be appointed in any office of administration of an estate because he has no regard for lawful processes. While his joint petitioners in probate cause 123/2023, are trying their best to bring the estate into lawful administration, he is going about engaging in unlawful processes of purporting to have the estate properties distributed with his cohorts.

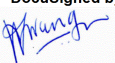
S.180 of the Succession Act provides that the executor or administrator as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such.

S.191 of the Succession Act Cap. 162 provides that except as hereinafter provided but subject to Section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any Court of Justice, unless Letters of Administration have first been granted by a court of competent jurisdiction.

S.192 of the Succession Act provides that Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.

The Respondent and the people he is dealing in the estate with, are not yet appointed either as executors nor as Administrators of the estate of the Late Ezekiel Rwabucuju nor can they purport to be protecting this huge estate by way of having it distributed fully without first challenging the will that is already on the record of court.

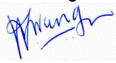
I find that for the Respondent's own admission to engaging in processes that are contrary to facilitating the grant of probate and his own admission to intermeddling in the estate of the deceased by way of purporting to carry out a distribution without lawful authority, confirm that there exist sufficient grounds for his removal from the petition.

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Whereas both parties traded counter accusations of illegally dealing in the estate properties by selling cows of the deceased. I find the Applicants' accusation against the Respondent more believable because the Respondent has even admitted to have been privy to an illegal distribution of the estate properties on oath. The only plausible reason for this blatant admission is to cover up and justify the Respondent's dealings in the estate properties by way of selling some of the cows of the deceased. It is common for persons appointed heirs to be under the false impression that they have authority to dominate and or distribute a deceased's estate. This appears to be the case here.

I further find that the Respondent is not fit to be either an executor under the current petition or any other subsequent petition for probate or Letters of Administration in the estate of the Late Ezekiel Rwabucuju.

2. *What remedies are available to the parties.*

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The Applicants prayed for the removal of the Respondent from the petition for probate, this prayer is according granted.

This Court is inclined to make the above order to protect the estate from further wastage and also because it cannot condone illegalities. The illegality being the Respondent's very own admission (on oath) to being part and privy to an illegal distribution scheme of the estate properties without lawful authority. *See Makula International vs. His Eminence Cardinal Nsubuga & Anor Civil Appeal No. 4 of 1981*

S.52 of the Succession Amendment Act 2022 in which lies a replacement of S.255 to wit S.255(2) is intended to halt the granting of probate or Letters of Administration in a petition upon which a caveat has been lodged.

S. 262 of the Succession Act provides for time within which grants of probate or administration may be made to wit; No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after expiration of fourteen clear days, from the day of the testator's or intestate's death.

By giving such short time frames, the drafters perceived that grants for administration of estates should be heard and disposed of at the earliest. The Courts have, however, in the interest of ensuring that all parties who may be affected by the grants are notified. The Courts have translated

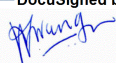
this period into a notice period from the date the court which has been petitioned, issues out such notice to all members of the public that may have an interest in the matter. The parties likely to be affected a given a notice period of 14 days in both petitions for probate or letters of administration. In the instant case the notice was advertised in media on 16th August 2023.

S. 238 of the Succession Act Cap. 162, provides that the proceedings of the Court in relation to the granting of probate and letters of administration shall, except otherwise provided, be regulated by the law relating to civil procedure.

S. 96 of the Civil Procedure Act provides that where any period is fixed or granted by the court for doing of any act prescribed by this Act, court may in its discretion enlarge that time if it expired.

Order 51 r 6 of the Civil Procedure Rules provides that where a limited time has been fixed for doing any act or taking any proceedings under these rules or by order of court, the court shall have power to enlarge the time upon such terms on application.

In the instant case, the **notice was advertised on 16th August 2023**, the **caveat was lodged on 8th December 2023 over three months after the expiration of the 14 days** that were granted by the Court.

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To add to the Respondent's callousness in this matter, he lodged the caveat only after the Applicants in this matter had filed the instant Application to remove the Respondent from the petition for probate, for frustrating the process. The fact that the caveat was not only lodged after institution of the instant Application but also that it was brought through the same Advocates representing the Respondent demonstrates that the lodgment of the caveat was a reaction to the Application to remove the Respondent from the petition. The Respondent mobilized his "supporters"/siblings in the family to lodge the caveat to lend support to his defence in the reply and for him to justify his wayward conduct. The caveat was without a doubt brought in bad faith to frustrate this application.

The above cited provisions of the Civil Procedure Act and Rules, S. 96 and Order 51 r 6 respectively, require that when a time frame has been fixed by court or an Order of court, as it is in the notice that was published in the media, the affected person who was unable to lodge his/her

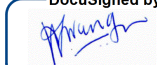
caveat within the prescribed time (in this case 14 days), should first seek leave of court for enlargement of time, before lodging a caveat.

In conclusion, since no proof of leave of court was adduced before this Honourable Court as having been sought, before the said caveats were lodged, I find that the said caveats are improperly before court and are therefore, inconsequential.

I hereby enter an interlocutory grant of probate in favor of the Applicants, subject to confirmation of execution of the will by the Late Ezekiel Rwabucuju through any one of the attesting witnesses.

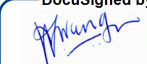
I so order.

Orders;

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1. The Respondent is hereby removed from the petition as executor.
2. The Respondent is further found to be unfit to be a joint executor or Administrator in any future petition touching the suit estate for his own admission of intermeddling in the estate of the Late Ezekiel Rwabucuju by purporting to have distributed it without lawful authority.
3. The Respondent is further directed to make good any loss occasioned to the estate through his purported distribution of the estate property without lawful authority.
4. An interlocutory order issues granting the Applicants probate of the Will of the Late Ezekiel Rwabucuju subject to confirmation (proof) of execution of the same by any one of the attesting witnesses before me on the 15th day of April, 2024.

Dated this 30th day of March, 2024

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HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA

