

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT Jinja

H.C.C.S. NO. 50 OF 1988

KOLONERI KYOKYO ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ERUSANIYA WAKASANGA ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

J U D G M E N T

The plaintiff in this suit is called Koleneri Kyokyo although in his evidence which he gave in court he said his other name was Mohamed. The defendant is one Wakasanga Erusaniya.

By this suit the plaintiff is asking the court to make an order so that the defendant vacates the suit premises and that the plaintiff be granted letters of administration. The suit was filed under the provisions of section 265 of the Succession Act. The defendant was served with summons to enter appearance but he did not enter appearance nor did he put in his written statement of defence, for that matter the suit proceeded ex-parte under the provisions of O.9 rules 8 and 8A of the Civil Procedure Rules, after having given the defendant the necessary notice.

The chequered history of this case is rather long but to understand what is involved one has to have a glance at it as a matter of necessity. According to the documents available and according to the evidence of the plaintiff there was once upon a time a lady called Esteri or Esita Balegeya alias Esteri Baligwerigha who according to the affidavit of the plaintiff dated 14-10-1983 died on 12-7-1983. After her death the present defendant who claimed to be the nephew of the deceased applied for letters of administration under Administration Cause no. 25/83. The letters of administration were granted to him



on 23-11-83 but later on, according to the scanty evidence, they were revoked on 11-2-1984 after which the present plaintiff applied for letters of administration for the estate of the same deceased whom the plaintiff asserted was his wife but the defendant felt he was being cheated and put in a caveat to block the application. The plaintiff then decided to bring the present case, as stated earlier under section 265 of the Succession Act.

At the hearing of the case Mr. Mawali the learned counsel who appeared for the plaintiff framed 3 issues for the determination of this suit:-

1. whether or not the plaintiff is entitled to the letters of administration for the estate of his late wife Esteri Balegeya.
2. whether or not the defendant was entitled to lodge the caveat.
3. whether or not the plaintiff is entitled to get the house and piece of land at Bugembe previously belonging to him and his wife.

The only witness who testified in this case was the plaintiff. In his evidence he said that he knew Wakasanga Erusaniya the defendant as a nephew of his late wife who died in 1983. According to him he had stayed with this lady as husband and wife at Bugembe and during their stay together they had built a house jointly at Bugembe. He had married her casually when one Sheikh called Shaban performed the marriage according to the Islamic faith which his wife also belonged to. He had lived with her since 1959 up to the time she died but he agreed that he did not pay dowry to the parents of the deceased although the father of the lady had consented to their staying together as husband and wife for all that time. He further testified that after the death of his wife he continued to live on his land until 1984 when Wakasanga with the help



of the police chased him away. He filed an application for letters of administration for the estate of his wife and the notice of that application appeared in the Munno of 9-11-1983. He concluded his evidence by asking this court to grant to him letters of administration and to order the defendant to leave his house and to return all his things which were in the house.

Mr. Mawali who appeared for the plaintiff in this matter addressed the court briefly and he contended that since the estate which the deceased left behind was acquired jointly with the plaintiff it was trite law that the survivor who is now the plaintiff is entitled to take the remaining property.

I now turn to the issues which were framed, starting with the first issue first. In view of the evidence of the plaintiff to the effect that he lived with the deceased for a period over 20 years (between 1959 and 1983) as husband and wife and that Shiekh Shaban had married him according to the Islamic rituals, I find as a fact that the deceased was the plaintiff's wife by cohabitation <sup>as there is no evidence</sup> to challenge the plaintiff's allegations. That being the position he was the only person who could lawfully obtain the letters of administration for the management of her estate. The first issue is therefore answered in affirmative.

As regards to the second issue, the defendant has not told the court as to why he lodged a caveat, even in the caveat itself which was dated 1-3-1984 no reason was stated as to why that caveat was lodged, <sup>a</sup> in these circumstances I find that the caveat was deliberate move by the defendant to delay the course of justice. The defendant had no legal or moral right to act in the way he did. That being the position I order that the caveat lodged by the defendant on 1-3-1984 in respect of plaintiff's application for letters of administration be removed, I also hold that the defendant was not entitled to lodge that caveat.



With regard to the third issue, the evidence of the plaintiff has been essentially that he built the house on a piece of land which had been acquired by him jointly with the deceased; that piece of evidence has not been challenged. I believe him when he says that he had acquired the land and house with the deceased I therefore hold that the plaintiff is entitled to get the house and the piece of land at Bugembe which he himself acquired with his late wife. In his evidence the plaintiff listed a number of articles which he complains were taken away by the defendant but these things were never mentioned or listed in the plaint. It would seem the list in court is something of an afterthought. I accordingly reject his claim in court that the defendant removed several articles from his house.

In all these circumstances I find that the plaintiff has proved his case against the defendant I accordingly do enter judgment for the plaintiff and the defendant is ordered to give vacant possession of the suit premises situated at Bugembe at Katende road to the plaintiff. I also do grant letters of administration to the plaintiff in respect of the estate of the late Esteri Baligeya. The defendant is to pay to the plaintiff costs of this suit.

C.M. KATO  
JUDGE  
18/4/1995