

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
ORIGINATING SUMMONS No. 007 of 2014**

**JOYCE CAROL NSUBUGA
DANIEL LWANGA NSUBUGA
DARRELL EMMANUEL NSUBUGA (a minor suing through next
friend MAGDALENE
NASSUUNA) ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**

V E R S U S

**CHRISTINE NSUBUGA:::
DEFENDANT**

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

JUDGMENT

This Judgment relates to a suit filed by way of Originating Summons dated 15th January 2014. It was brought under Order 37, rule 1 of the Civil Procedure Rules SI 71-1. The suit was brought by the three Plaintiffs with the 3rd Plaintiff suing through a next of friend.

The three claimants are beneficiaries of the Estate of the late David Nsubuga. Their claim against the Defendant is for Orders directing the Defendant to give an accountability of the Estate of the Late David Nsubuga from the date when the grant of the Letters of Administration was done until now; an order directing the Defendant to distribute the money on the Estate account to the beneficiaries; an Order directing the Defendant to distribute the Estate of the late Nsubuga David to the beneficiaries/Plaintiffs; Costs of the suit and any consequential or any further relief as the Honourable Court may deem fit just and reasonable.

The following questions were framed for determination of this Court;

1. Whether the Plaintiffs as beneficiaries are entitled to an accountability of the Estate of the Late David Nsubuga by the Administrator.
2. Whether the Defendant has refused to distribute the money already on the account to the beneficiaries/ Plaintiffs.
3. Whether the Defendant has refused to distribute the Estate of the late David Nsubuga to the beneficiaries/ Plaintiffs.

The summons was supported by an Affidavit deposed by Daniel Lwanga Nsubuga, one of the biological sons and beneficiaries of the Estate of the late David Nsubuga.

At the hearing of the originating summons, the Plaintiffs were represented by Counsel George Muhangi of Kafeero & Co. Advocates whilst the Defendant was represented by Mr. Stuart Ayeebwa of M/s Mwesige Mugisha & Co. Advocates/ Solicitors.

It is worth noting that before the hearing of the Summons, Mr. Stuart Ayeebwa (Counsel for the Defendant) raised a Preliminary Objection. Counsel averred that the suit is premature on the basis that under Section 278 of the Succession Act, an Administrator has a time limit of 1 year (one) within which to file the Accountability. Additionally, since the Letters of Administration in respect of the deceased's Estate was issued on the 28th October 2013 to the Defendant, he was under no duty to give accountability for the same. I did not make a ruling on the Preliminary Objection, but I opted to make a finding on the Preliminary Objection at the time of Judgment.

I will resolve the Preliminary Objection at the conclusion of the Judgment. Also issues No. 2 & 3 will be resolved together. I will now proceed to look at the said issues.

ISSUE 1: Whether the Plaintiffs as Beneficiaries are Entitled to An Accountability of the Estate of the Late David Nsubuga by The Administrator

The general principle of the law is that an Administrator must administer the Estate of the deceased to the best interest of the beneficiaries. see ***Jonah Senteza Kanyerezi & Another vs. Chief Registrar of Titles & 2 Others High Court Miscellaneous Application No. 919 of 1997*** . The duty to administer the Estate of the deceased person includes the duty to account for all the proceeds of the deceased's estate. This is a requirement under Section 278 Succession Act Cap 162.

In accordance with the facts, it is not in contention that the Defendant is the Administrator of the Estate of the late David Nsubuga. A copy of the Letters of Administration dated 23rd April 2013, which were granted by this Court were attached as Annexure "A" on the Defendant's Affidavit in Reply. This fact was agreed to by the Plaintiffs in the *paragraph "C"* Affidavit in support of the Summons. The Plaintiffs are the beneficiaries of the Estate of the deceased. This was respectively attested to in paragraphs b and 4 of the Affidavit in support of Originating Summons and the Affidavit in Reply.

Therefore, from the above authorities the Plaintiffs as beneficiaries of the Estate on the late David Nsubuga, are entitled to accountability of the Estate of the deceased though this must be done within the confines of the law.

Section 278 Succession Act Cap 162 mandates an Administrator of the deceased person's Estate to provide an accountability of the Estate to the beneficiaries within one year.

The purpose of an account is to exhibit the property forming part of the deceased's Estate which has come into the Administrators' hands and how it has been applied or disposed off.

The facts as earlier stated are that the Defendant obtained the Letters of Administration in respect of the Estate on the 23rd April 2013. Therefore since the time has not yet lapsed for filing of final Accounts in respect of the Estate of the late David Nsubuga, this Court has no mandate to enforce the same. I note that the deadline of one year I within which to file an Inventory is approaching soon in April 2014

ISSUE 2 & 3: Whether the Defendant has refused to distribute to the beneficiaries/Plaintiffs the money already on the account and Whether the Defendant has refused to distribute the Estate to the beneficiaries/Plaintiffs

In his oral submissions, Counsel for the Plaintiffs maintained the grounds in the Affidavit in support of the Originating Summons. He referred Court to paragraphs 3 of the Affidavit in rejoinder which states that the Defendant refused to account for UGX 65,000,000/= (Sixty Five Million Shillings) left of the deceased's account and transferred to the Estates Account, which is managed by the Administrator. Further, that the Inventory exhibited by the Defendant was filed as an aforethought and demands to distribute the property. In conclusion Counsel averred that the 2nd and 3rd beneficiaries stay with their mother and therefore they need their share of the Estate to be able to support her.

In reply by Counsel for the Defendant, he averred that there are only three beneficiaries to the Late David Nsubuga's Estate. He contended that Ms. Magdalene Nassuna was not a wife to the deceased. Furthermore, that the Defendant is the sole Administrator of the Estate. Therefore as an Administrator, she is the only one entitled to manage the deceased's Estate. Additionally, the money on the said account has been used to pay

school fees for the 2nd and 3rd Plaintiffs. In conclusion, Counsel submitted that the matter of requesting for accountability is premature and should not be entertained by Court.

I take cognizance of the evidence on record as well as the submissions made by both Counsel. It is however, clear that according to *paragraph I* of Affidavit in support of Summons, the Deponent averred that the beneficiaries of the Estate are still students and pupils, who are still undertaking their studies. Therefore, they need the money from the Estate Account to cater for their school fees and other education necessities. Further, in *paragraph j* of the Affidavit, it is stated that the beneficiaries are staying with their mother Magdalene Nassuna who maintains them by providing medical, accommodation, feeding, clothing, and education facilities. Hence, the beneficiaries need their respective share in the Estate in order to support her.

In paragraph 5 of her Affidavit in reply, the Defendant deposed that the money in the Estate Account has been used to pay school fees for the 2nd and 3rd beneficiaries inclusive of the school fees for the year 2014. No copies of bank slips were adduced in proof of the same but the Defendant managed to prove this issue on the balance of probabilities. It should be noted that Ms. Magdalene Massena was cross examined before Court and it was her information that the Defendant volunteered to pay school fees for the children. Further, that she only paid school fees for the children for only one term, *to wit*, the 1st term after the deceased's death. Therefore she has never paid fees. Rather, it is the Defendant who has been paying school fees for the children.

I note that the Affidavit of Daniel Lwanga Nsubuga in support of the Originating Summons bears some falsehoods bordering on deliberate lies. There is also contradictory evidence in regard to the amount of money to be found on the Estate Account. Whereas the Affidavit in Rejoinder by the Plaintiffs deposes in paragraph 3 that the money left on the original

Account by the deceased and transferred by the Defendant on the Estate Account is UGX 65,000,000/= (Sixty Five Million Shillings), the Defendants statement differs. In cross examination, the Defendant contested the amount and averred that there is only UGX 50,000,000/= (Fifty Million Shillings). She explained that some of the money has been used to pay school fees for the 2nd and 3rd Plaintiff. Further, that it would later be utilized in processing the respective titles. A bank statement would resolve this fact once and for all but it was not available to the Plaintiffs.

The credit on the Estate Account No.3020584503 with Centenary Rural Development Bank constitutes part of the Estate of the Late David Nsubuga. I have already noted that there are disputes in relation to the amount that is on the Account. Additionally, there is a question as to whether the land which formed part of the deceased's Estate was distributed amongst the beneficiaries. Whereas the Plaintiff states that they have never acquired their respective entitlements, the Defendant stated, in paragraph 7 of her Affidavit in Reply, that a Clan Meeting was held on the 13th December 2013. This was in respect of the deceased's land and the distribution of the Estate amongst the beneficiaries. Ms. Magdalene Nassuna, in her Cross Examination, stated that she also attended the Meeting but the land was not distributed. Therefore, it is not clear whether indeed the properties were distributed and how they were distributed amongst the beneficiaries. Since this is a contentious matter, it should not be determined by such a procedure but through filing of Plaint and through adducible evidence.

I am cognizant of the fact that the Application was brought by Originating Summons as per Order 37, rule 1 of the CPR which stipulates that;

'The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by

assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course an originating summons, returnable before a judge sitting in the chambers, for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions-

(a)...

(b)...

(c) The furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;

(d)...

A strict interpretation of this Order extends to administrators, legatees or devisees. A *legatee*, also called a *beneficiary*, is a person who will receive something from a will, when the will is executed, usually by the executor responsible for carrying out the wishes of the *testator* (person who made the will).(see <http://www.wisegeek.com/what-is-a-legatee.htm>). The same word is defined elsewhere as ‘a beneficiary of a will or one who is named in a will to receive property. The term comes from the Latin word *legare* which can mean to bequeath or simply, legacy.” (See <http://www.ask.com/question/what-is-a-legatee>). A cursory look at the phrase ‘*or other person as afore said*’ would tend to exclude beneficiaries outside a Will.

It therefore becomes apparent that the Plaintiffs do not fall within any of the above categories. However, if the mischief of this rule is viewed in a wider perspective, it would include those who claim under the Administrators of Estates as beneficiaries. In my considered opinion, pursuant to Article 126(2) (e) of the Constitution of the Republic of Uganda 1995, Courts of law should render substantive justice without due regard to technicalities. If this is done, then the Plaintiffs in this case become relevant.

Ruling on the Preliminary objection

At the introduction of this Judgment, I stated that I will make a Ruling on the Preliminary Objection (“P.O.”) within the Judgment. I now proceed to make a determination on the P.O.

Counsel for the Defendant raised a Preliminary Objection regarding the propriety of the Originating summons on the basis that the suit is premature. The issue for determination in the Preliminary Objection is whether the Beneficiaries are entitled to the accountability of the Estate of the late David Nsubuga before the expiry of one year as stipulated in the Succession Act, Cap 162. Counsel of the Defendant relied on Section 278 of the Succession Act and stated that under that provision, the Administrator of the Estate of the deceased is entitled to a period of one year from the grant of Letters of Administration within which he is supposed to file an Accountability of the Estate. Counsel averred that since the Letters of Administration were issued on the 23.4.2013 and the initial inventory was filed on 28.10.1013. Hence, the Originating Summons for accountability of the Estate was premature.

In response, Counsel for the Plaintiffs stated that the Application was brought under Order 37, r 1 of the CPR which authorizes a beneficiary to initiate a Court suit by Originating Summons before the expiry of one year for such relief of the nature or kind specified there under and in accordance with the circumstances of the case. The learned Counsel for the Applicants/Plaintiffs stated that the Defendant had refused to distribute the money which was already on the Account and the Inventory so filed by the Defendant was an afterthought. Therefore, it is suspicious. Counsel concluded that it would be unfair to the beneficiaries to wait for the lapse of 1 year before they acquire their respective shares in the Estate. He prayed that Court Orders the Administrator to distribute the Estate of the deceased.

The Summons was brought under Order 37, r 1 of the CPR. This provision gives Court wide discretion on whether to grant the Orders sought in the Chamber Summons or not dependent on a case to case basis. Under the provision, the Orders include furnishing of *particular* accounts by an Administrator.

I already stated the grounds of the Application. For the purpose of the Preliminary Objection, it is important to understand that the Originating Summons before me are intended to move Court to make Orders that:- the Defendant gives an Accountability of the Estate of the Late David Nsubuga from the time he was granted the Letters of Administration until now; the Defendant distributes the money on the Estate Account to the beneficiaries; that the Defendant distributes the Estate of the Late David Nsubuga to the beneficiaries; costs of the Application and any other relief that Court deems fit.

The evidence on the file is that there is contention whether or not the Estate of the Late David Nsubuga has been distributed. Paragraph g of the Plaintiffs' Affidavit in support of the Chamber Summons states that the beneficiaries wrote a letter to the Defendant asking her to distribute the Estate but it was in vain. A copy of the letter was attached. The letter is dated 16th September 2013. Further, paragraph d of the Affidavit states that the Defendant opened up an Estate Account No. 3020584503 with Centenary Rural Development Bank and transferred all the deceased's funds from his Account No. 3220525592 of the Estate Account which is solely managed by the Defendant.

The Defendant in her Affidavit in Reply paragraph 5 stated that the money on the Estate Account has been used to pay school fees for the beneficiaries. Further, in paragraph 6 she deposed that she filed an Inventory in respect of the deceased's Estate which the Plaintiffs do not deny but contend that it was done as an afterthought.

It is true that the Defendant filed an Inventory. It is dated 28th October 2013. It was attached as Annexure "B" on the Defendant's Affidavit in Reply. It only shows the properties which are available for distribution to the beneficiaries. It does not state the amount of money on the Account nor how much money has been used. I have also noticed that there is contradictory evidence presented on behalf of the Defendant. Whereas paragraph 7 of her Affidavit in Reply states that on the 13th December 2013, a clan meeting was convened and all the deceased's properties were distributed to the three beneficiaries, the Inventory shows that there are properties available for distribution. Further, the Defence argues that it was agreed that the money on the Estate Account be used to cater for school fees for the 2nd and 3rd Plaintiffs. The minutes of this meeting were not adduced nor were the bank slips attached to prove that the 2nd and 3rd Plaintiffs were indeed receiving help in the form of school fees from the Defendant. However, the mother of the beneficiaries did not contest the fact that indeed the school fees for the beneficiaries are being paid by the Administrator, Ms. Christine Nsubuga.

Therefore, in view on the above, I find that seeking an order to make the Defendant account for the Estate at this stage is premature. The P.O. succeeds only in respect of requiring that the Defendants produce the entire Inventory since the grant of the Letters of Administration until now. However, accountability was not the only issue for which the Plaintiffs sought a declaration. There are issues relating to distribution of the estate, particularly the money on the Estate Account. It is in contention whether any distribution was done and when it was done but I see no harm in ordering the Defendant to provide further and better particulars on the status of the Estates Account.

In conclusion I reiterate that in view of my findings herein, I uphold the Preliminary Objection raised by Counsel of the Defendants that the suit for the accountability of the Estate of the deceased is premature.

However, I make the following Declarations pertaining to the other issues:-

1. THAT that the Plaintiffs are the rightful beneficiaries of the Estate of the late David Nsubuga and that the Defendant, Christine Nsubuga, the administrator thereto.
2. THAT Ms. Christine Nsubuga, the Administrator provides further particulars concerning the Estate Account No. 3020584503 with Centenary Rural Development Bank to which she had transferred all the deceased's funds from his Account No. 3220525592 and which she solely manages. Specifically, provide a current bank statement of the said account to the beneficiaries and to Court.
3. THAT the Plaintiffs should, within 7 days from the date of this Judgment, file a plaint in this Court for it to determine whether or not the Defendant refused to distribute the said Estate among the beneficiaries, particularly the money on the Estate account and also whether she refused to distribute the Estate as a whole to the said beneficiaries.
4. THAT the Defendant will file her written statement of Defence within 14 days after being served with the Plaint.
5. THAT the matter will come before this Court within 10 days after filing the Defence for mention.
6. THAT the Defendant should, in the meantime, release more money to the mother of the beneficiaries to the tune of UGX 3,000,000 (Three million Uganda shillings only) for the upkeep of the beneficiaries until the final distribution of the Estate to them.

7. THAT the Defendant shall continue paying the fees for the beneficiaries.

8. Costs shall be in the cause.



Signed:

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HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA.
J U D G E
11th March, 2014