

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 1 OF 2012

**ARISING FROM BUKEDEA ADMINISTRATION CAUSE NO. 5 OF
2011**

KEDI JOHN.....APPELLANT

V

ASIMO IMMACULATE.....RESPONDENT

JUDGMENT

The appellant through his advocates Okalebo & Co. appealed the judgment of HW Omalla Felix senior Principal magistrate grade one dated 19th December 2011 sitting at Bukedea on five grounds of appeal that i will revert to later in the judgment.

Ms. Okalebo & advocates for the appellant filed written submissions that i have carefully considered. The respondent appeared in person .

The background to his appeal is as follows Asimo Immaculate applicant in Bukedea administration cause 5 of 2011 applied for letters of administration to the estates of late Okiror Nichola and Okurut Adetei of Tukum village, Tukum parish, Bukedea sub-county.

The applicant in that application avers that she is the biological daughter of late Okiror Nichola and caretaker to the estate of late Okurut Adetei . She avers that the late left behind 36 gardens situate at Tukum village and that she is the only surviving child .

No proof of death was filed. The application itself is silent on when the two deceased persons died.

After filing the application and on the issuance of a notice by the court, two persons, Kedi John William and Adengo John objected to the grant of letters of administration to the applicant Asimo Immaculate hence the suit that resulted in a judgment on 19.12.2011 in favour of Asimo Immaculate. Asimo was the plaintiff in the suit while Kedi John William and Adenge John were the defendants. The current appeal is against this judgment .

The duty of an appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusion bearing in mind that the trial court had an opportunity to observe the demeanour of the witnesses.

During the trial five issues were framed for determination:

1. Who of the parties is entitled to letters of administration to the estates of Okiror Nichola and Okurut Adetei.
2. Whether the defendants (Kedi William and Adenge John) are the appointed heirs and beneficiaries to the estates.
3. What is the legal position of each party?
4. Whether plaintiff and defendants can be joint administrators
5. Remedies.

I have studied the proceedings of the lower court and ascertained the following facts.

The respondent claims to be the only child of the intestate Okiror Nichola and the only surviving relative of Okurut Odetei , a brother to Okiror. She asserts that Kedi John William was only a neighbour. Adenge John the second defendant is brother to Kedi.

It is noteworthy that Asimo states she was born in 1976 while her father died in 1984 and her mother Ilaro Lucy died in 1993. This vital information about date when Okiror and Odetei died is missing from her application for a grant.

According to PW2 Okwi John Peter whose age was 50 years, Ilaro Lucy died between 1985 and 1986. Okwi states he is a cousin sister to Asimo (not clear whether maternal or paternal cousin).

This witness further stated that Asimo is not the biological child of Okiror. He further testified that his late father Onenen Enos was cousin brother to Okiror and Odetei. In other words, Okwi is a lineal descendant of the deceased while Asimo is not according to Okwii.

Another witness PW3 Olwa Nakaleta aged 67 testified that Asimo is the only child of Okiror and he was appointed heir of Okiror.

The appellant's case on the other hand is that PW2 Okwii is the father of Asimo and not Okiror. That by the time Okiror married Asimo's mother, Asimo was already born. According to DW2 Adenge, their father Olete Odeke was brother to Nichola Okiror and Odetei. That Okiror is therefore his grandfather.

According to this witness, Asimo is the child of Okiror. DW 3 Laberito Okello aged 80 years testified that Asimo is daughter of Peter Okwii Okwalinga PW2.

It appears that the appellant and witnesses including Okwii PW2 are members of the same clan Inomo Lokouba Ariok as Okiror and Odetei, the two intestates. This explains why Kedi John William stated that he was appointed heir to Okiror by the clan.

From the foregoing, there is some considerable controversy surrounding the assertion by Asimo that she is a biological child of Okiror Nicholas.

In view of this controversy, the trial magistrate erred in making a finding that Asimo was the biological child of Okiror .

Secondly, there were irregularities in the application for a grant for two estates , i.e, that of Okiror Nichola and Okurut Odetei . There ought to have been two separate applications.

Third, i observe that the estate was under valued. 36 gardens is definitely not a small estate. Under these circumstances, the application for letters of administration ought to have been made in the High Court.

I find that the trial magistrate ought not to have made a finding that Asimo Immaculte was a daughter of the intestate Okiror in light of the glaring contradictions in her case and the appellant's case denying she was a daughter to Okiror.

Turning to the grounds of appeal, ground one is that the trial magistrate erred in fact and in law when he failed to properly apply the law and custom concurrently and thereby arrived at a wrong decision.

Ground two is that the trial magistrate wrongly ignored the decisions of the clan of Inom Aariok in respect of the estates of Nichola Okiror and Okurut Odetei .

Ground three is that the trial magistrate erred in fact and in law when he granted letters of administration to the respondent.

Ground four is that the trial magistrate did not properly evaluate the evidence.

Ground five is that the decision has occasioned a miscarriage of justice.

With regard to ground one and two, I agree with counsel for the appellant that section 10 (1) of the MCA empowers magistrates to observe and enforce civil customary law that is not repugnant to justice, equity and good conscience.

The same section gives a proviso that the civil customary law must be compatible with written law. Matters of succession are regulated by written law, specifically the Administrator General's Act, and Succession Act among others that provide for who is entitled to apply for a grant of letters of administration. Therefore the magistrate did not err when he declined to enforce clan decisions on inheritance.

Grounds three, four and five are about the evaluation of evidence. I have found that the trial magistrate erred when he made a finding on the paternity of Asimo when there were inconsistencies in her case and doubts had been raised by the defence case about her paternity.

I accordingly set aside the judgment of the trial court and revoke the grant given to Asimo Immaculate by Bukedea grade one court on 19th December 2011.

Section 4 (5) of the Administrator General's Act Cap 157 empowers the court to make a grant to the Administrator general when the court is satisfied that there are peculiar circumstances that make this necessary.

I find that there are peculiar circumstances that warrant such a decision. The date when the two intestates died are unknown. There is no clear lineal descendant as Asimo's claim as daughter of one of the deceased Okiror is disputed. There are two estates involved in this case and falls under the category of a large estate comprising 36 gardens.

I issue the grant for the two estates of Nichola Okiror and Okurut Odetei to the Administrator General who shall administer the estate in accordance with the Succession Act after identifying the beneficiaries to the two estates.

As this was a dispute about estates that will now be administered by the Administrator General, each party will bear its own costs.

DATED AT SOROTI THIS 12TH DAY OF FEBRUARY 2015.

HON. LADY JUSTICE H. WOLAYO