

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL APPEAL NO.0037 OF 2020

(Arising from Kabale Civil Suit No.0132 of 2013)

BYEBIROHA PROTAZI===== APPELLANT

VERSUS

1. BAJUNGU AIDA

2. BARIYO ARTH=====RESPONDENTS

BEFORE: HON.JUSTICE MOSES KAZIBWE KAWUMI
JUDGMENT

This Appeal arises from the judgment of the Magistrate Grade 1 at Kabale delivered on 7th September 2020 in favor of the Respondents. The gist of the suit filed by the Respondents was that they are the only beneficiaries to the estate of late Bonabaana Catherine and that the Appellant was not entitled to the grant of Letters of Administration.

The Appellant claimed to have customarily married the late Bonabaana and the two had stayed together as a married couple, that he had been recognized as the widower at the burial ceremony and had received all the condolence messages. He contends that the Respondents were not dependents and thus beneficiaries in the estate of his late wife.

The Respondents are a mother and brother of the late Bonabaana respectively. The trial Magistrates held that the Appellant was not a widower and has no claim over the estate. It was further held that the 1st Respondent was a beneficiary in the estate and the 2nd Respondent did not qualify as a beneficiary. A permanent injunction restraining the Appellant from deriving title or interfering with the estate was issued.

Dissatisfied by the decision of the trial Magistrate a Memorandum of Appeal with twelve (12) grounds was filed on 28th January 2021. The Appellant did not use the services of Counsel. The Respondents were represented by M/S Beitwenda & Co. Advocates.

Submissions filed by the parties have been considered but are not reproduced. Pertinent to bring out for purposes of this judgment are the two preliminary objections raised by Counsel for the Respondents.

1st Preliminary Objection.

It was submitted that the judgment in the lower court was delivered on the 7th September 2020 but the Appeal was filed on 28th January 2021 well after the 30 days stipulated in Section 79(1) of the Civil Procedure Act. Counsel invited Court to strike out the Appeal on account of the late filing.

The Appellant conceded to the late filing and justified it on the fact that the Court Registrar called for the record of proceedings on 24th September 2020. It was remitted on 9th December 2020. The Appellant contends that he got the record late and the problem cannot be attributed to him.

Decision.

Section 79(1)(a) of the Civil Procedure Act provides for the lodgment of appeals from judgments and orders issued by Magistrates Courts within 30 days. **Section 79(2)** of the same Act provides;-

“In computing the period of limitation prescribed by this section, the time taken by the court or registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.”

The record of proceedings in the instant case was remitted to the High Court on 9th December 2020 which is conceded to by the Appellant. The Appellant thus had to file the Appeal within thirty days from that date if he had applied for the record of proceedings in order to benefit from section 79(2) of the Act.

It is also evident on record on record that he had filed a Notice of Appeal on 8th September 2020 which neither amounted to an Appeal nor a letter applying for certified proceedings. Since the Judgment was delivered on 7th September 2020, the Appeal was filed out of time and fails on that ground per se.

Migadde Richard Lubinga & Others V Nakibuule Sandra & Others.HCCA No.0053/2019: Mathias Turyabahika V Lydia Timwine.HCMA No.015/2016 (Kabale);Luzinda George V Edward Wasswa.HCCA No.39/2009.

2nd Preliminary Objection.

Counsel for the Respondent objected to the grounds of Appeal in the Memorandum filed by the Appellant as being narrative, argumentative and not precise contrary to Order 43 rule 1(2) of the Civil Procedure Rules. The objection was not responded to by the Appellant.

I am in agreement with the objection about the framed grounds of Appeal since they offend the parameters set in order 43 rule 1(2) of the Civil Procedure Rules. Grounds of Appeal must be concise and devoid of arguments or narrative.

The Grounds of Appeal must also specifically point out the errors observed in the course of the trial including the decision which the Appellant thinks caused a miscarriage of justice. This was not observed by the Appellant. The impugned grounds are here below reproduced for the sake of completeness.

Grounds of Appeal.

1. The trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on Court records and she entered Judgment for the 1st Respondent and awarded costs to the 2nd Respondent whom she had declared was not a Dependant to the late Bonabana Catherine. When there was no evidence for the same 1st Respondent.
2. The Magistrate erred to put in the Judgment that the 1st Respondent was a Dependent to the late Bonabana Catherine when she had an independent residence in LC I Bugongi.
3. The trial Magistrate erred not to have written a letter to Kabale Regional Referral Hospital asking for a medical report to confirm who she had named as her next of kin before taking the decision.
4. The trial Magistrate erred to declare the 1st Respondent a dependant of the late Bonabana Catherine my wife when she had noted in the Judgment the PW3 wife to PW2 did not abduces evidence in relation to the dependants.
5. The trial Magistrate erred to reverse the decision of the late Bonabana Catherine who gave me all the documents concerning the properties I had applied to administer as if she did not have authority of her properties and she did not show any section of law that bars one from taking a decision on her personal properties.

6. The trial Magistrate erred to enter Judgment for the 1st Respondent because what she told Court at the hearing of the Suit were the properties of the late Bonabana Catherine was different from what is in the plaint and what I had applied for.
7. The Magistrate erred to declare the 1st Respondent a beneficiary to the estate of late Bonabana Catherine and entitled to the grant of Letters of Administration of the estate of late Bonabana Catherine when she failed to specify in the Judgment what had been proved to form the estate of the late Bonabana Catherine.
8. The Magistrate erred to declare the 1st Respondent a dependant of the late Bonabana Catherine and noted in the Judgment that she would take care of her daughter in hospitals, she contradicted herself to believe in both which practically makes it impossible to be one in two.
9. The trial Magistrate erred to declare that the 1st Plaintiff is entitled to the grant of Letters of Administration of the estate of late Bonabana Catherine. Because what PW3 wife to PW2 now the second Respondent what she testified at the hearing of the Suit was different from what PW1 now 1st Respondent testified in Court at the hearing of the Suit.
10. The Magistrate erred to put in the Judgment that I did not exhibit the medical receipts and other documents because she did not guide me on how to do the same.
11. The magistrate erred to put in the Judgment that I was not widower to the late Bonabana Catherine when there was evidence.
12. The Magistrate erred to declare the 1st Plaintiff is entitled to the grant of Letters of Administration of the estate of late Bonabana Catherine and at the same time choose a person to whom the Letters should be granted.

Olanya James v Ociti & Others. HCCA No.54/2017; Migadde Richard Lubinga (supra); Katumba Byaruhanga v Edward Kyewalabye Musoke. CA Civil Appeal No.2/1998.

On account of the faulty grounds the Appeal fails. The Respondent shall be paid costs in the lower court and in this court.

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MOSES KAZIBWE KAWUMI
JUDGE
27TH OCTOBER, 2021