

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
CIVIL SUIT NO.28 OF 2016

SAMALIE NAKIJJOBA ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. ATEGEKA SAMUEL

2. MARGRET KABAKIDI

3. BYOONA RICHARD ::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- [1] In the amended plaint, the plaintiff brings this action against the defendants for a declaration that she is the widow and beneficiary to the estate of the late **Col. Dr. Kaijabahoire Christopher**, an order for revocation of letters of Administration granted to the defendants in **Administration Cause No.003 of 2015**, an order that the plaintiff be appointed as an administrator of the property and credits of the late **Col. Dr. Christopher Kaijabahoire**, an order of distribution of the estate to its beneficiaries in accordance with succession laws and a permanent injunction restraining the defendants from further dealing in the estate without the plaintiff's counsel.
- [2] The plaintiff's case is that the plaintiff is a widow and beneficiary to the estate of the late **Col. Dr. Christopher Kaijabahoire** who died intestate from Somalia on the 25/12/2016 and left the following properties; **Wazalendo savings, pension and gratuity with UPDF, 2 pieces of land at Bikonzi I & II villages, Bwijanga sub-county measuring approximately 2.5 and 1.5 acres respectively, a plot of land in Entebbe, herd of about 67 heads of cattle, 2 commercial**

**houses at Bikonzi Trading Centre on mile 9 along Masindi-Hoima Road and a residential home at Bikonzi village Bwijanga sub county, Masindi District.**

- [3] That by consent of the family members including the plaintiff, on the 7/1/2015, it was agreed that the 1<sup>st</sup> & 2<sup>nd</sup> defendants and the plaintiff shall apply for letters of administration of the estate of the late **Col. Dr. Christopher Kaijabahoire**. Consequently, the plaintiff and the 1<sup>st</sup> and the 2<sup>nd</sup> defendants jointly applied for letters of administration under **Administration Cause No.03/15**.
- [4] That the plaintiff being illiterate, she was misled and/or misrepresented into signing a consent dated the 29<sup>th</sup> of June, 2016 replacing her with one of the children of the deceased under the guise that since she was not legally married to the deceased, she did not qualify to be an administrator thereby, technically removing her as an administrator of the estate of the late **Col. Dr. Christopher Kaijabahoire**.
- [5] The plaintiff contended that the grant obtained by the defendants has become unclear and inoperative since the UPDF authorities insist that in order to access the deceased's death gratuity from the Government of Uganda, the plaintiff's name must be included on the grant as an administrator of the deceased's estate since the plaintiff is the only recognized widow who was left by the deceased.
- [6] The plaintiff also alleged fraud in the acquisition of the letters of administration vide **A.C No.3/2015** and particularized fraud as follows;
  - a) Duping and/or misrepresenting to the plaintiff into signing consent dated the 2<sup>nd</sup> day of June, 2016 replacing her with one of

the children of the deceased in an application for letters of administration.

- b) Illegal withdrawing of the estate pension and gratuity without accounting to the beneficiaries.
- c) Defendants failing to distribute the estate of the late **Col. Dr. Christopher Kaijabahoire** and/or filing an inventory to this court.
- d) Defendants' illegal selling of the estate property like cattle and collecting rent for their own personal use.
- e) Defendants chasing the plaintiff away from her matrimonial home basing on the grant of letters of administration.
- f) Cutting and selling trees on the estate land for timber without the consent of other beneficiaries.
- g) Acting with impunity, disregard of the rights and welfare of other beneficiaries and carrying themselves as a superior beneficiary of the estate to the detriment of other beneficiaries.

[7] In their amended joint Written Statement of Defence, the defendants denied the plaintiff's allegations and contended that the plaintiff is not a widow of the late **Col. Dr. Christopher Kaijabahoire** and that the deceased, did not own any property apart from a plot of land in Entebbe and his terminal benefits from UPDF.

[8] That the pieces of land at Bikonzi village in Bwijanga sub-county are the property of the 2<sup>nd</sup> defendant which she inherited from her parents while the 2 commercial houses at Bikonzi Trading Centre and the herd of cattle belong to the 2<sup>nd</sup> defendant who built the houses herself and had purchased the cattle herself.

[9] The defendants further averred that they are joint Administrators of the deceased's estate having legally obtained a grant and they did file

an inventory showing an account of the estate and that they have not turned any of the estate property into their personal property as claimed by the plaintiff but have distributed the available assets as per the inventory.

- [10] The 2<sup>nd</sup> defendant filed a counter claim against the plaintiff/counter defendant for a declaration that the pieces of land at Bikonzi I and II villages measuring **2.5 and 1.5 acres**, together with the 2 commercial houses at Bikonzi Trading Centre in Bwijanga Sub-county belong to her in her own right and are not part of the deceased's estate and a permanent injunction to restrain the plaintiff/counter defendant from trespassing or encroaching on the said properties.
- [11] That the Plaintiff/ Counter defendant harvested timber from the trees on the 2<sup>nd</sup> defendant/Counter claimant's land claiming that they belonged to her late husband and cultivated the land leaving the counter claimant with nowhere to grow her crops and therefore, seeks an order requiring the Plaintiff/Counter defendant to account for the timber harvested and general damages for inconveniences and suffering caused to the Counter claimant resulting from the Counter defendant's trespass.

### **Counsel legal representation**

- [12] The plaintiff was represented by **Counsel Simon Kasangaki** of **Kasangaki & Co Advocates, Masindi** and the defendants were represented by **Counsel Tumwesigye Lawrence** of **Tumwesigye, Baingana & Co Advocates, Kampala**. Both counsel filed their respective final written submissions as permitted by this court.

## **Background of the suit**

- [13] The late **Col. Dr. Christopher Kaijabahoire** died intestate on a foreign mission in Somalia on the 25<sup>th</sup> day of December 2014.
- [14] The plaintiff, mother of three of the deceased's children was recognized as a widow of the deceased at a family meeting held on 17<sup>th</sup> of January 2015 at the Chief Administrative Officer's office (C.A.O) Masindi and it was agreed that the plaintiff together with the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly apply for Letters of Administration to the estate of the deceased **Col. Dr. Christopher Kaijabahoire**. A joint Application for letters of Administration was accordingly lodged in court vide **A.C No. 003 of 2015** at Masindi High Court but later, the plaintiff consented to introducing the 3<sup>rd</sup> defendant in her place on the joint application for the grant.
- [15] The 1<sup>st</sup> and 3<sup>rd</sup> defendants are sons to the deceased **Col. Dr. Christopher Kaijabahoire**, the 3<sup>rd</sup> defendant being born of the plaintiff as his biological mother while the 2<sup>nd</sup> defendant is the deceased's mother. The plaintiff now brings this action against the defendants for inter alia, a declaration that she is the widow and beneficiary to the estate of the late **Col. Dr. Kaijabahoire Christopher** and an order for revocation of letters of administration granted to the defendants in **Administration Cause No.0003 of 2015**.

## **ISSUES**

- [16] During the court scheduling, the following issues were framed for the determination of this suit;
1. Whether the plaintiff has locus to challenge the grant.
  2. Whether grounds exist for the revocation of the grant.

3. What are the properties of the estate.
4. Remedies available to the parties.

### **The burden of proof**

- [17] In the case of **NSUBUGA VS KAVUMA [1978] HCB 307**, it was held that in civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities. **Section 101 of the Evidence Act (Cap 6)** provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.
- [18] It follows therefore that in the instant case, since the law of evidence is premised on proof of alleged facts, the burden of proof is so that the plaintiff who asserts must prove and if he asserts and does not prove, then he must fail. The general rule is therefore that the plaintiff proves his/her asserted facts unless they are admitted.

### **Issue No.1: Whether the plaintiff has locus to challenge the grant.**

- [19] It is the submission of counsel for the plaintiff that the plaintiff as a widow has locus to challenge the grant issued to the defendants to her exclusion and is the most suited person in law to administer the estate of her late husband.
- [20] The counsel for the defendants on the other hand, submitted that the plaintiff is not a widow to the deceased because she was never married to him whether in church, by civil marriage or customary marriage and that she is not related to the deceased in any way by blood. That for that reason, the plaintiff has no locus to challenge the grant of letters of administrator of the deceased's estate granted to his mother and his children.

- [21] **Black's Law Dictionary 9<sup>th</sup> Edn**, the expression "locus standi" means **the right to bring an action or to be heard in a given forum**. For a person to bring an action or to be heard in a given forum, such person must have sufficient interest in respect of the subject matter of a suit; **KISUNGWA ISSA & ORS VS STANDARD CHARTERED BANK INVESTMENT CORPORATION AND ORS H.C.C.S No.409/2004**.
- [22] In the instant case, though the plaintiff claim to had been customarily married to the deceased **Col. Dr. Kaija Christopher**, her claims are not backed by any evidence. She did not adduce any evidence regarding under what customary ceremony or practice of the community/tribe, her claimed marriage was performed; **STEVEN BUJARA VS POLLY T.BUJARA (2001-2005) HCB 362**.
- [23] Secondly, it is also apparent that the deceased himself never recognized the plaintiff as his wife in any way. This is clearly deduced from the **Written condolence message dated 29/12/14** signed by the Chief of Defence Forces, **General Katumba Wamala** which was presented and read at the burial of the deceased (**D.Exh.4**) and **annexture "B"** to the witness statement of **Kabakidi Margret** (DW2). The document is evidence that the deceased never registered the plaintiff anywhere in the records of UPDF where he was serving that she was his wife or next of kin. The **Condolence message** on the other hand, had a list of the children of the deceased who included those begotten from the plaintiff.
- [24] Lastly, though the plaintiff claim to had been recognized as a widow in the family meeting of 7<sup>th</sup>/1/2015 held in the Chief Administrative Officer's office Masindi (annexed to her witness statement as "B" & "C"), she herself recognized her limitations regarding her relationship with the deceased and consented to be replaced by her son, the 3<sup>rd</sup> defendant

in the petition for grant of letters of administration of the estate of the late **Col. Dr. Kaija Christopher**. The plaintiff claims that being illiterate, she was misled and /or duped into signing a consent dated the 29<sup>th</sup> day of June, 2016 replacing her with one of the children of the deceased thereby technically removing her as an administrator of the estate of the late **Col. Dr. Kaija Christopher**, but evidence on record show that she was replaced by her biological son, the 3<sup>rd</sup> defendant, who was therefore in position to sufficiently represent her interests and those of his siblings. The plaintiff has therefore, not demonstrated to court how her being replaced by her own biological son prejudiced her.

[25] It is my view therefore, that the plaintiff being replaced by her own biological son, the 3<sup>rd</sup> defendant, it did not in any way prejudice her and therefore, it cannot be said that she was technically removed as an administrator of the estate of the late **Col. Dr. Christopher Kaija** to her disadvantage for the sole benefit of the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

[26] It is however not disputed that the plaintiff is a mother to three of the deceased's children.

In the premises, I find that the plaintiff as a mother of some of the children of the deceased, three of them, is a beneficiary with a valid interest in the estate. As a beneficiary of an estate of a deceased intestate, the plaintiff has locus standi to challenge the grant of the defendants once aggrieved about the management of the estate.

[27] The 1<sup>st</sup> issue is in the circumstances answered in the affirmative. The plaintiff has locus standi to challenge the grant of the defendants.

## **Issue No.2; Whether grounds for revocation of the grant exist.**

[28] On revocation of grants, **Section 234 of the Succession Act (Cap 162)** provides thus;



***“234. Revocation or annulment for just cause***

*1) The grant of probate or letters of administration may be revoked or annulled for just cause.*

*2) In this section, “just cause” means-*

*a) that the proceedings to obtain the grant were defective in substance.*

*b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;*

*c) that the grant was obtained by means of an untrue allegations of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;*

*d) that the grant has become useless and inoperative through circumstances; or*

*e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account...or has exhibited...an inventory or account which is untrue in a material aspect.”*

[29] In the instant case, the plaintiff did not adduce any evidence that the proceedings to obtain the impugned grant were defective in substance or that the grant was obtained fraudulently and or by means of an untrue allegations of a fact essential in point of law.

[30] The fraudulent allegations particularized in the pleadings by the plaintiff are not supported by any evidence. The burden of proving fraud as it were, lies on the person alleging it and the standard of proof is beyond mere balance of probabilities required in ordinary civil cases though not beyond a shadow of doubt; **SEBULIBA VS COOPERATIVE**

**BANK LTD [1987] HCB 130.** See also **R.G PATEL VS LALJI MAKANJI (1957) E.A 314 at 317.**

- [31] The plaintiff's claims that she was duped into signing a consent dated 29/6/2016 replacing her with her own biological son is not backed by any evidence and as I have already observed, no prejudice occasioned the plaintiff by being replaced by her own son, the 3<sup>rd</sup> defendant who sufficiently represented her interests in the estate of the deceased.
- [32] The plaintiff did not adduce evidence to prove that the sold cattle belonged to the deceased and that the alleged collected rent were from the estate property. The claim that she was chased away from her residential home remain mere allegations because instead, there is overwhelming evidence from **Kabakidi Margret** (DW2), the mother of the deceased, that she offered her only son a piece of land at **Bikonzi I village** where the deceased built a house and this is where the plaintiff and her children are staying and cultivating food crops.
- [33] No evidence was led even from the plaintiff's children or any other independent witness to support her claims that the deceased owned cattle, the commercial buildings or the land from where trees were harvested for timber. What is on record is mere allegation and speculation.
- [34] Again, the claim that the impugned grant has become useless and inoperative through circumstances is also without evidence. Instead, there is uncontroverted evidence that it is the plaintiff responsible for its being inoperative because, she raised a complaint to Bank of Africa where estate account had been opened and the account was made in accessible to the administrators of the estate as **Ategeka Samuel** (DW1) clearly explained.

- [35] The claim that the grant has become useless and inoperative because the UPDF authorities insist that in order to access the deceased's death gratuity from the government of Uganda, her name must be included on the grant as an administrator of the deceased's estate is not supported by any evidence. Instead, there is evidence as per the memorandum of understanding among the Administrators of the estate of the deceased reached before the UPDF Administration Representatives (**D.Exh.5**) that clearly show the contrary.
- [36] As regards the plaintiff's claim/allegation that the defendants failed to distribute the estate of the late **Col. Dr. Christopher Kaija** and/or filing an inventory to court, it is not in dispute that the defendants filed an inventory (**D.Exh.2**) in January 2019. The 3<sup>rd</sup> defendant did not testify in court to dispute the inventory and prove the contrary. The inventory on record instead is found consistent with the undisputed evidence on record by the defendants regarding how the deceased's terminal benefits from UPDF were distributed and shared among the beneficiaries.
- [37] In conclusion, I find that the defendants/Administrators of the estate of **Col. Dr. Kaija Christopher** filed an inventory except that there was a delay to do so. The letters of Administration were granted in **2015** and the inventory was filed in **2019** during the course of this suit. In **FRANCIS DDIBA NDUGA VS RITA NANSIKOMBI & ORS [1980] HCB 79**, it was held that for the plaintiff to succeed, he had to show that the defendant's failure to exhibit an inventory and account was wilful and without reasonable cause.
- [38] It is however clear from the instant case that the defendants as administrators of the estate had first, an uphill task of accessing the deceased's benefits and being recognized by the UPDF and then,

secondly, the UPDF itself had to first process the terminal benefits of the deceased. As can be seen from the M.O.U among the defendants/Administrators dated **1/1/2018** made before the UPDF administration representatives (**D.Exh.5**), the process was still on going by 2018.

[39] Under these circumstances, it cannot be said that the defendant Administrators of the Estate of the deceased wilfully and without reasonable cause failed to exhibit the inventory and account between **2015** when the grant was issued out and **2019** when the inventory was filed. The periods prescribed in **Section 278 (1) of the Succession Act** are not **absolute**; **NDUGA VS NANSIKOMBI** (Supra) and court has the power to extend time.

[40] The object of the power to revoke a grant is to ensure the due and proper administration of the estate and protection of the interests of the beneficiaries. In this case, there are no good grounds why court should order fresh action in regard to the estate. There was reasonable cause for the failure by the defendants to file the inventory in time. The second issue is therefore answered in the negative.

### **Issue No.3: What are the properties of the estate?**

[41] The plaintiff led evidence that the deceased **Col. Dr. Kaija Christopher** left the following properties; Wazalendo savings, and pension and gratuity with UPDF. Then 2 pieces of land at Bikonzi I & II villages measuring approximately **2.5** and **1.5 acres** respectively, a plot of land in Entebbe, 2 commercial houses at Bikonzi trading centre, a residential home at Bikonzi village and a herd of about 67 heads of cattle.

[42] The defendants indicated that apart from the terminal benefits from the UPDF and the plot of land in Entebbe, Wakiso district, the deceased

had no other property. The 2<sup>nd</sup> defendant/counter claimant stated in her witness statement that she inherited the land at Bikonzi from her father upon failing in marriage and on the part of this land, she built commercial houses of which proof, she presented electricity utility receipts.

[43] The plaintiff in this case, apart from merely stating the existence of the properties, she adduced no evidence to support her claim that they belonged to the deceased, **Col. Dr. Kaija Christopher** as required of her under **Section 101 U.E.A.**

[44] However, there is ample evidence supported by **Kabakidi Margret** (DW2) that she gave the deceased what she described as a small piece of land of about a quarter of an acre to her son, the deceased on which he put a small house. It is the evidence of the plaintiff that this is where she is staying with her children. It forms part of the deceased's matrimonial home. It follows therefore, that once DW2 offered it out to her son, the late **Col. Dr. Kaija Christopher**, she could not claim it as hers upon his demise. The L.C III Bwijanga found that the portion in question is about **1 acre** including the deceased's residential house (Annex "F" to the plaintiff's witness statement). This is an independent reliable source and therefore, court is persuaded that it is an acre of that portion of land that is an entitlement to the plaintiff and her children.

[45] I find that this portion of land at Bikonzi I village, Bwijanga sub county forms part of the estate of the deceased. The properties of the estate were therefore the pension money and gratuity from UPDF, the plot of land in Entebbe Wakiso district and a portion of land at Bikunzi, Bwijanga sub-county developed with the deceased's matrimonial house measuring 1 acre.

#### **Issue No.4: What remedies are available to the parties**

- [46] The plaintiff generally failed to prove her case on the balance of probabilities, the suit against the defendants stand dismissed and as a result, the plaintiff is not entitled to the remedies sought.
- [47] The 2<sup>nd</sup> defendant/counter claimant adduced satisfactory evidence that the land with the commercial buildings at Bikunzi village Bwjanga sub-county, Masindi District belonged to her save for the portion she offered to her son and that they did not therefore form part of the estate of the deceased, **Kaija Christopher**.
- [48] However, no definitive evidence was led by the 2<sup>nd</sup> defendant/counter claimant to prove that the trees harvested for timber were from her land and not from that part of the portion of land she had already offered to the deceased which in essence formed part of the estate of the deceased.
- [49] The 2<sup>nd</sup> defendant/counter claimant claim for damages for trespass; No evidence was adduced by the 2<sup>nd</sup> defendant/counter claimant to prove the alleged trespass and justify any damages. Other than the plaintiff/counter defendant merely claiming that the property in question belonged to the deceased, there is no evidence that the plaintiff interfered with the property in any way. No order as to general damages is therefore made in the circumstances of this case.
- [50] As a result, the counter claim succeeds with the following orders;
1. The plaintiff's claim against the defendants is dismissed.
  2. The pieces of land at Bikonzi I & II villages measuring **2.5** and **1.5 acres** and 3 commercial houses at Bikonzi trading centre all in Bwijanga sub-county, Masindi district **save the portion of 1 acre**

**of land with the deceased's matrimonial house at Bikonzi 1 village, belong to the 2<sup>nd</sup> defendant/counter claimant and do not form part of the estate of the late Col. Dr. Christopher Kaijabahoire.**

3. No order as to costs as this is a family dispute deserving reconciliation of the parties.

**Dated at Masindi this 21<sup>st</sup> day of December, 2021.**

**Byaruhanga Jesse Rugyema**  
**JUDGE.**