

(ARISING OUT OF ADMINISTRATION CAUSE NO. 05 OF 2020)

VERSUS

- Before; Hon. Justice Victoria Nakintu Nkwanga Katamba***

This application is brought under Section 98 Civil Procedure Act, Order 9 Rule 12, Order 52 Rules 1, 2 & 3 and Order 46 Rule 1(b) & Rule 8 Civil Procedure Rules seeking orders that;

- The grounds of the application as contained in the affidavit of the Applicant, Namatovu Hadijah, are briefly that;

- a) The Applicant together with her late husband's sister petitioned this court for letters of administration for her late husband's estate on the 16<sup>th</sup> day of January, 2020 vide Administration Cause No. 5 of 2020;
- b) The 3<sup>rd</sup> Respondent lodged a caveat against the petition seeking that the 1<sup>st</sup> Respondent be added as one of the petitioners;
- c) A consent judgment was entered to substitute Kasasa Ritah Nakaye and for a fresh petition to be lodged in the court;
- d) The Applicant was made to sign the consent under pressure and coercion by the Respondents and she did not understand the contents of the consent;
- e) The Respondents are not beneficiaries and they influenced the Applicant to enter a consent to be part of Administrators in bad faith for their personal benefits;
- f) The Applicant has four children and stands to lose the entire estate if the application is not granted;

In his affidavit in reply, the 3<sup>rd</sup> Respondent opposed the application and stated that the Applicant cannot be her own legal manager and the family of the late Isaac Seruyange met and agreed that the Applicant and her late husband's two sisters apply for letters of administration of the estate of the late Isaac Seruyange. That the decision to add the 1<sup>st</sup> Respondent was made because the Applicant and her husband's two sisters do not possess the financial literacy skills which were necessary in matters of the estate. He further stated that the mediation proceedings were conducted in Luganda and at no time did the Applicant complain about the alleged duress or incapacity to understand the proceedings and she signed the consent voluntarily. The allegations that the other administrators will make the Applicant lose the estate are factually and legally baseless as the other administrators are gainfully employed and lineal descendants of the late and have a stake in the estate.

Counsel for the Respondent cited *Section 67 (2) of the Civil Procedure Act* that bars appeals arising from decrees passed with consent of the Parties, and the case of *AG & Anor vs. James Mark Kamego & Anor SCCA No. 8 of 2004* where the Supreme Court stated grounds upon which a consent decree may not be upheld. Counsel argued that the

Applicant has failed to satisfactorily furnish proof on the allegations of duress for setting aside the consent judgment.

**Consideration of the application;**

The Applicant states that she is the widow of the late Isaac Seruyange who died intestate on the 19<sup>th</sup> day of July 2019. She seeks to challenge a consent judgment entered into on the 3rd day of September, 2020 with the effect of allowing the 1st Respondent to be added as a petitioner for letters of administration for the estate of the late Isaac Seruyange.

The Applicant claims that she entered into the consent judgment while under duress by the Respondents and did not understand its contents.

The remedy of review is provided under *Section 82 of the Civil Procedure Act* which is available to parties aggrieved by a decree or order from which an appeal is allowed. Under *Section 67 of the Civil Procedure Act*, appeals are not allowed from decrees or orders made with consent of the parties.

The Supreme Court has laid down grounds upon which a consent order can be reviewed and they include proving that the order was made through fraud, collusion, duress, or any other sufficient reason which would enable the court set aside a consent judgment. Such sufficient reason might include misapprehension of material facts relating to the consent judgment or circumstances which would enable court vitiate a contract. (*see Mohamed Alibhai v W.E. Bukenya Mukasa & Anor [1996] UGSC 2 (15 August 1996), Attorney General and Another v James Mark Kamoga and Another ((Civil Appeal No.8 of 2004)) [2008] UGSC 4 (6 March 2008))*

In the instant case, the Applicant seeks to rely on the ground of duress and that she did not understand the contents of the consent judgment. I will proceed to consider these grounds in regards to the evidence on record.

## 1. Duress or coercion

Duress is defined to include a threat of harm made to compel a person to do something against their will or judgment ***Black's Law Dictionary 8th Edition Page 542.***

The Applicant claims that the Respondent entered the consent judgment in bad faith with the intention of mismanaging the estate of the deceased.

In the case of ***Pao On Vs Lau [1979] 3 ALL ER 65 at 78***; Lord Scarman held as follows;

*“Duress, whatever form it takes, is a coercion of the will so as to vitiate consent.... There must be present some factor ‘which could in law be regarded as a coercion of this will so as to vitiate consent.’ In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; whether after entering he took steps to avoid it. All these matters are, as was recognized in Maskell Vs Home [1915] 3KB 106, relevant in determining whether he acted voluntarily or not.” Burton Vs Armstrong [1976] AC 104 at 121”*

The Applicant is required to prove that she was coerced or forced to enter into the consent. This would show that the consent judgment was entered into without free will and evidence of force or any instances of protest by the Applicant would make sufficient proof for duress or coercion. Any evidence of ill advice might also amount to coercion or duress including threats of harm.

The matter proceeded by mediation and I have carefully perused the record and established that the Applicant stated that she had no problem with co-administering with the already co-petitioner. She further stated that there was no need to add other administrators since she was the only one from her side and the rest were her in-laws.

I find this to sufficiently prove that she was not in agreement with the addition of another administrator. I have not established where in the mediation proceedings, the Applicant agreed to have another administrator/petitioner added to the petition. I find that her statements objecting to the addition of another petitioner are sufficient to prove that she took steps to avoid the consent by making her position known.

The consent judgment was therefore reached without considering her wishes and or opinion and as such it was not entered into voluntarily or unilaterally by all the Parties.

I therefore find that the Applicant acted under duress and undue influence in giving her consent.

This ground alone is sufficient to invalidate the consent agreement.

I also have to add that this being a family matter with children involved, extreme caution has to be exercised where the Parties who are being appointed to cater for the interests of the estate and the children involved are not in agreement and are unwilling to work together.

I have carefully perused the record of this court and it is evidence that the family of the deceased and the widow have concerns regarding administration of the estate.

The purpose of seeking consent of all family members in succession matters where the deceased died intestate is to ensure that the estate is properly administered and the since administrators are trustees of the estate, by giving consent the family members are placing their trust in the administrators to perform their duties diligently for the benefit of the deceased's estate.

The Administrator General under *Sections 5 of the Administrator General's Act* gives notice by certificate of no objection to the court for parties who have been duly consented to by the family members to be granted letters of administration.

In the instant case, a certificate of no objection was granted on the 22<sup>nd</sup> day of November, 2019 to Nakanyike Esther, Kasasa Ritah Nakaye and Namatovu Hadijah (the Applicant).

The Petition for letters of administration was made by Nakanyike Esther, Kasasa Ritah Nakaye and Namatovu Hadijah on the 16<sup>th</sup> day of January, 2020. A consent judgment was entered into on the 3<sup>rd</sup> September, 2020 to the effect that one Kasasa Moses would be added as Petitioner to substitute Kasasa Ritah Nakaye so as to harmonise the two Petitioners who are ladies and have misunderstandings which would affect administration of the estate.

A letter was filed in this court on the 4<sup>th</sup> day of March, 2021 by the Applicant's counsel requesting for the matter to be referred back to the Administrator General's office since the widow is contesting the issuance of letters of administration to Nakanyike Esther and Kasasa Moses.

As I have already noted, this is a sensitive family matter involving an estate and children whose best interests should be paramount. I find that the purpose of the certificate of no objection and consent given by family members has been rendered ineffective by the misunderstandings among the family members.

Also the whole purpose of obtaining a Certificate of No Objection to administer an intestate's estate on behalf of the Administrator General would be defeated by persons entering into consents and substituting those authorized by the Administrator General with those not authorized to administer in his behalf.

In the result, I find it prudent to refer the matter (Administrative Cause No. 005 of 2020) for the estate of the late Seruyange Isaac back to the Administrator General's office for the issuance of a fresh Certificate of No Objection following fresh family proceedings.

The proceedings should be conducted with the sole purpose of the proper management of the estate and meeting the interests of the beneficiaries.

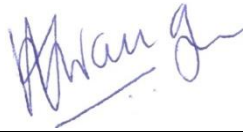
Court makes the following orders;

1. The certificate of no objection serial No. 27823 issued via Administrator-General's Cause No. 2377 of 2019 is hereby revoked.
2. The Administrator General shall issue a fresh Certificate of No Objection to a party or parties with authority to administer the estate of the late Isaac Sseruyange in the best interest of the beneficiaries;
3. No order is made as to costs.

I so order.

Dated at Masaka this 3rd day of December, 2021.

Signed; \_\_\_\_\_



**Victoria Nakintu Nkwanga Katamba**

**Judge**