

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 65 OF 2021

ARISING FROM ADMINISTRATION CAUSE NO. 10 OF 2021

NABUKENYA AISHA:..... APPLICANT

VERSUS

1. NALUBEGA JULIET
2. LUBEGA RONALD
3. NAKANWAGI ROSEMARY
4. SSUUNA GEORGE :..... RESPONDENTS

Before; Hon Justice Victoria Nakintu Nkwanga Katamba

RULING

This application was brought under Sections 82 and 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 46 Rules 1 (b) and Order 52 Rules 1 & 3 of the Civil procedure Rules for orders that;

1. The court be pleased to recall the grant for letters of administration vide Administration Cause No. 10 of 2021 issued 10th March 2021 for purposes of reviewing, altering or otherwise varying the same to include the name of the Applicant as Co-Administrator of the estate of the late Ssajalyabene Mukasa;
2. The court orders the Respondents to account for the monies removed from the bank accounts left by the deceased and also account for properties forming part of the estate which they have sold off to the applicant's detriment and her children;

3. The court be pleased to order the Respondents to restore the beneficial interest of the Applicant and her children in all properties of the estate sold off by the Respondents by way of monetary compensation;
4. The court orders the Respondents to cease any continued administration of the estate of the late Sadjalayabene of dealing in the estate to the exclusion of the Applicant and her children;
5. Costs of the application be provided for;

The grounds of the application as contained in the Applicant's affidavit are briefly that;

- a. The Applicant and the late Ssajalyabene begot 5 children during his life time who were all dependent on the deceased and are now in her custody;
- b. A consent was entered authorizing the Applicant and the Respondents to administer the estate of the late Ssajalyabene and the applicant was included on the certificate of no objection;
- c. The Applicant petitioned the court jointly with the Respondents for the grant of letters of administration and was subsequently identified as the petitioner;
- d. The Applicant's name was not included on the grant of letters of administration which is a mistake apparent on the face of the record;
- e. As a result of the error, the Respondents have excluded the Applicant from managing the estate and safeguarding her children's interests which is detrimental to herself and the children;
- f. It is in the interest of justice that the grant be recalled, reviewed, altered or otherwise varied;

In response, the 4th Respondent, Ssuuna George deposed an affidavit in reply in which he stated that the application was brought in bad faith and the allegations of managing the estate and dealing in the same are false. He further stated that the error of leaving the Applicant name off to rectify the same the grant was discovered upon receipt of the grant and a letter was written to court on the 29th day of March, 2021. The Respondents and the

Applicant were advised to manage the estate upon insertion of the Applicant's name on the grant.

Both Parties filed written submissions.

Counsel for the Applicant submitted that since the application arises from an administration cause with no decree and no appeal has been preferred from the same, the application is properly before court. Further that there is an error apparent on the face of the record since the Applicant's name was not included on the letters of administration which is sufficient reason for court to recall and review the grant of letters of administration.

Counsel for the Respondent prayed for the application to be dismissed on the grounds that the allegations raised in the application are false and that the applicant is on a fishing expedition.

Court's consideration;

Section 82 of the Civil Procedure Act establishes court's jurisdiction to review its own decrees or orders. It provides that:-

“Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred or by a decree or order from which no appeal is allowed by this Act, may appeal for review of the judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.”

Section 82 has been enlarged by **Order 46 rule 1 of the Civil Procedure Rules** which provides that:-

“Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter of evidence which after the exercise of due diligence was not within his or her knowledge or

could not be produced by him or her at the time when the decree was passed or order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him or her may apply for a review of the judgment to the court which passed the decree or made the order.”

The grounds for review are clearly provided for and were outlined in ***FX Mubuuke vs UEB High court Misc. Application No. 98 of 2005***;

1. That there is a mistake manifest or error apparent on the face of the record.
2. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant’s knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
3. That any other sufficient reason exists.

The Applicant’s main ground in the instant case is that there is a mistake or an error apparent on the face of the record.

An error apparent on the face of the record was defined in ***Batuk K. Vyas vs Surart Borough Municipality & Ors (1953) Bom 133*** that:

“No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it...”

The Applicant’s case is that she petitioned the court together with the Respondents for a grant of letters of administration upon being authorized by the family and receiving a certificate of no objection from the Administrator General. The Petitioners were identified by the court but the grant of letters of administration was issued without the Applicant’s name as one of the administrators.

The purpose of the grant for letters of administration is to ensure proper administration, management and distribution of a deceased person's estate with due regard and consideration of the beneficiaries' interests.

In the instant case, it is not disputed that the Applicant should have been one of the administrators of the estate of the late Ssajjalyabene and indeed the Respondents state in their affidavit that the error was realized and a letter was made to the court for rectification of the grant.

For an error to warrant the grant of the remedy of review, it must be so apparent on the face of the record and not require admission of evidence to prove the same.

In the case of *Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173* the court stated that;

“There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.”

I have carefully perused the record of the court and established that the Applicant Nabukenya Aisha was one of the authorized persons to obtain letters of administration of the estate of the late Ssajalyabene as per the certificate of no objection dated the 9th day of February, 2021.

I therefore find that it was an error and the grant should not have been issued to the Respondents with such an apparent error. The powers of administration have to be exercised jointly by the persons to whom the grant is made who should be the same persons authorized by the Administrator General to be granted such powers.

The Applicant further alleges that the Respondents have dealt in the estate without involving her, to her detriment and her children. This is not a ground for review and such an issue cannot be considered in an application for review.

The letters of administration were issued on the 10th day of March, 2021 and the Respondents claim to have observed the error and agreed to only manage the estate upon insertion of the Applicant's name on the grant. Any dealings by the Respondents in the estate using the erroneous grant would therefore amount to intermeddling in the estate. Nevertheless, the issue of management of the estate cannot be determined in an application for review as already stated and as such, the Applicant's prayer that the Respondents be ordered to pay the monetary value of the funds allegedly withdraw from the deceased's accounts cannot stand. The grounds can only be addressed in a suit for revocation of the grant.

In the result, the grant of letters of administration in Administration Cause No. 10 of 2021 issued on the 10th day of March, 2021 is hereby recalled for rectification. The Applicant's name shall be added to the grant as one of the administrators and a fresh grant shall be issued giving administrators authority to manage the estate of the late Sajjalyabene Mukasa to commence on the date of issuance of the fresh grant.

An inventory and account of the estate shall be filed within the court within six months from the date of the receipt of the grant.

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