

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 132 OF 2020

(ARISING FROM MSK-06-CV-AC-0092 OF 2000)

KIVUBUKA ARCHILEO ::APPLICANT

VERSUS

1. KYAGABA EDWARD
2. NALIKA ROSE
3. SSEMUGOOMA EMMANUEL :: RESPONDENTS

Before: Hon Lady Justice Victoria Nakintu Nkwanga Katamba

RULING

The Applicant Kivubuka Archileo, brought this application seeking orders that;

1. The Will dated 19th June, 1999 purportedly to have been made by the late Simoni Mulaki Musisi and was attached to the application/petition by the Respondents Administration Cause No. 0092 of 2000 be rescinded;
2. Costs of the application be provided for;

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

1. The Applicant is among the beneficiaries of the estate of the late Simon Mulaki Musisi and that the Will purported to have been written by the late does not reflect all the properties belonging to the deceased which were found after his death;
2. The Will does not reflect thirteen of the deceased’s children;

3. The Will does not bear the deceased's thumb mark and the signature reflected is not the true signature of the deceased;
4. The Applicant and other beneficiaries will lose irreparably if this application is not granted;
5. In his affidavit in reply, the 1st Respondent Kyagaba Edward stated that the Will being challenged was presented by the clan lineage elder a one Kasirye Anthony Martin and the late Hussein Musoke but the 1st Applicant did not know about the other properties belonging to the deceased. The 1st Applicant acknowledged that indeed the Will does not bear the deceased's thumb mark and that the Will does not reflect all the deceased's children.

The 1st Applicant further stated that after obtaining the grant, the other properties which were found were also reflected in the partial inventory which was filed in court. He further conceded that the beneficiaries will suffer irreparably if the application is not granted.

The 2nd and 3rd Applicants reiterated the same information as the 1st Applicant in their affidavits in reply.

In his submissions, the Applicant stated that the Respondents in their affidavits confirmed that the Applicant is among the beneficiaries to the estate of the late Simon Mulaki Musisi and that the Will does not reflect all the properties and children of the late; and as such it is evident that the Respondents concur with the Applicant that the Will dated June 19th 1999 was not made by the late Simon Mulaki Musisi wherefore it ought to be rescinded.

In their joint written submissions, the Respondents reiterated the contents of their affidavits and conceded that the application should be granted and the Will rescinded.

Determination of the Application;

The Applicant brought this application to challenge the validity of a Will which was subject to Administration Cause No. 92 of 2000 wherein the Respondents were granted the letters of administration for the estate of the late Musisi Mulaki Simoni.

The Applicant claims that the Will which was annexed to the Petition left out some of the deceased's children and properties.

The Respondents do not contest the Applicant's claims.

When a deceased does not include all of his or her property and children in the Will, Administrators have the duty and responsibility of securing and establishing all the deceased's property and have them included in an inventory which is then filed with the court which granted the letters of administration. The same can be done for the children if there are no issues relating to parentage.

In the instant application, it is clear that both the Applicant and the Respondents who are the administrators of the estate of the late Musisi do not contest that the Will left some children and property out. It is therefore the Administrators' responsibility to establish who the children and property are and have the estate distributed accordingly, and thereafter, return an inventory to the court to have the estate wound up and the administrators discharged of their duty.

Therefore, since both Parties agree as to the status of the estate it is prudent that the Administrators proceed and perform their duties to distribute the estate expeditiously considering that the letters of administration were granted in 2000.

Nevertheless, this application seeks to indirectly challenge the letters of administration which were duly granted by court. That is a contentious matter and the right procedure provided in the law has to be followed.

I am of the opinion that the Parties should proceed with the management and distribution of the estate in accordance with the letters of administration since they have never filed a final inventory and hence have never been discharged of their duties. They are in agreement that some children and property were left out in the Will presented. As administrators they are hereby ordered to include the properties and children excluded from the Will presented.

Alternatively, they may file a suit for revocation of the letters of administration granted by this court.

The parties being related and in agreement, no order is made as to costs.

I so order.

Dated at Masaka this 4th day of October, 2021.

Signed;

A handwritten signature in blue ink, appearing to read 'Victoria N.N. Katamba', written over a horizontal line.

VICTORIA N.N. KATAMBA.

Judge.