

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPEAL NO. 03 OF 2021
(ARISING FROM MISC. APPLICATION NO. 7 OF 2021)
(ALL ARISING FROM CIVIL SUIT NO. 45 OF 2020)**

- 1. MUGISA SOLOMON**
- 2. BARUNGI SUSAN ::: APPELLANT**
- 3. MUGISA STEVEN (Administrators of the estate of the late Kasigwa Kosia)**

VERSUS

BYARUHANGA JAMES MIDOMO::::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

Before: Hon. Justice Byaruhanga Jesse Rugyema

[1] This Appeal was brought under **Section 98 of the CPA Cap 71, Order 50 rule 8 and Order 52 rules 1 & 3 of the CPR SI 71-1** seeking orders that;

- 1. The ruling and orders of the Assistant Registrar in Misc. Application No. 7 of 2021 dismissing Misc. Application No. 7 of 2021 be discharged and or set aside.*
- 2. This court makes an order directing the Respondent to make available in court for distribution amongst all the beneficiaries estate money received from Kinyara Sugar Ltd in the sum of **Ushs. 24,641,154/=** collected by the Respondent from the estate account held with stanbic bank Masindi Branch number **9030011679098***
- 3. The piece of land located at Bulyango 2 Cell, Kibwona Ward, Karujubu division, Masindi Municipality, Masindi District*

measuring approximately 23.5 acres and a plot of land at Bulyango 2 trading center in Bulyango 2 cell, Kibwona Ward, Karujubu division, Masindi Municipality, Masindi District developed with a commercial house be distributed amongst 8 beneficiaries.

4. The Respondent renders a detailed, true and correct inventory of all proceeds from the estate to the beneficiaries and any deficit be set off from his share in the estate.

*5. The estate of the late **Kosia Kasigwa** be wound up.*

6. Provision be made for the costs of this application.

Facts of the Appeal

[2] The Appellants and the Respondent are children and beneficiaries of the estate of the late **Kasigwa Kosia**. The Appellants are Administrators of the deceased's estate having obtained Letters of Administration of the **19th October 2015** vide **H.C.A.C NO. 059 of 2015**. The Respondent filed a suit against the Appellants vide **H.C.C.S No. 45 of 2020** for mismanagement of the estate of the late **Kasigwa Kosia**. The Respondent further filed **Misc. Application No. 65 of 2020** seeking for order that the proceeds of a sugar cane harvest from the estate cane fields be deposited in court which application was granted. The parties entered into consent to resolve the dispute but contrary to what they consented upon, the Appellants filed **Misc. Application No. 7 of 2021**, for orders that the Respondent makes available in court a sum of **Ushs. 24,641,154/=** that was collected from the estate account No. 9030011679098 Stanbic Bank. The application was dismissed and the Appellants being dissatisfied with the

Registrar's decision, appealed against the ruling hence this appeal.

- [3] The grounds of this application briefly are;
1. That the Appellants are administrators of the estate of the late Kasigwa Kosia.
 2. That the Appellants have been frustrated by the Respondent in the administration of the estate by his incessant acts of intermeddling and pilferage of the estate resources.
 3. That the Respondent fraudulently and without the consent of administrators accessed estate sugarcane money in the sum of **Ushs. 24,641,154/=** from the estate account held with stanbic bank.
 4. That the respondent should deposit in court money received wrongfully from the estate account for distribution amongst the beneficiaries in accordance with the law.
 5. That the estate should be wound up by court.
 6. The respondent renders a detailed, true and correct inventory of all proceeds from the estate to the beneficiaries and any deficit be set off from his share in the estate.
 7. That the Appellants unsuccessfully applied before the registrar of court for orders for distribution of the estate and deposit of money which was irregularly received by the Respondent.

8. The Assistant registrar allowed the appellants application in part and erred when he awarded costs to the Respondent.
9. That it is fair and in the interest of justice to grant this application.

Counsel Representation

- [4] The Appellants were represented by **Mr. Kasangaki Simon of Kasangaki & Co. Advocates, Masindi** and the Respondent was represented by **Mr. Akugugizibwe Richard of Kabalega Advocates and Legal Consultant, Masindi**. Both counsel filed written submissions.

Duty of appellate court

- [5] This is an appeal under **O.50 r.8 CPR**, from the ruling and order of the learned Assistant Registrar of this court dated **21/04/2021**. The approach to be followed by a first appellate court is that it ought to subject the evidence adduced before the trial court to a fresh and exhaustive scrutiny so that it weighs the conflicting evidence and draws its own conclusion. In so doing the appellate court must make allowances for the fact that the trial court had the advantage of hearing and seeing the witnesses.
- UGACHICK POULTRY BREEDERS LTD VS TADJIN KARA
CIVIL APPEAL NO. 2 OF 1997.**

Submissions

- [6] Counsel for the Appellant argued that the estate has not been distributed because of frustrations to the administrators by the Respondent who ceaselessly intermeddles in the estate. That the respondent has prejudiced other beneficiaries and illegally withdrew proceeds from the estate account amounting to **Ushs. 24,641,154/=** which he converted for his own personal use. Counsel relied on the case of **Silver Wakayinja and 2 others versus Petwa Babirye (Administratrix of the estate of the late Silvester Wakayinja, HCSC No. 89 of 2014)**.
- [7] In reply counsel for the Respondent raised a preliminary objection and argued that **Misc. Application No. 7 of 2021** was filed before a forum without jurisdiction since it arose from **Civil Suit No. 45 of 2020** which had been concluded by a consent decree/judgment. **Order.50 r. 3 of the Civil Procedure Rules** provides for Registrar's jurisdiction and do not include power to entertain applications after judgment has been entered. Counsel referred to the case of ***Dairy Development Authority Vs Balikowa HCMA No. 202 of 2016***
- [8] Counsel further argued that **Misc. Application No. 7 of 2021** does not fall in any of the categories provided for under **Order. 50 r. 3 CPR** and therefore the proceedings were illegal and no substantive appeal could arise from such illegal proceedings. Counsel referred to the case of **Makula International Vs His Eminence Cardinal Nsubuga**.

Any decision made without jurisdiction is a nullity and must be set aside.

[9] I have carefully considered the above arguments and the objections to the appeal by the Respondent's Counsel. The crux of the objection is that the appeal is incompetent because **Misc. Application No. 7 of 2021** does not fall in any of the categories provided for under **Order.50 r.3 CPR**. That no appeal could arise from illegal proceedings since there was a consent judgment on record.

[10] In this case there is a consent judgment reached amicably that settled the main suit **H.C.C.S No. 45 of 2020**. A perusal of the record indicates that this matter is arising out of **Misc. Application No. 7 of 2021** which arose out of **civil suit No. 45 of 2020** that was concluded by consent of both parties. The contention here is whether the Assistant Registrar's decision of **21st April 2021** dismissing the application had merit.

[11] The Appellants were granted letters of Administration on the **19th day of October 2015** but never distributed the estate of the deceased to date. In 2020 the Respondent filed a suit against the Administrators and an application to have the money from the cane proceeds be deposited in court and court issued an order dated the **15th October 2020** for the money to be deposited in court. It is this order that led the Appellants to agree to settle the matter and a consent judgment was entered.

[12] I do agree with counsel for the Respondent that there was a judgment already on record and therefore the Assistant Registrar had no jurisdiction in the first place to entertain the **Misc. Application No. 7 of 2021** since there was no pending suit before court as the matter between the parties had been concluded by consent. Therefore **Misc. Application No. 7 of 2021** does not fall in categories of applications under **O. 50 r. 3 CPR** as there was no pending suit before this court. However it has been seven years since the Appellants obtained letters of Administration but they had neither distributed the estate nor filed an inventory in court. As a result, I find that they are responsible for the current dilemma regarding the distribution of the estate in question.

[13] I have considered the provisions of **Order 50 of the Civil Procedure Rules** which enumerates the Powers of Registrars.

O. 50 r.3 of the Civil Procedure Rules provides that:

“All formal steps preliminary to the trial and all interlocutory applications may be made and taken before the Registrar.”

[14] In this case there was however a judgment already on record and therefore there was no room for either preliminary steps or interlocutory applications for the registrar to entertain.

This provision is properly articulated in the case of **AG v. James Mark Kamoga CA. 8/2004** where the Court stated that:

“The Powers of Registrars are set out in O. 50 of the Civil Procedure Rules and enhanced in Practice Direction No.1 of 2002. It suffices to say that the former confers on the Registrar powers to enter judgment in uncontested cases and consent judgments, to deal with formal orders in executions of decrees and the later empowers the Registrar to handle matters governed by specific rules and orders of the Civil Procedure Rules; which do not include any rule of O.46. Clearly the Power to review Judgments or orders of the high Court, (including those entered by the Registrar) is not among the powers delegated to the Registrar. In the circumstances, the prohibition under rule 4 was not applicable since the Registrar who passed the decree was not empowered to review it.”

[15] The above case law clearly puts this matter to rest. The learned Registrar therefore had no powers to entertain any application arising from the concluded **Civil Suit No. 45 of 2020** save for execution of the consent order under the provisions of **Order 50 r.4 CPR**. The registrar nevertheless had found that there was no evidence that the Respondent was intermeddling with the estate. The Appellants were directed to comply with the consent and distribute the

estate in accordance with the consent and file a true and proper inventory. These orders would not surely prejudice any party including the beneficiaries for they would leave the Respondent accountable of all the proceeds that came his way by virtue of the consent on record vide **Civil Suit No. 45 of 2020**.

[16] As a result of the foregoing, I allow the preliminary objection. Orders of the Registrar are accordingly set aside but substituted with the following orders.

- a) The Respondent avails accountability for the estate money that came to his possession by virtue of the consent judgment vide **Civil Suit No. 45 of 2020** and render a detailed true and correct account/inventory of all proceeds from the estate to the beneficiaries within 14 days from the date of this order.
- b) The distribution of the estate of the late **Kasigwa Kosia** be accordingly effected by the Appellants/administrators of the estate in accordance with the laws of succession and the estate be finally wound up within a period of **1 month** from the date of this order.

Order accordingly

Dated at Masindi, this **31st** day of **August, 2022**.

Byaruhanga Jesse Rugyema
JUDGE