

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CV-CA-0003 OF 2001

POKI WILSON.....APPELLANT

VERSUS

ISALE JOHN MICHAEL.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The appellant brought the respondent to the Magistrate's court contesting the grant to the respondent of letters of administration to the estate of the late Opus Bisaleri. The Magistrate Grade 1 who heard the matter decided it in favour of the respondent, who was the defendant in that court. Hence this appeal.

The facts from which this appeal arises are rather simple. The evidence on record as accepted by the trial magistrate was that both the appellant and the respondent were relatives of the deceased. The deceased left a widow, the 1st one having died before the husband. The deceased did not produce any child from any of his wives.

Sometimes in his life, he brought in the respondent who was then a young boy to stay with him as his son. This was in agreement with the 'father' of the boy. The respondent grew up in deceased's home as a son, and was treated as such by all including the deceased. The respondent was educated by the deceased and when he was of marrying age, he paid the cows for that purpose. The deceased even gave him land for cultivation.

In return, the respondent grew up as a member of the Opus family. He got fully integrated into the family of the deceased. When the deceased's wife was ill, he had her treated at his expense. When the deceased was ill, he did likewise. He faithfully and at great expense looked after him for all of 6 years when he was seriously ill. When he died, the respondent met the funeral expenses. He continued looking after the remaining widow. He even reclaimed through payment

of a lot of money land which had been rented out to cover other funeral expenses. This land he handed over to the widow. The respondent was the one looking after the widow. He had stayed in that family for more than 30 years.

The appellant was a son of the deceased's brother. He left the area way back and was staying in Kapelabyong after he sold off all his land. In other words, he had no interest in the area. The evidence which was not disputed was that he never had any contact with his uncle and never assisted the family even after his death. He even never attended the burial of the uncle or his wife.

He only appeared in the area after he saw in the newspapers that the respondent had applied for letters of administration of the estate of the deceased, filed the suit out of which this appeal arises.

Four grounds of appeal were set out in the memorandum of appeal as follows;

1. The learned trial magistrate erred in law to grant letters of administration to the respondent having held that in regard to the consanguinity of the parties both lineal and collateral the appellant was nearest.
2. The learned trial magistrate's decision is insupportable having regard to the evidence and probabilities of the case.
3. The decision of the learned trial magistrate is full of misdirection and non-directions both in law and on the evidence.
4. Because the decision appealed against has occasioned a miscarriage of justice

At the hearing in this court, Mr. Natsomi represented the appellant while Mr. Magellan Olubwe represented the respondent. In regard to ground 1, it was argued that rule 9(1) (now rule 11) of the Estates (small Estates) (Probate and Administration) Rules 1972 provide for the order of priority for grant in case of intestacy.

Once the trial magistrate found that the appellant was the nearest in relative to the deceased, he ought to have made the grant to him, rather than the respondent, a more further off relative.

Rule 11 of the above cited rules is titled, 'Order of Priority in Case of Intestacy'. It provides in part as follows;

‘(1) The persons entitled to a grant of letters of administration shall be determined in accordance with the following order of priority-

- (a) The children of the deceased;
- (b) The surviving spouse;
- (c) The father or mother of the deceased;
- (d) Brothers or sisters of the whole blood, or the issue of any deceased brother or sister of the whole blood who had died during the lifetime of the deceased and any persons entitled by virtue of any enactment to be treated as if they were the children of the deceased; or
- (e) The issue of any such child of the deceased.

The evidence which was not displayed either side was that the appellant was a nephew of the deceased. There was also evidence on record from the widow that the appellant was a matter of fact, a son of the deceased. The widow told court that the deceased told her this in confidence before he died. This evidence was re echoed by another niece of the deceased Siprosa Apolot. The trial magistrate did not consider this evidence yet it was vital in this case.

There was other evidence which supported it. The evidence from virtually all the appellant's witnesses and those of the respondent was that the deceased brought the respondent was that the deceased brought the respondent into his home when he was a young boy of about the age of 12 years. This was after talking this over with his brother, the 'father'. The deceased treated the respondent as his true son. He educated him, gave him land and paid his dowry. While the respondent did not state this in court, and for obvious reasons, the only surviving widow to the deceased disclosed it to court. She was supported by a niece of the deceased. This could have supported by a niece of the deceased. This niece could have supported the appellant, her cousin brother but did not and that was telling.

I was satisfied that the trial magistrate did not err when he awarded the grant to the respondent instead of the appellant, since from the rule above cited, a son of the deceased ranks higher than a nephew. I would dismiss the 1st ground and uphold the decision of the trial court though for different reason.

The rest of the issues can all be dealt with together. They relate to the evaluation of the evidence. The only reason for the suit was that the appellant was more closely related to the deceased than

the respondent, and therefore ought to be appointed administrator of the estate of the late Opus. Apart from that, there was uncontroverted evidence that he was not resident in Ongino. He shifted to Kapelabyong a long time ago. He had not returned since. Even when his relatives fell sick or died, never bothered to come over.

He sold off all he had in Ongino. Even his return was, as was observed by the witnesses for the respondent, to sell off the land which the widow was occupying for the reasons that she did not produce a child with his uncle. He also intended to sell off the land which the deceased gave to the respondent for the respondent for the other reason that he was a close relative of the deceased. According to the respondent, there were no other assets in the estate. That would surely be squandering the estate, and putting the life and livelihood of the widow in jeopardy.

In **Lucy Monica Akulo v Michael Kiligia** Admin. Cause No. 10 of 1990, it was held as follows,

‘Letters of administration merely empower the grantee to collect all the properties of the deceased together and to pay debts and distribute the balance to those who are entitled to a share according to the law of succession. This provides good protection to the interest of those who are entitled to a share of the estate against dishonest grantees of letters of administration.’

That is a correct proposition of the law, and in the present case, it would only be proper to respect the wishes of the only surviving widow in order to protect her interest. She told court that the respondent was the one looking after her. He helped her recover their land using his money. He had been steadfast helpful and honest to the family.

The appellant on the other hand was interested in becoming the heir and administrator of the estate. He had virtually abandoned the family and only now was back. One could not but suspect his motives in view of his character while his uncle was living. He sold off all his land, moved far away, never came to visit or assist the uncle when the 1st wife was sick and had to be operated upon. Even when she died he did not come to the burial. He never bothered to assist the uncle himself when sick and even when he died.

It is difficult to believe that the appellant was well motivated. No wonder the widow was not only suspicious of him, but also worried that she might be thrown out of the estate, and left in the cold by his nephew of theirs, if he was to be granted letters of administration.

I found that the evidence weighed heavily against the appellant, and in favour of the respondent. The decision of the trial court was arrived at after properly evaluating the evidence. There were no misdirection and non-directions. I did not see any injustice occasioned by the decision to grant letters of administration to the respondent. There was no miscarriage of justice. I would dismiss the three grounds of appeal.

For the above reasons, the appeal is dismissed with costs.

RUGADYA ATWOKI

JUDGE

05/03/09

Court: The judgment shall be delivered by the D/Registrar of the court.

RUGADYA ATWOKI

JUDGE

05/03/09