

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPLA
{FAMILY DIVISION}
CIVIL SUIT NO. 104 OF 2013
ANNE ASIIMWE NDYOMUGYENYI TUMWESIGYE ::::::::::::::::::::PLAINTIFF
V
IMMACULATE ASIIMWE :::::::::::::::::::: DEFENDANT

BEFORE HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE

JUDGMENT

The Plaintiff was the wife/widow of the late Dr. Cillasy Ruy Tumwesigye who died on 30th June 2012 at Nairobi Hospital and was buried at his ancestral home at Kagando village Bugangari in Bushenyi District. Upon Dr Tumwesigye's death, his widow, Anne Asiimwe Tumwesigye, applied for Letters of Administration for his estate vide Admin Cause No. 536 of 2012. A caveat was lodged on Mrs Tumwesigye's Petition for Letters of Administration on grounds that the late Dr. Tumwesigye sired two children with the defendant - Immaculate Asiimwe

It was an agreed fact that on 30th of June 2012 Dr. Cillasy Ruy Tumwesigye died intestate at Nairobi Hospital.

The Plaintiff's evidence was that she first learnt of the Defendant's children when the defendant lodged a caveat against her application for letters of administration on the 1st of August 2012. In response, the Plaintiff filed Civil Suit No. 194 of 2012 to have the caveat lifted.

A settlement was arrived at (see annexure D), when it was proved by DNA sampling that the two children Adrian Musinguzi Tumwesigye (Approx 11.5years) and Alison Adrian Tumwesigye (Approx 8years) had indeed been sired by the late Dr Cillasy Ruy Tumwesigye. The two children were consequently included in an amended petition dated 18th April 2013.

On 8th May 2013 the Defendant caused another caveat to be lodged on the plaintiff's application for letters of Administration. Indeed, this suit was filed in response to the second caveat.

The Defendant's case was that the Plaintiff's Amended Petition was full of falsehoods. The alleged falsehoods included the claim that the Petition did not include the deceased's bank accounts and their bank balances to which the

defendant had been privy. It was further alleged by the Defendant that there was a medical refund expected from the ministry of health amounting to UGX 92,000,000/= which was deliberately not included in the Plaintiff's Petition for Letters of Administration. The Defendant contended that her application for the caveat was intended to help the Court and the Plaintiff avoid making decisions that would occasion an injustice to the two children of the Defendant. The Defendant further argued that since the Plaintiff had only accepted her children after her demand for a DNA test proved that they were the Deceased's children, she was not in a position to make objective decisions about the two children. The children were minors and the Defendant sued as next friend.

At the hearing, the parties agreed on two issues:

1. **Whether or not the Plaintiff should be granted letters of Administration alone or whether a relative should be added to co-administer the estate of the deceased.**
2. **Costs of the suit.**

Whether or not the Plaintiff should be granted letters of Administration alone or whether a relative should be added to co-administer the estate of the deceased: There appeared to be no contention that the Plaintiff Anne Asiimwe is the lawful widow of the late Dr. Cillasy Ruy Tumwesigye. Both Learned Counsel for the Plaintiff and the Defendant relied on Section 201 of the Succession Act CAP 62 which provides as follows:

When the deceased has died intestate those who are connected with the deceased either by marriage or consanguinity are entitled to obtain Letters of Administration of his or her estate...

Section 201 of the Succession Act makes the wife the most immediate next of kin to the deceased unless the contrary is proved. Section 27 of the Succession Act Cap 62 was equally relied on as were sections 22, 202 and 203 of the Succession Act Cap 62.

Summary of the evidence:

The Plaintiff Anne Asiimwe Tumwesigye testified that she was the lawful wife/widow of the late Dr. Cillasy Tumwesigye having been married to him on 4th November 1989. It was her further evidence that she did not know of any other marriage entered by the late Tumwesigye. Anne Tumwesigye added that as a result of the marriage three children were born between her and the late Dr. Cillasy Ruy Tumwesigye. The children were called: Amelia Ahebwa, 24,

Anthony Ayesigwa 23 and Andrew Grace Atulinda 17years of age. The plaintiff further testified that she learnt of the two children sired by the deceased when Ms Asiimwe lodged a Caveat on PW1's Application for Letters of Administration. The two children in issue were Adrian Musinguzi and Alison Adrina Tumwesigye. The Plaintiff further stated in her evidence that after it was confirmed by a DNA paternity test that the children belonged to her deceased husband she included them in an amended Petition but that did not prevent the Defendant lodging a caveat on it as well.

I noted that from her demeanour that consequent upon the death of her husband the plaintiff was shocked to learn that her husband's extra marital affairs were not only a reality but that he had sired two children and perhaps more, out of wedlock. Anne Tumwesigye further stated that a DNA paternity test was conducted which proved that indeed the children belonged to the late Dr. Cillasy Tumwesigye and therefore she included the children in an amended Application for letters of Administration.

Apart from her **viva voce** evidence, the plaintiff called one other witness, Fred Bwengye, a brother to the deceased.

PW2, Fred Bwengye, 62years was a peasant resident of Kanyamuhe Village, Kyabureere Parish, Bungangali Subcounty in Rukungiri District. He described the Plaintiff as his in-law (a.k.a mulamu) on account of having been the wife of his late brother Dr. Cillasy Tumwesigye. Fred Bwengye stated that his late brother left three children with the Plaintiff and there were two others. The other two were Adriana and Alison. He added that he got to know the two children when he underwent DNA paternity tests to prove their relation to his late brother fondly known as Cillasy. His evidence was that the DNA proved that the children belonged to their family line and thereby admitted the children into the family. When asked whether he had seen the children before the DNA Bwengye (PW2) answered that he never saw the children at the funeral of the late Doctor. When asked about the widow's ability to manage the estate, he emphatically stated thus;

"She has been managing and is very active. I have no doubt in my mind that she can manage an estate".

The Defence evidence is summarised hereunder:

The Defendant Immaculate Asiimwe is a Procurement Officer in the Office of the Prime Minister. Ms Asiimwe stated that she was a resident Kisaasi Zone Kisaasi, Kawempe. This Court noted that late Dr Cillasy Tumwesigye and his wife apparently lived in the same Kisaasi area in Kawempe Division. The widow still resides in that matrimonial home. Ms Asiimwe testified that she had an affair with the Late Dr. Tumwesigye and as a result she conceived and gave birth to two

children with him, namely: Adrian Tumusinguzi 11.5years and Alison 8 years. The children were in Primary 6 and 3 respectively at Kabojja Junior School in Kampala. The Defendant has sole custody of the children she bore and takes care of their daily needs. She further stated that before Tumwesigye's death, he paid the children's school fees and met their other needs. Regarding her sources of income she stated that she depended on her monthly salary and sometimes takes loans. While condescendingly pointing to the Plaintiff, the Defendant, who would not bring herself to call the Plaintiff by name (merely referred to the plaintiff as 'her'. The Defendant stated that before she lodged the caveat she called 'her' (pointing to the plaintiff) and informed 'her' on phone that she was the mother of two of Dr. Cillasy Tumwesigye's children. The Defendant further stated that the plaintiff switched off her phone and never talked to her (a fact that appeared to offend the defendant gravely). The Defendant added that a number of people tried to mediate between the two of them but the efforts had not been fruitful. The Defendant expressed surprise and was amazed that the paternity of her children was questioned before maintenance was even discussed. The Defendant further testified that one Paul Muhimbura who knew 'her' (the plaintiff) attempted to settle the issues and so did one Dr Joseph Turyabahika. She further stated that she (the defendant) advised and counselled that she (the plaintiff) must sit with objective people and discuss the issue of her children. The Defendant added that friends advised that the children be assimilated. The Defendant however stated that the talks failed.

Asiimwe further stated that during the burial, the widow blew hot and cold to prevent her and the children from accessing the burial ground. Ms Asiimwe however stated that despite the resistance she faced, she managed to attend the funeral service in Kampala and the burial in Rukungiri.

Talking rather confidently about his property the Defendant appeared to have extensive knowledge about the bank accounts the late Dr. Cillasy Tumwesigye held. According to DW1 the Deceased purportedly had shares in Nakasero Hospital. The Defence did not lead any evidence to prove this fact. To the contrary, the defence expected the Plaintiff to prove this allegation. The deceased was alleged to be entitled to a medical refund he expected from the Ministry of Public Service. The Defendant further claimed that she was aware of the sale of deceased Doctor's Optical Practice. The Defendant faulted the Plaintiff for not disclosing the Defendant's entire income and assets and stated that all these facts should have been included as part of the deceased's estate while petitioning for Letters of Administration.

In cross examination the Defendant, when asked whether she had introduced herself to any of the deceased's relatives stated inter alia that:

“I did not introduce myself to any of them.I travelled with my kids to Rukungiri. We went with my relatives and friends and went to the place. I did not introduce the children to their uncle Kalisti. The atmosphere was tense and so we were requested to leave. I have never contacted the children of the petitioner to know about their brothers.”

The Defendant stated in re-examination that her prayer was for the children to be catered for as regards their school fees, welfare and managing of their share of estate of the late Dr Cillasy Tumwesigye.

The Defendant’s fears were expressed in the following words,

“My children have a long way (to go, I presume).Supposing she mismanages the estate?”

The first issue for examination by this Court was **Whether or not the Plaintiff should be granted letters of Administration alone or whether a relative should be added to co-administer the estate of the deceased?** Both Counsel relied on the evidence of the witnesses in making their submissions. In particular learned Defence Counsel relied on the evidence given by PW1 and DW1 to state that PW1 was unfit to manage the property of the deceased without being aided by another.

Learned Defence Counsel relied on the case of **Ndabahweje Pauline v Babirye Rosemary and 2 Others Civil Appeal No. 95 of 2001** where it was held that the two step daughters of the Appellant, a widow, were also entitled to a share of the deceased’s property and can administer and should administer the estate with one of the Respondents representing the others.

Counsel for the Plaintiff on the other hand relied in **Re Kibiego 1972 EA 179.**

It was held in that case thus:

“ I am of the opinion that in today’s Kenya, in the absence of a valid reason such as grave unsuitability, a widow of whatever race living in the country, is entitled to apply to the court for the grant of letters of administration, more so when the children, as in the instant case, are minors. A widow is the most suitable person to obtain representation to her deceased husband’s estate. In the normal course of events she is the person who would rightfully, properly and honestly safeguard the assets of the estate for herself and her children. It would be going back to a mediaeval conception to cling to a tribal custom by refusing her a grant which is obviously unsuited to the progressive society of Kenya in this year of grace. A legal system ought to be able to march with the changing

conditions fitting itself into the aspirations of the people which it is supposed to safeguard and serve.”

I could not agree more with the judicial finding and I am persuaded by it. The above sentiments were re-echoed in **Florence Kemitungo v Yolamu Katuramu 1992-1993 HCB 155** where it was held that a widow is the most suitable person to obtain representation to her deceased husband’s estate as she is in the normal course of event the person who would rightly and properly and honestly safeguard for herself and the children. In the case of **Ngugira v Nansikombi 1980 HCB** it was held that in granting letters of Administration consideration of factors such as consanguinity, nature of interest, safety of estate and probability of proper administration have to be taken into consideration.

Having given careful consideration to the above submissions I find that the case of **Ndabahweje Pauline v Babirye Rose** (supra) is distinguishable both in fact and in law. The two respondents in the Ndabahweje case were direct beneficiaries to the estate of the deceased being his daughters. They were also of age and able to co-administer the estate. In this case I would like to agree with Counsel for the Plaintiff that the case of **Adong Susan and 2 Others v OtuccuRaymong Civil Suit No. 89 of 2002** is Applicable. A person not related to the deceased has no locus standi and a right to lodge a caveat forbidding the grant of letters of Administration to the person legally entitled to apply for them.

The plaintiff did adduce and rely on the evidence of her brother in law, one Fred Bwengye who testified that indeed the plaintiff was capable of administering her husband’s estate. Fred Bwengye further stated that a younger brother had tried to intermeddle in the estate of the late Dr Cillassy Tumwesigye. It would be a travesty of justice if this Court accepted the opinion of the Defence which suggest that the Plaintiff is an unfit fit person for reason that she happens to be a step mother to children whose existence she has just come to learn of and who she has to come to terms with. I was touched by the demeanour of the Plaintiff who appeared humble and grappling with the difficult circumstances her deceased husband had left her in and the impact on the husband’s estate..I find that the Plaintiff was truthful when she stated some of the property listed was property jointly acquired. I find that where property was jointly held between the Plaintiff and the deceased it must not form part of the deceased’s estate.

The late Dr. Cillasy Ruy Tumwesigye is said to have left land in different places, houses, a clinic, cars, and bank accounts. The property was listed as follows:

- ❖ Land: A Matrimonial Home in Rukungiri, Bugangali Kazindiro Kanyamuge and another home in Kisaasi Ddungu Zone, Kawempe Division.

- ❖ The late was said to have one Plot in Rukungiri Town.
- ❖ He had over five acres of land located three kilometres from Rukungiri Town
- ❖ There was one Plot of land in Gayaza Town, another Plot of land outside Gayaza Town, one Plot of land in Bukoto Trading Centre jointly owned on which was built a storied building and yet another Plot in Bukoto also jointly owned with old houses almost condemned
- ❖ Also included in the estate was one other plot still under purchase which the widow intended to pay off and plots of land in Kikaya Zone Kisaasi which she was in the process of purchasing. His place of occupation was Optical House on Luwum Street is located on rented premises.
- ❖ The plaintiff plainly stated that the above assets with the exception of the plots in Gayaza Trading Centre and the Plots in Rukungiri Town were jointly acquired and she often acquired loans from her bank to contribute to their purchase.

I agree with the evidence presented by the plaintiff that the couple jointly raised money to buy property. The plaintiff stated that she often obtained loans from her workplace to make her contribution. The Plaintiff identified the two plots in Bukoto as some of the property which was they jointly purchased.

I note with concern the vigilance and keen interest which the Defendant, who is a stranger with no locus standi, has taken in the estate of the deceased. The level of aggression and involvement exhibited by the Defendant is either as a result of ill-advice or mala fide on her part. While the Defendant makes so many demands and claims a lot of rights she does not come to Court with clean hands. She appears to be a go-getter out to scavenge on and benefit from the estate of the deceased. The Court frowns upon such behaviour.

I agree with Counsel for the plaintiff that it was suspicious that the Defendant was aware not only of the Bank Accounts but also of the bank balances on the deceased's bank accounts when his own wife, herself a banker, respected bank secrecy and did not illegally obtain such information. This once again demonstrates mala fide on the part of the defendant.

Regarding issue No. 1 given the totality of the circumstances of this case, the conduct of the defendants and the resilience of the Plaintiff I find that the Plaintiff Anne Asiimwe Ndyomugenyi Tumwesigye is the best placed person to manage the estate of the late Dr. Cillasy Tumwesigye.

Regarding the issue of Costs: I listened with care to the evidence for the Defence. It was a Defence I found to be callous, self-approving and lacking in

remorse. I was looking for the element of regret for the pain the Defendant and the late Dr. Cillassy Tumwesigye occasioned to the Plaintiff. I found no such remorse. Instead the Defendant appeared to enjoy causing more pain and suffering to this widow who had no part in the Defendant's fornication. I found the moral stance exhibited by the Defendant utterly disgusting and revolting. This Court is under a duty to protect individuals who have endeavoured to live lawfully. The Court is further under a duty to protect families. Endorsing the Defendant's wanton behaviour would amount to rubber stamping a life style that is frowned upon. While the children should enjoy the benefits that the Deceased had extended to them, the behaviour of Defendant should be condemned.

Consequently, in view of the amount of pain and suffering the Plaintiff has been occasioned at the instance of the Defendant I shall award her punitive damages of Fifty Million Uganda Shillings. In Addition she is entitled to General Damages of Fifteen Million Uganda Shillings.

Additionally the Defendant shall pay the Costs of this suit.

The above notwithstanding, the Law in this Country recognises not just a lawful marriages but ALL children born in and outside of the marriage. ALL children are children of the Law whether they are born in or out of wedlock. As a result, all children must be treated equally. In an intestate situation the distribution portions are well legislated. It is therefore the duty of the Administrator to ensure and effect a fair and equitable distribution of the estate of the late Dr. Cillassy Tumwesigye in order to make certain that each child gets what they are entitled to irrespective of whether they were born in or out of the marriage.

Consequently I allow this suit and order as follows:

1. The Caveat Lodged by the Defendant on the Plaintiff's Application for Letters of Administration be and is hereby removed, lifted and vacated with immediate effect.
2. As noted Above General Damages are allowed at Fifteen Million Uganda Shillings {UGX 15,000,000/=}
3. Punitive Damages of Fifty Million Uganda Shillings {UGX 50,000,000/=} are hereby awarded.
4. Interest in 2. and 3. above and shall be at Court Rate
5. A Permanent Injunction Doth issue against the Defendant and/or her agents to restrain them from interfering in and with the estate of Dr Cillasy Ruy Tumwesigye.

6. Plaintiff is Awarded Costs of this suit.

Catherine Bamugemereire
Judge
19th December 2014

19th Dec 2014

Eva Nabitaka holding brief for Francis Bwengye

Plaintiff in Court

Defendant in Court

Judgment Delivered in Open Court in the Presence of Counsel for the Plaintiff
and both Parties.

Catherine Bamugemereire

Judge

