

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

ORIGINATING SUMMONS NO. 09 OF 2014

WAMELI & CO ADVOCATES.....PLAINTIFF

VERSUS

**THE ADMINISTRATORS OF THE ESTATE OF THE LATE H.H SIR DAUDI CHWA
II.....DEFENDANTS**

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

JUDGEMENT

This suit was brought by way of Originating Summons (OS) under Order 37. rule 1(a), (c) & (e) of the Civil Procedure Rules (CPR) SI 71 - 1. The application, which is supported by sworn affidavits of the plaintiff Muniafu Mukembo dated 8th July 2014, and that of Prince Alexander David Ssimbwa, is for determination of the following questions:-

1. Whether the interest of Prince Alexander David Ssimbwa takes precedence over other interests in the estate of the late Sir Daudi Chwa II.
2. Whether the administrators of the estate of the late Sir Daudi Chwa II can be directed to distribute the said estate.

The OS was opposed by the defendants through the affidavit in reply sworn by Prince David Namugala in response to which the plaintiff filed an affidavit in rejoinder. The parties and their counsel had court to adjourn this matter on various occasions on request that they were negotiating the matter with a view to settling it amicably. This however did not yield any settlements. Consequently, court set deadlines within which to file written submissions. At the time of writing this judgement the plaintiff's counsel's submissions were on record, but the defendants' counsel was yet to file any written submissions and the deadline for doing so has

already passed. I nevertheless proceeded to write the judgement under Order under Order 17 rule 4 of the Civil Procedure Rules.

Question 1: Whether the interest of Prince Alexander David Ssimbwa takes precedence over other interests in the estate of the late Sir Daudi Chwa II?

The affidavits of plaintiff and of Prince Alexander Ssimbwa are to the effect that the plaintiff has, on behalf of Prince Alexander Ssimbwa in the firm of Wameli & Co Advocates, all along been having personal conduct of the affairs of the estate of the late Sir Daudi Chwa II. Prince Alexander Ssimbwa is the only surviving son to the late Sir Daudi Chwa II and is a first degree beneficiary in the estate of Sir Daudi Chwa II. That on 11th July 2012 Prince Alexander Ssimbwa entered into a remuneration agreement in favour of the plaintiff by way of consent judgement recorded by court on 11th July 2012 vide Miscellaneous Cause No. 13/2012 arising out of Administration Cause No 2505/2008. By the said consent judgement, he became entitled to 10% of the share claimed by Prince Alexander Ssimbwa in the estate of Sir Daudi Chwa II as full and final settlement of the plaintiff's claim in remuneration for the latter's provision of legal and technical assistance.

The affidavits also reveal that the letters of administration for the said estate were issued on 19th October 2011 to Prince Alexander Ssimbwa and 6 others who included grandchildren of the late Sir Daudi Chwa II. The estate remains undistributed to date. That Prince Alexander Ssimbwa was willing to settle the plaintiff's claim as stated in the consent judgement. The plaintiff avers that he believes there is no illegality, hardship and/or inconvenience to be caused when the administrators are directed to distribute the estate among the beneficiaries.

The foregoing evidence is confirmed by various annexures to the affidavits. These include a copy of the consent judgement in Miscellaneous Application 13/2012 signed by Prince Alexander David Ssimbwa and the plaintiff, annexed as **A** to Prince Alexander David Ssimbwa's affidavit; a copy of the letters of administration to the estate of the late Sir Daudi Chwa II issued in favour of Prince Alexander David Ssimbwa and 6 others in Administration Cause No 2505/2008 annexed as **B**; and annexure **C** to the same affidavit showing, among others, that the administrators have so far openly disclosed property described as Kyaggwe Block 113 Plot 9 at Nantabulirwa measuring approximately 377.5 and 71.6 hectares.

The record also contains a copy of a statutory durable power of attorney, annexure **A** to the plaintiff's affidavit stating, among other things, that Mr. Muniafu Mukembo is a true and lawful attorney to make claims in relation to the estate of the late Sir Daudi Chwa II; and annexure **B** which shows Prince Alexander Ssimbwa to be the biological son of Sir Daudi Chwa II. I refrained from addressing the annexures to the plaintiff's counsel's submissions since they appeared to be evidence adduced from the Bar.

The affidavit in reply of Prince David Namugala is to the effect that Prince Alexander Ssimbwa is dead; that the administrators are willing to distribute the estate but that the white pages to the various properties are missing, making it difficult to distribute the estate; and that as soon as they become available they will distribute it.

Thus, in essence, the defendants are not disputing the plaintiff's claim. The adduced evidence shows that Prince Alexander David Ssimbwa was a biological son of Sir Daudi Chwa II. Under section 20(2) of the Succession Act and its first schedule, this would make him the only surviving male first degree relative, at least by the time of filing the case, since Prince Ssimbwa is now deceased. The only other surviving first degree beneficiary is Princess Beatrice Muggale. The interest of Prince Alexander David Ssimbwa therefore falls among those that precede other interests as spelt out by the Succession Act.

Question 1 is answered in the affirmative.

Question 2: Whether the administrators of the estate of the late Sir Daudi Chwa II can be directed to distribute the said estate?

There is evidence that the plaintiff's claim is based on a consent judgement signed between the plaintiff and Prince Alexander David Ssimbwa. Prince Ssimbwa confirms the existence of the consent judgement in his affidavit where he averred that the plaintiff is entitled to 10% of his share of the estate of the late Sir Daudi Chwa II. There is also evidence from both sides that the estate has never been administered.

Section 278 requires an administrator of an estate to file an inventory of the estate he/she is administering within six months from the grant, or such further time as the court may appoint; and to exhibit an account of the estate within one year from the grant, or such further time as the

court may appoint. Section 279 of the same Act requires an administrator or executor to collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his/her at the time of his/her death.

In this case, the administrators of the estate were granted letters of administration vide Administration Cause No. 2505/2008, but to date the estate has never been administered. Prince Alexander David Ssimbwa, one of the six administrators who has since passed on, had, as evidenced in Annexure **A**, consented to the plaintiff's being entitled to 10% of the share claimed by him in the estate in the estate of Sir Daudi Chwa II. Section 286 of the Succession Act provides that debts of every description shall be paid before any legacy.

I agree with the plaintiff's counsel's submissions that the plaintiff's claim against Prince Alexander David Ssimbwa is a debt on the estate of Sir Daudi Chwa II pegged on the share of Prince Ssimbwa as a beneficiary of the estate.

Issue number ii) is answered in the affirmative.

Learned Counsel Steven Senkeezi, in his submissions, requested this court to also issue consequential orders under section 33 of the Judicature Act. It was not stated which orders I should issue. I note that he had earlier made a request by a letter dated 26/06/2015 addressed to the Registrar of this court, listing various orders which included directing the Registrar of Titles Mukono to issue certificates of title in the names of the deceased Sir Daudi Chwa II, and also in the names of the plaintiff in respect of properties located in Nantabulirwa, Kyaggwe. I declined to issue such orders since they were based on mere correspondence and the other side had not been heard on the same. I still hold this position since the plaintiff never raised them in the OS or the supporting affidavits, and the defendant's side consequently did not address them in their affidavit in reply. To expedite justice however, I can only invoke section 33 of the Judicature Act and section 98 of the Civil Procedure Act to state that the administration of this estate is long overdue. It should be expeditiously concluded, but the plaintiff's claim should take precedence since it is not disputed. It is unfortunate that all but one of the first degree relatives of the late Sir Daudi Chwa II have not lived to benefit from the administration of the estate yet the letters of administration were issued in 2011.

Thus, based on the adduced evidence and the applicable laws, the two questions in the OS are determined in the affirmative. It is accordingly declared and ordered as follows:-

1. The interest of Prince Alexander David Ssimbwa falls among those that take precedence over other interests in the estate of the late Sir Daudi Chwa II.
2. The administrators of the estate of the late Sir Daudi Chwa II are directed to distribute the said estate within one year from the date of this judgement, and the plaintiff's claim should be cleared within three months from the date of this judgement.
3. The costs of this suit are awarded to the plaintiff.

Dated at Kampala this 25th day of August 2015.

Percy Night Tuhaise.

Judge.