

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**FAMILY DIVISION**

**MISCELLANEOUS APPLICATIONS 127 & 207/2014**

**ARISING FROM CIVIL SUIT NO. 87/2012 & ADMINISTRATION CAUSE 480/1986**

**MARGARET M. NAMUGENZE MUKASA.....APPLICANT/PLAINTIFF**

**VERSUS**

**ELIZABETH N. NABETA.....RESPONDENT/DEFENDANT**

**BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE**

**JUDGEMENT/RULING**

These were two consolidated applications, namely Miscellaneous Application 127/2014 and Miscellaneous Application 207/2014, both arising from Civil Suit 87/2012 and Administration Cause 480/1986.

Miscellaneous Application 127/2014, filed by Margaret Mabel Namugenze Mukasa against Elizabeth Nanteza Nabeta, plaintiff and defendant respectively in Civil Suit 87/2012, is by Notice of Motion brought under section 82 of the Civil Procedure Act, section 33 of the Judicature Act and Order 46 of the Civil Procedure Rules for orders that:-

1. The consent decree entered into between the parties on 5/10/2012 be reviewed.
2. The letters of administration be revoked forthwith and new administrators be appointed by court for purposes of equitably distributing the estate and pursuing ongoing court cases involving the estate.
3. The respondent files final accounts detailing all dividends received from shares in Uganda Breweries, renting out land for erecting telecom masts, all properties sold, all leases renewed, all monies collected from premium and ground rent as well as proceeds collected from renting commercial

properties since she took over sole administration of the estate in the year 2000.

4. Provisions be made for costs of this application.

Miscellaneous Application 207/2014, filed by Elizabeth Nanteza Nabeta against Margaret Mabel Namugenze Mukasa is by Originating Summons (OS) brought under sections 82, 83 & 98 of the Civil Procedure Act, Order 37 rules 1 & 8 of the Civil Procedure Rules (CPR), and Order 52 rules 1 & 2 of the CPR. It seeks this court to determine the following questions:-

1. Whether or not the distribution of the estate attached to the respondent's application should be approved by this honourable court.
2. Whether the District Staff Surveyor Mukono District should be appointed to analyze the residue of the estate falling under Kyaggwe Block 193 and 350 in Mukono and provide a scheme for distribution of the leasehold and freehold zones of that part of the estate.
3. Whether the order by the Registrar dated 1<sup>st</sup> July 2014 recalling letters of administration to the estate of the late James H.S.B.K. Mukasa is lawful and fair and therefore whether it should be cancelled or vacated.
4. Whether the respondent should file final accounts of the administration of the estate.

The OS further prayed that upon the determination of the foregoing issues, the court makes orders for approval of the distribution, appointment of the proposed Surveyor, and that such directions be made for the beneficiaries to take out their shares of the estate as well as costs of the application.

The background to the two applications is that the plaintiff (Margaret Mabel Namugenze Mukasa) filed Civil Suit Civil Suit 87/2012 against the defendant (Elizabeth Nanteza Nabeta), the surviving administrator of the estate of the late James H.S.B.K Mukasa. On 5<sup>th</sup> October 2012, the parties entered into a consent judgement in settlement of the suit. The consent judgement required the defendant to file a revised inventory of all the estate properties of the estate of the late James H.S.B.K Mukasa within three months from 5<sup>th</sup> October 2012; to distribute the property within six months from 5<sup>th</sup> October 2012; to make a full

and final account and return the letters of administration to court by 31<sup>st</sup> December 2013, among others.

On 7<sup>th</sup> May 2013, the defendant lodged in this court a revised inventory of the properties of the estate of the deceased. On 8<sup>th</sup> July 2013 the presiding Judge requested the parties to continue working together to achieve final distribution of the estate to all beneficiaries. The meetings continued before the same Judge on various dates in November and December 2013. The plaintiff in the meantime filed MA 285/2013 on 2<sup>nd</sup> December 2013 seeking court to review the consent judgement, among other things. The defendant also filed MA 287/2013 on 6<sup>th</sup> December 2013 seeking court to review the consent judgement by extending the time within which to distribute the estate, among other things. On 10/12/13 the Judge requested all the beneficiaries to come to court and take their respective shares of the estate instead of arguing applications. The Judge eventually mandated the Deputy Registrar of this court to supervise the distribution of the estate.

On 28<sup>th</sup> May 2014, during the time the distribution of the estate was ongoing before the Deputy Registrar, the applicant filed Miscellaneous Application 127/2014 against the respondent/defendant. The defendant, in addition to filing an affidavit in reply to Miscellaneous Application 127/2014, also, on 19<sup>th</sup> November 2014, subsequently filed Miscellaneous Application 207/2014 against the applicant/plaintiff. The applicant/plaintiff filed affidavits in reply to the same.

When Miscellaneous Application 127/2014 came up for hearing before this court, I had it consolidated with Miscellaneous Application No. 207/2014 since the two applications arose from the same civil suit and administration cause. Counsel filed written submissions within time schedules set by this court. For ease of reference and disposing of the consolidated applications, counsel agreed before this court that the applicant in MA 127/2014 (respondent in OS 207/2014) was to be referred to as the applicant in the consolidated applications, while the respondent in MA 127/2014 (applicant in OS 207/2014) was to be referred to as the respondent.

The issues arising from the consolidated applications are:-

1. Whether the consent decree entered into between the parties on 5<sup>th</sup> October 2012 can be reviewed on the terms proposed by the applicant.
2. Whether the letters of administration issued to the respondent should be revoked and new administrators appointed to equitably distribute the estate.
3. Whether the distribution scheme of the estate of the late James H.S.B.K Mukasa attached to the OS in MA 207/2014 should be approved by this court.
4. Whether the District Staff Surveyor Mukono District should be appointed to analyze the residue of the estate falling under Kyaggwe Blocks 193 and 530 Mukono and provide a scheme of distribution of the leaseholds and freeholds zones of that part of the estate.
5. Whether the order of the Registrar dated 1<sup>st</sup> July 2014 recalling letters of administration to the estate of the late James H.S.B.K Mukasa is lawful and fair and therefore whether it should be cancelled or vacated.
6. Whether the respondent should be ordered to file final accounts pertaining to the distribution of the estate.
7. What remedies are available to the parties.

***Issue 1: Whether the consent judgement of 5<sup>th</sup> October 2012 should be reviewed in the terms proposed by the applicant.***

***Issue 2: Whether the letters of administration issued to the respondent should be revoked and new administrators appointed to equitably distribute the estate.***

Issues 1 and 2 will be addressed together since some of the matters concerning them to an extent, overlap.

The applicant's affidavit evidence is that the respondent has not been respecting the consent judgement of 5<sup>th</sup> October 2012. She avers that the respondent, who took over sole administration of the estate, has been transferring the estate properties into her names and selling some of them off. The respondent denies

this in her affidavits. She contends that the applicant has been frustrating her efforts to distribute the property falling under the estate.

The applicant's counsel submitted that the respondent's failing to honour the consent judgement calls for it to be reviewed. The respondent's counsel submitted in reply that the consent judgement cannot be reviewed except upon proof that it was obtained by fraud, collusion or agreement contrary to the policy of court. He cited **Attorney General & Uganda Land Commission V John Mark Kamoga SCCA No.8 of 2004** to support his position. The applicant's counsel submitted in rejoinder that the application is for review and not for setting aside of the consent order. He argued that the case cited by the respondent's counsel is only relevant to setting aside consent orders and has nothing to do with review of such orders.

Section 82 of the Civil Procedure Act cap 71 provides that any person considering himself or herself aggrieved by an order from which no appeal is allowed may apply for review to the court which passed the order. In **Attorney General & Uganda Land Commission V John Mark Kamoga SCCA No.8 of 2004** the Supreme Court held that a consent judgement has to be upheld unless it is vitiated by a reason that would enable court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy. See also **Peter Mulira V Mitchell Cotts CACA15/2012**.

The applicant's counsel's argument that the decision in **Attorney General & Uganda Land Commission V John Mark Kamoga SCCA No.8 of 2004** only refers to setting aside consent orders as opposed to review of such orders is, in my opinion, not correct. It is clear from the judgement that the Supreme Court referred to review and setting aside the consent judgement synonymously. It may be noted that the **Kamoga** case was indeed before court for review of a consent order for purposes of setting it aside. In my opinion a court order can be set aside in the course of reviewing it, and vice versa. In some cases it may be splitting hairs to separate one from the other. It is my considered opinion therefore that the decision in **Attorney General & Uganda Land Commission V John Mark Kamoga SCCA No.8 of 2004** permits a consent judgement to be set aside or reviewed for

reasons set out above. The reasons apply to setting aside as they do to review of consent orders.

In that regard, I agree with the respondent's counsel that the consent order can only be reviewed on terms spelt out in the law as was set out in the **Kamoga** case decision. In the instant application, the applicant has not shown this court that the consent judgement was obtained by fraud, mistake, misapprehension or contravention of court policy, or any other reason that would enable this court to review or set it aside. The applicant has attached various photocopies of documents to her affidavits which are not certified by the issuing authorities, contrary to the directives of this court. This court cannot safely rely on such documents to make decisions because they lack authenticity, especially so in applications of this nature where evidence is not subjected to cross examination of the parties to test its credibility.

Secondly, the averments in the applicant's affidavits point to the respondent's mismanagement of the estate and her disrespecting the consent judgement. This can be addressed by the respondent being made to show cause why she is not complying with the consent judgement, or seeking to revoke the letters of administration under section 234(1) & (2)e) of the Succession Act, that is, on grounds that she has without reasonable cause omitted to exhibit an inventory or account or has exhibited an untrue inventory or account. This is normally by filing an ordinary civil suit.

It is noted though that Civil Suit 87/2012 filed by the applicant/plaintiff against the respondent/defendant was seeking the letters of administration granted to the defendant to be revoked. This was however overtaken by events when the two parties settled the dispute by filing a consent judgement. Filing a civil suit to revoke the letters is different from challenging the validity of the consent judgement.

This brings me to the applicant's prayer to revoke the letters of administration issued to the respondent/defendant and to appoint new administrators to equitably distribute the estate. Short of pursuing this matter through a civil suit and thereby proving to court that there is just cause as is required under section

234 of the Succession Act, the other way to attain this, since the initial suit was settled through a consent between the parties, is through the parties revising their earlier agreement which formed the basis of the consent judgement, in consultation with the beneficiaries. This court has not even been advised on the names of the administrators to be appointed.

Issues 1 and 2 are therefore answered in the negative.

***Issue 3: Whether the distribution scheme of the estate of the late James H.S.B.K Mukasa attached to the OS in MA 207/2014 should be approved by this court.***

***Issue 4: Whether the District Staff Surveyor Mukono District should be appointed to analyze the residue of the estate falling under Kyaggwe Blocks 193 and 530 Mukono and provide a scheme of distribution of the leaseholds and freeholds zones of that part of the estate.***

***Issue 5: Whether the respondent should be ordered to file final accounts pertaining to the administration of the estate.***

Issues 3, 4 and 5 will be addressed together to avoid repetition of arguments since some of the aspects touching them are overlapping.

The affidavit evidence adduced from both parties reveals that the parties entered into a consent judgement on 5<sup>th</sup> October 2012 in settlement of Civil Suit No. 87/2012. The applicant avers in her affidavits that the respondent has, since she took over administration of the estate, been transferring properties into the names of her children, grand children and husband; selling off estate properties and leasing others to defeat the interests of the estate and in disregard of the consent judgement. The respondent's affidavit evidence is that the applicant frustrated the respondent's attempts to distribute the estate in accordance with the consent judgement; that the agreement was reviewed before the then presiding Judge on 6<sup>th</sup> February 2014 where the time for distribution was extended and the Registrar of the court was mandated to supervise the distribution. The respondent also denies having forged any document.

The record shows that the parties entered into a consent judgement on 5<sup>th</sup> October 2012 in settlement of Civil Suit No. 87/2012. The civil suit was filed by the applicant Margaret Mabel Namugenze Mukasa against the respondent Elizabeth Nanteza Nabeta. The respondent is stated to be the surviving administrator of the estate of the late James H.S.B.K Mukasa. The consent judgement required the defendant/respondent to file a revised inventory of all the estate properties within three months of signing the consent decree; to distribute the property within six months of signing the same consent; the beneficiaries to register their respective properties in their names; the money of the estate to be distributed equally among the beneficiaries subject to liabilities on the estate; and the respondent to make a full and final account and return the letters of administration to court by 31<sup>st</sup> December 2013.

Miscellaneous Application 285/2013 was apparently never heard on the merits as there is no record of proceedings to that effect on the record. Miscellaneous Application 287/2013 was also apparently never even served or handled and all the copies of the same are on court record.

The record however reveals that subsequent to the respondent's filing a revised inventory of the properties of the estate of the deceased, the then presiding Judge handled the matter on 8<sup>th</sup> July 2013; 25<sup>th</sup> November 2013; 10<sup>th</sup> December 2013; and 6<sup>th</sup> February 2014. The record shows he opted to preside over the supervision of the estate. The Judge's record of proceedings indicates that all parties and most beneficiaries attended court with respective counsel on most occasions. On 6<sup>th</sup> February 2014 the presiding Judge forwarded the file to the Deputy Registrar to continue the exercise of supervising the distribution of the estate. The Deputy Registrar's record of proceedings shows she handled the matter on 06/02/14; 13/02/14; 26/02/14; 07/03/14; 04/06/14. The record shows she issued two orders dated 6<sup>th</sup> February 2014 and 14<sup>th</sup> February 2014.

It is apparent from the record that no particular application was being heard or entertained by the Judge or, after that, the Deputy Registrar, in the course of their supervising the distribution of the estate. The hearing notices and records of proceedings indicate that the matter to be handled was Civil Suit 87/2012. In fact,



the record of proceedings of 10/12/2013 indicate the then presiding Judge as stating that, *“Instead of arguing applications all the time let all the beneficiaries come to court and take their respective shares of the estate, and we call it a day.”* Learned Counsel for both parties agreed with the Judge who eventually referred the matter to the Deputy Registrar to supervise the exercise of distributing the deceased person’s estate.

I am inclined to believe therefore, that MA 285/2013 was never heard or disposed of on the merits. It is thus not correct on the part of the respondent’s counsel to submit that the consent judgement was reviewed or that the supervision by the Judge and Registrar was review of the consent judgement within the meaning of section 82 of the Civil Procedure Act.

This takes me to the issue of distribution of the estate according to the proposed distribution scheme attached to the OS in MA 207/2014. The proceedings before the Deputy Registrar of this court reveal that the Deputy Registrar allowed the parties to discuss the distribution schedule/list and come out with a consent distribution schedule/list. The record does not reveal that the distribution of the estate was concluded. The matter was adjourned to 8<sup>th</sup> May 2014 for filing a consent distribution list. There is nothing on record to show that such consent distribution list was ever filed, or that the distribution scheme attached to the OS in MA 207/2014 was negotiated or agreed on with the applicant/plaintiff and the beneficiaries. The record instead shows that the parties continued to file applications amid the court supervised process of distributing the estate.

The record shows the parties’ last appearance before the Deputy Registrar to have been held on 4<sup>th</sup> June 2014. The respondent and her counsel did not attend court that day. The plaintiff/applicant and her counsel attended. The proceedings do not indicate that any progress was made. The record ends immediately after the recording of the parties as being in court. The Deputy Registrar did not sign at the end of the record as is the practice, which leaves speculation as to whether there is a missing record, or whether the proceedings just ended abruptly.

I would, in the circumstances, be hesitant to approve the distribution schedule attached to the Originating Summons. It is proposed by only the respondent’s side

without the participation of the applicant's side, and it goes against the spirit of the court supervised distribution of the estate where the apparent position was that the parties were to file a consent distribution schedule/list. There is nothing brought to the attention of this court to justify it to approve it the way it is proposed.

The parties' failure to file a consent distribution schedule/list infers that the matter was not concluded. Thus, in my opinion, the consent judgement of 5<sup>th</sup> October 2012, still stands valid and binding on the parties. Until it is set aside or reviewed, it should be abided by. Neither of the parties has given this court any satisfactory reason to set aside or review the consent judgement. Secondly, there is nothing on record to show that the parties formally withdrew from the court supervised distribution process before filing the now consolidated applications.

In that light I agree with the applicant, but only in principle, that the respondent/defendant should comply with the consent judgement by completing the distribution of the estate and filing a full and final account including returning the letters of administration. The deadline of 31<sup>st</sup> December 2013 within which she should have accomplished the administration of the estate including filing final accounts and returning letters has long expired by more than a year. The respondent did however file a revised inventory, albeit belatedly, outside the dates set out in the consent judgement. The inventory should, according to the consent judgement, have been filed by 5<sup>th</sup> January 2013, that is, within three months of signing the consent judgement.

It is my understanding though, that the presiding Judge's and Deputy Registrar's supervision of the distribution of the estate was being based on the revised inventory filed in court. This court's supervising the distribution of the estate based on the revised inventory, by implication, extended the deadline of the distribution of the estate. It is also my understanding, from the reading of the record, that the distribution schedules/lists arising from the revised inventory were required to have been discussed and agreed on and/or endorsed by all the parties and beneficiaries.

Thus, in my opinion, the distribution schedule of the estate of the late James H.S.B.K Mukasa attached to MA 207/2014, the appointment of the District Staff Surveyor Mukono District to analyze the residue of the estate Kyaggwe Blocks 193 and 530 Mukono and provide a scheme of distribution of the leaseholds and freeholds zones of that part of the estate, are matters that need to be negotiated and agreed on by all the parties and beneficiaries to the estate. This court can only endorse them after the same have been agreed on.

On the issue of filing final accounts, the record shows that this court embarked on supervising distribution of the estate subsequent to the defendant's belated filing a revised inventory. The given circumstances could, by implication, mean that the court extended the time within which to administer the estate. In such a situation, it may be premature to order for a final and full account before the estate is fully administered in line with the revised inventory and a yet to be agreed on distribution schedule/list. It is my opinion that the parties should have first concluded the consent distribution schedule/list of the estate before the Deputy Registrar and filed it instead of dashing to court with numerous applications. A final and full account would only be appropriate after the administration of the estate is completed within the spirit of the consent judgement which still stands.

Issues 3, 4 and 5 are therefore answered in the negative, save that final accounting can only be after completion of the administration of the estate on an agreed distribution schedule/list.

***Issue 6: Whether the order of the Registrar dated 1<sup>st</sup> July 2014 recalling letters of administration to the estate of the late James H.S.B.K Mukasa is lawful and fair and therefore whether it should be cancelled/vacated.***

The respondent's counsel argued that the Deputy Registrar was only directed to oversee the distribution of the estate and that her powers under the law do not include the power to recall, cancel, order for return of letters of administration. He submitted that the order was not only in excess of her authority but also an abuse of the powers assigned to her by the presiding Judge. He invited this court

to vacate the orders. The applicant's counsel submitted in reply that the order was in accordance with the terms of the consent judgement.

I have perused this file entirely, but I have, with respect, failed to locate the order of 1<sup>st</sup> July 2014 alluded to by both counsel. There are two orders issued by the Deputy Registrar in connection with this matter which I found on record. The first, issued on 6<sup>th</sup> February 2014, directed M/S Crane Bank and M/S Barclays Bank to avail court account statements of account numbers 0141088233100 and 0341125871 respectively since the opening of the said accounts to the date of the order. The second, issued on 14<sup>th</sup> February 2014, directed the defendant/respondent (administrator) to distribute a specific amount of money on the deceased's bank account among the beneficiaries, and another to the lawyers. I do not see any record of proceedings, or order, or any provision in the two orders, requiring the respondent to return letters of administration to this court. I will therefore not rule on this issue.

***Issue 7: What remedies are available to the parties.***

It is ironic that the consent judgement meant to save time and expenses of litigation and have the matter amicably solved outside court has instead given rise to more applications and litigation. I note that the parties are bent on filing application after application instead of working on implementation or execution of the consent judgement, or the court supervised distribution of the estate. This has not only led to multiplicity of proceedings but also tantamounts to abuse of court process by both sides.

I am of the opinion that the respondent should respect the consent judgement by administering the estate and filing final accounts to that effect, but subject to the parties concluding and filing the consent distribution schedule/list that was initiated before the Registrar of this court. Where she fails to do so, the remedy is not for the applicant to seek review of the consent judgement, but to challenge the respondent's non compliance which she can use as a basis to pray for revocation of the letters of administration under section 234(1) & (2)e) of the Succession Act, including filing full and final accounts.

All in all the consolidated applications are, for each side, allowed in part and in a modified manner. Within the spirit of section 33 of the Judicature Act and section 98 of the Civil Procedure Act, it is therefore ordered as follows:-

1. The parties should file in court a consent distribution schedule/list, including agreed time schedules, of the entire estate of the late James H.S.B.K Mukasa upon which the distribution of the estate should continue under the supervision of the Registrar of this court.
2. The respondent should, immediately after the distribution of the estate as will have been agreed on in 1 above, file a full and final account pertaining to the distribution of the estate, including returning the letters of administration as was initially required in the consent judgement in Civil Suit 87/2012.
3. Each party is to meet their own costs.

**Dated at Kampala** this 3<sup>rd</sup> day of February 2015.

Percy Night Tuhaise

**Judge.**