

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[FAMILY DIVISION]

CIVIL SUIT No. 36 OF 2005

MARY NAKAYIMA ::

PLAINTIFF

VERSUS

1. NAJJEMBA BIRABWA }
2. DAVID MUWANGA } :: **DEFENDANTS**
3. NAKIGANDA MARGARET }
4. MONDAY LUWEMBA }

BEFORE HON. MR. JUSTICE B. KAINAMURA

JUDGEMENT

The Plaintiffs brought this case against the defendants seeking orders for ;(a) an order of revocation of Letters of Administration which were granted to the defendants Vide Administration Cause No. 123 of 1994, (b) a grant of Letters of Administration of the deceased's estate to the plaintiff, (c) an order for a true and correct statement of the account and inventory of the deceased's estate, (d) an order to pay compensation for the loss and damage wilfully and negligently occasioned to the deceased's estate, (e) permanent injunction against the defendants restraining them from any further dealings in the estate and that the original land titles be surrendered to this court and given to her, (f) an order to surrender the said Letters of Administration and to file a true and correct statement of account of the estate of the deceased, (g) damages for mismanagement and intermeddling with the estate of the deceased (h) costs of the suit and interest thereon from the date of judgment until full payment.

The amended plaint sets out the facts constituting the cause of action as:-

In 1994 Ezekiel Mukasa died intestate leaving behind 15 children. The defendants applied for Letters of Administration which were granted to them vide Administration Cause No. 123 of 1994 on 2nd June 1994. However since the grant of Letters of Administration the defendants without reasonable cause omitted to file an inventory and true account of the deceased's estate. The defendants instead sold off the biggest part of the land that was in Nansana, Bwaise, and Bweyogerere and are now trying to sell off the land in Kawempe where the plaintiff, her sister and their late mother were left by the deceased as their home. The defendants have additionally since subdivided the land with the intent to share it amongst themselves and other beneficiaries and giving the plaintiff a very small part compared to what they sold and what they cannot account for. The defendants have all mismanaged the estate and put it to loss and damage and unless they are restrained from the estate of the deceased the said estate will go to waste to the detriment of the beneficiaries.

The defendants filed a written statement of defence where they stated that they have truly and honestly administered the estate. They stated further that the entire estate of the deceased was wholly distributed and there is nothing left for the plaintiff to administer in case she is granted the Letters of Administration. The defendants contended that a full statement of the account and inventory of the deceased's estate was furnished to court as required by the law. They added that the plaintiff has not suffered any damage or loss as the result of the defendants' actions and is therefore not entitled to any compensation by way of special or general damages or costs. The defendants further stated that all the certificates which were in their possession have already been surrendered to this court and therefore the issue of a permanent injunction against them does not arise. They also stated that they shall adduce evidence that the land at Kawempe that the plaintiff claims to be entitled to is part of the estate to be distributed by the defendants as the administrators. The defendants in conclusion averred that they shall show what that the plaintiff is claiming is too far in excess of every beneficiary's share of the estate of the deceased.

At the commencement of the trial the following issues were framed:-

- 1. Whether there is just cause for revocation of Letters of Administration of the Estate of the Late Ezekiel Mukasa granted to the defendants*

2. *Whether the Letters of Administration should be granted to the plaintiff*
3. *Whether or not the defendants should give a true and correct statement of the account and inventory of dealings with the deceased's estate*
4. *Whether the defendants should pay compensation for loss and damage wilfully and negligently occasioned to the estate*

At the trial, Mr. Semugera Ronald represented the plaintiff while the defendants were represented by Mr. Sebuliba Byrd.

The plaintiff called two witnesses; Nakayima Mary as PW1, Badru Kirumira as PW2. The defendants called four witnesses; James Monday Luwemba as DW1, David Muwanga as DW2, Justine Nakayima as DW3, Nakiganda Margaret as DW4.

Issue one - Whether there is just cause for revocation of Letters of Administration of the Estate of the Late Ezekiel Mukasa granted to the defendants

PW1 stated that their late father died on 15th January 1993 and the defendants were given Letters of Administration in 1994 but to the best of her knowledge they did not file an inventory within 6 months. In cross examination, she stated that she wants the grant cancelled and be granted to her. DW1 in cross examination admitted that he did not file an inventory within 6 months. DW2 in cross examination stated that they did file an inventory on some of the assets and did not agree that they had mismanaged the estate.

Counsel for the plaintiff submitted that S. 28 (1) of the Succession Act mandatorily requires an administrator of the estate to exhibit an inventory or account of the estate within six months from the date of grant as was echoed in ***Paulo Kavuma Vs Moses Sekajja & Anor HCCS No.473 of 1995***. He argued that the defendants in the instant case obtained letters of administration in 1994 but according to the evidence of the plaintiff the defendants did not file an inventory within six months from the date of grant. Counsel further submitted that the defendants had also, ten years since the grant, not distributed the estate yet the youngest child of the deceased was above 18 years. Counsel further stated that there is justification for revocation of Letters of Administration of the estate of the late Ezekiel Mukasa which were granted to the defendants.

Counsel for the defendants submitted that it is not in dispute that the law makes it mandatory for an administrator of the estate to exhibit an inventory within six months from the date of grant. Counsel added that the defendants did not comply with that requirement. He however stated that

the non filing of the inventory did not prejudice the beneficiaries in any way. Counsel submitted that the plaintiff should be the last person to seek the intervention of the court in the administration of the estate of her late father.

Issue two - Whether the Letters of Administration should be granted to the plaintiff

Counsel for the plaintiff submitted that the plaintiff is a daughter and beneficiary of the estate of the late Ezekiel Mukasa. Counsel added that the plaintiff is eligible to be granted Letters of Administration of her father's estate under the law. Counsel stated that the plaintiff out of all the children of the late Mukasa took responsibility to challenge the improper administration of the estate by the defendants while others seemed not to care. Counsel submitted that according to the plaintiff the defendants sold off land at Bweyogerere, Seeta, Nansana, Bwaise and what is remaining is land at Kawempe where the plaintiff resides. Counsel argued that the administrators should not be left to deal with the remaining properties and for this reason the plaintiff should be granted Letters of Administration to administer what has remained of her father's estate.

Counsel for the defendant submitted that it is not denied that the deceased had the properties stated to be in the areas of Bweyogerere, Seeta, Nansana, Bwaise and Kawempe. However, the estate was fully distributed and there is nothing left to administer save the ancestral home and burial grounds at Nansana. Counsel added that the plaintiff having participated directly or indirectly in the sale of the assets of the estate should not come to Court to seek a remedy against her accomplices. Counsel further submitted that the plaintiff is not the most suitable person to be granted the Letters of Administration in case the current ones are revoked.

Issue three - Whether or not the defendants should give a true and correct statement of the account and inventory of dealings with the deceased's estate

Counsel for the plaintiff submitted that it is the plaintiff's case that the estate of her late father was not properly managed by the defendants. Counsel added that according to the plaintiff, most properties were sold off without and before distribution. Counsel added that the defendants conceded that they indeed sold off several properties of the estate. Counsel submitted that however none of the defendants can tell precisely how much each property was sold and how the proceeds were used. Counsel submitted that the defendants are duty bound to account for the estate and simply not say we sold off this land.

Counsel for the defendants submitted that an exhaustive explanation/ accountability of how the deceased's estate was dealt with was made and subsequently rendered to all the beneficiaries who are all not complaining apart from the plaintiff. Counsel submitted that should court deem it necessary to have the accountability filed with it then the defendants will comply with such an order.

Issue four- Whether the defendants should pay compensation for loss and damage wilfully and negligently occasioned to the estate

Counsel for the plaintiff submitted that the administrators of the estate are trustees of the estate and not owners of the properties. Counsel added that this is why they have to give a true account of the assets and liabilities of the estate. Counsel stated that accordingly they are obliged to make good what they wasted wilfully or negligently. Counsel further submitted that the defendants should be stopped permanently from dealing or interfering with the estate in event administration of the same is granted to the plaintiff.

Counsel for the defendants submitted that the claim under this head is too general and vague. Counsel submitted that none of the beneficiaries except the plaintiff has complained about the manner in which the estate was managed and distributed. Counsel submitted that the estate has not in any way suffered any loss or damage as alleged by the plaintiff and therefore no orders should be made for the defendants to compensate it. Counsel prayed that the suit be dismissed with costs to the defendants.

DECISION OF COURT

Revocation of grant of Letters of Administration is provided for under **Section 234 of the Succession Act Cap 165 Laws of Uganda.**

Under the Section grant of Letters of Administration may be revoked or annulled for "just cause". Just cause is established if it is proved amongst others that the proceedings to obtain grant were defective in substance, that the grant was obtained fraudulently by making false suggestions or by concealing from court something material to the case, that the person to whom the grant was made willingly and without reasonable cause omitted to exhibit an inventory or

account in accordance with the Act or has exhibited an account which is untrue in a material respect (**see Francis Ddiba Ndugga Vs N Nansisokombo & othrs 1980 HCB 79**)

The evidence on record shows that the defendants were granted Letters of Administration in 1994 after the demise of their father Ezakiel Mukasa. The late Ezakiel Mukasa left a number of properties in Bweyogerere, Seeta, Nansana, Bwaise and Kawempe. According to the evidence of the plaintiff and the defendants, a number of properties were sold and it is only property in Nansana which constitutes the burial grounds and land in Kawempe on which the plaintiff resides that remained.

Furthermore, evidence was adduced to the effect that the defendants did not file an inventory yet most of the properties of the estate were already sold off by the administrators. The issues framed at the commencement of the trial have been set out above. I propose to address them concurrently since they revolve around the dissatisfaction of the plaintiff as a beneficiary about the administration of the estate. The prayers that arise therefrom are for an order of court for the defendants to file an inventory and revocation of the grant of the Letters of Administration as well as costs of the suit.

S. 278 (1) of the Succession Act provides:-

“An executor or administrator shall within six months from the grant of Probate or Letters of Administration or within such further time as the court which granted Probate or Letters may from time to time appoint exhibit in that court an inventory containing full and true estimate of all the property in possession and all credits and all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant or within such further time as the court may from time to time appoint, exhibit in account of the estate, showing the assets which have come to his or her hands and the manner in which they have been applied or disposed of”

S. 234 (1) provides that the grant of Probate or Letters of Administration may be revoked for just cause and “just cause” under **S. 234 (2) (e)** is that the person to whom the grant was made

has wilfully and without reasonable excuse omitted to exhibit an inventory or account in accordance with **Section 278 of the Act** or has exhibited under that section an inventory or account which is untrue in a material respect.

I am left in no doubt that the defendants failed in their obligations to account to this court as to the status of the estate of the late Ezakiel Mukasa. I have no hesitation therefore in finding that the defendants who were entrusted with the estate under the grant of this court breached the trust put in them.

I agree with Counsel for the plaintiff's submission that there ought to have been a more transparent accountability of how much each property was sold, what was distributed and what remained pending distribution.

That being the case, I order the defendants to render and exhibit to court and the plaintiff a true and update inventory and accountability of all the properties in the deceased estate. Filing of an inventory is a statutory requirement and since the defendants have administered the estate for twenty one years, they should file the inventory and account within three months of this judgement. I have allowed a three months period for the filing largely to allow time to the defendants to distribute the assets of the estate that are remaining.

However regarding the revocation and grant of letters to the plaintiff, it is denied for the reason that according to the evidence on record the defendants have disposed off most of the properties in the estate.

This will in my view render the new grant nugatory. I accordingly decline to grant of Letters of Administration to the plaintiff.

The plaintiff prayed for compensation and loss occasioned by the defendant's actions which I will not grant because she did not prove the loss and damage occasioned to the estate.

On costs the defendants will pay costs of this suit to the plaintiff for their failure to administer the estate in accordance with the law.

B. Kainamura

Judge

11.11.2015