

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS CAUSE NO 15/2015
ARISING FROM PROBATE CAUSE NO 770/1999

- 1. JOSEPH BUYE**
- 2. THOMAS SSEMAKULA**
- 3. RICHARD SSENABULYA**
- 4. KIREMA MUKASA.....APPLICANTS**

VERSUS

DR. SAMUEL SSENYANGE.....RESPONDENT

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by notice of motion brought under section 98 of the Civil Procedure Act and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that the probate in Probate and Administration Cause No 770/1999 be amended to remove the late Justine Busingye Mwanje and Dr. Samuel Ssenyange as executors; that the applicants be vested with authority to manage and administer the entire estate of the late Charles Mwanje; and that the applicants be permitted to liquidate and distribute the estate of the late Charles Mwanje.

The application is supported by the affidavit of Joseph Mary Buye the 1st applicant. It is based on the grounds that the applicants together with the respondent and the late Justine Busingye Mwanje were granted probate of the will of the late Charles Mwanje vide Probate and Administration Cause No. 770/1999 to manage his estate; that the respondent disappeared immediately after the grant was issued; that Justine Busingye Mwanje passed away in January 2014; that the respondent neglected his duties in relation to the administration; that the applicants filed an inventory of the estate of the properties; that the

beneficiaries of the estate are now of age and want the estate distributed among them in line with the distribution scheme prepared by the administrators which they have accepted.

The applicants' evidence is that they, together with the respondent, are the executors of the will of the late Charles Mwanje vide AC 770/1999. The respondent did not participate in the administering of the estate because he disappeared immediately after the grant was issued. The other administrators administered the estate including filing an inventory of the estate in this court. One of the administrators Busingye Justine has since passed on. The administrators have prepared a distribution scheme agreed on by all the beneficiaries and filed it in court but they cannot transfer the estate to the beneficiaries unless Justine Busingye, who is dead, and the respondent who cannot be traced, is removed from the grant.

The applicants annexed various documents to the 1st applicant's affidavit to support their case, including a copy of the will of the late Charles Mwanje; a copy of the grant in AC 770/1999; a copy of the death certificate of Justine Busingye; and copies of the inventory and the distribution scheme of the estate of the late Charles Mwanje.

Section 187 of the Succession Act provides that on the death of one of the executors, the entire representation of the estate accrues to the surviving executor or executors. Section 273 of the same Act states that upon the death of one or more of several executors or administrators all the powers of the office become vested in the survivor or survivors. Section 272 states that where there are many executors, their power may be executed by one of them. Thus, based on the said provisions of the law, it is my opinion that on the death of Justine Busingye, the administration of the estate of the late Charles Mwanje accrued to surviving executors.

Regarding the absence or non participation of the respondent in administering the estate of the late Charles Mwanje, the Succession Act is silent on executors who neglect their duties except when the negligence causes loss, in which case section 333 would be invoked. In this case the applicants have proved that the respondent did not participate in the administration of the estate. There is nothing to show that the respondent has ever renounced his duties as administrator of the estate of the late Charles Mwanje. Yet the circumstances of the case are that the beneficiaries of the estate and the other administrators want to finalize the

administration of the estate by transferring the estate to the rightful beneficiaries. They cannot do this while the names of the respondent and the deceased are still on the grant as administrators.

Section 98 of the Civil Procedure Act cap 71 empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In this case it is evident the applicants can only be able to transfer the estate to the respective beneficiaries if the names of the deceased administrator and the absent administrator are removed from the grant. They have done all that is required of them as administrators to conclude the administration of the estate but are hampered from transferring the same to the rightful beneficiaries due to the existence of names of administrators that cannot sign transfers due to death and absence.

In that respect I would invoke this court's inherent powers and direct that the probate in Probate and Administration Cause No 770/1999 be amended to remove the late Justine Busingye Mwanje and Dr. Samuel Ssenyange as executors; that the applicants be vested with authority to manage and administer the entire estate of the late Charles Mwanje; and that the applicants be permitted to liquidate and distribute the estate of the late Charles Mwanje.

It is so ordered.

Dated at Kampala this 14th day of December 2015.

Percy Night Tuhaise

Judge.