

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
CIVIL SUIT NO.44 OF 2010

- 1. NALUBEGA GLADYS**
 - 2. BRIAN SEKAMATE**
 - 3. BRENDA NABISENKE**
 - 4. DANIEL**
NSEREKO.....PL
- PLAINTIFFS**

VERSUS

- 1. SEBULUGUSE HENRY.....**
.....DEFENDANT

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

JUDGMENT

The plaintiffs brought this suit against the defendant for revocation and annulment of letters of administration, citation of letters of administration, a permanent injunction, general damages and costs of the suit. The 1st plaintiff is a widow of the late Tony Lutwama and mother of the 2nd, 3rd, and 4th plaintiffs. The plaintiffs' case is that the late Tony Lutwama died intestate on 24th October 1986. The 2nd plaintiff was appointed the customary heir of the late Tony Lutwama. On or about 20th April 2005 the defendant without any colour of right applied for letters of administration to the estate of the late Tony Lutwama in High Court Administration Cause No. 499 of 2005 which he was granted on 17th June 2005; that the defendant made fraudulent untrue allegations of fact that the late Tony Lutwama is survived by no wife and no children, and that he is a brother of the late Tony Lutwama. It is also the plaintiffs' case that the defendant fraudulently obtained the grant, and that he willfully and without reasonable cause omitted to exhibit an inventory or account of his fraudulent administration of the estate of the late Tony Lutwama.

The defendant filed a defence where he denied all the allegations. He contended that the land in issue comprised in Block 16 Kibuga Plot 259 at Rubaga originally belonged to the late Luuti Bwaagu Nsereko, the grandfather of the defendant. He asserted that the mother of the late Tony Lutwama, the late Gertrude Nsereko Babirye, purportedly obtained a certificate of succession in the names of Tony Lutwama with an intention of defrauding the defendant of the said suit land; and that the said certificate of succession was obtained in 1989 whereas the late Tony Lutwama died in 1986. He stated that the plaintiffs have never been in occupation of the suit land but that he and his siblings have been on the suit land from time immemorial. He denied all particulars of fraud alleged by the plaintiffs. He contended that the latter are trying to cling on the suit land which was never meant to be owned by the late Tony Lutwama.

When the matter was called for hearing, the defendant and his counsel were not in court. The previous Judge had granted leave to the plaintiffs' counsel to serve the defendant by substituted service. There is a sworn affidavit of service on the court record indicating that the hearing notice was served by substituted service. A copy of the "Saturday Vision" newspaper of 13/12/2014 was attached to the affidavit showing the advertised hearing notice on page 47. There is no explanation on the record as to why the defendant or his counsel did not attend court. The matter therefore proceeded *ex parte* on the application of the plaintiffs' counsel. The plaintiffs filed sworn witness statements and their counsel filed written submissions in accordance with time schedules given by this court.

The matter will be deliberated along the following issues:-

- i) Whether there exists just cause for the revocation and/or annulment of the grant of letters of administration of the late Tony Lutwama's estate to the defendant.
- ii) Remedies available to the plaintiffs.

Issue i: Whether there exists just cause for the revocation and/or annulment of the grant of letters of administration of the late Tony Lutwama's estate to the defendant.

Section 234 of the Succession Act Cap 162 provides that the grant of letters of administration shall be revoked for just cause. Just cause is defined to mean that

the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making a false suggestion or concealing from court something material to the case; the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant though the allegation was made in ignorance or inadvertently; the grant has become useless and inoperative through circumstances; or the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account under Part XXXIV of the Act, or has exhibited an inventory which is untrue in a material aspect.

The 1st plaintiff states in her sworn witness statement that she is the widow of the late Tony Lutwama and that the 2nd, 3rd and 4th plaintiffs are the children she bore with him. She stated that she gave testimony in Buganda Road Chief Magistrates Court Criminal Case No. 1176/2006 against the defendant as PW4 where the defendant was convicted of obtaining registration by the false pretence and intermeddling in the estate of the late Tony Lutwama. She stated that she knows the grant was obtained fraudulently.

This evidence is corroborated by other evidence in the sworn witness statements of the 2nd plaintiff who states that the defendant made untrue allegations in his petition for letters of administration vide AC 499/2005 that the late Lutwama did not leave any children, yet he left behind three children who are the 2nd, 3rd and 4th plaintiffs. The 2nd plaintiff also stated that the defendant's other untrue allegations were that the defendant is a brother of the late Tony Lutwama who was not survived by a widow. He stated that the defendant has already used the grant to the prejudice of the late Lutwama's estate by selling off property comprised in Kibuga Block 16 Plot 259 at Rubaga; that he made a complaint about the defendant's conduct upon which he was charged and convicted of obtaining registration by false pretence; that the defendant served his sentence and never appealed the conviction; and that he has never made a full and true inventory nor a true account of the properties of the estate of the late Tony Lutwama as he undertook in the bond. He annexed certified true copies of the certificate of title and sale agreement annexed to the witness statement as **C** and **D** to support statement.

The evidence is further corroborated by the 3rd and 4th plaintiffs who jointly stated in their sworn statement that they are the children of the late Tony Lutwama born

by the 1st plaintiff with the said deceased; that they know the grant to the defendant was obtained fraudulently by the defendant's concealing material facts of their existence from court.

The plaintiffs' sworn witness statements show that the defendant obtained the grant by making false statements that the late Tony Lutwama was not survived by a widow or children. Their evidence that they are children of the late Tony Lutwama is corroborated by copies of their respective birth certificates annexed to their sworn witness statements. Their evidence that the defendant made untrue allegations on basis of which he was granted letters of administration to the late Tony Lutwama's estate is corroborated by the certified true copies of the court documents in ***AC 499/2005 In the matter of the Estate of Tony Lutwama*** which confirm that the defendant actually made the allegations or statements. The falsehood in the defendant's statements to court is brought out by the annexed birth certificates which show that the 2nd 3rd and 4th plaintiffs' father is the late Tony Lutwama while their mother is the 1st plaintiff.

On the plaintiffs' allegation that the defendant has never filed a true inventory and account in respect of the late Tony Lutwama, the court record of ***AC 499/2005 In the matter of the Estate of Tony Lutwama*** from which the instant suit arose is attached to this file. I perused it and found nothing to show that the defendant has ever filed such true inventory or true account of the properties of the estate. This is in breach of the Administration Bond he signed, since it bound him to administer the estate according to the law by filing true inventories and accounts pertaining to the estate, in respect of which he was granted the letters of administration.

Besides, the evidence on record has not been challenged or rebutted by the defendant. It was held in ***Massa V Achen [1978] HCB 279*** that an averment on oath which is neither denied nor rebutted is admitted as the true fact.

It is not in dispute therefore that the defendant obtained the grant by making a false suggestion that the late Tony Lutwama did not leave any widow or children. There is also evidence that the defendant has filed neither a full and true inventory nor a true account of the properties of the estate of the late Tony Lutwama as he undertook in the bond. In that regard, on the adduced evidence and authorities, it is my finding that there exists just cause for the revocation and/or annulment of the

grant of letters of administration of the late Tony Lutwama's estate to the defendant. Issue (i) is therefore answered in the affirmative.

Issue ii: Remedies available to the parties.

The plaintiffs have proved their case against the defendant that the defendant obtained the grant of letters of administration in respect of the estate of the late Tony Lutwama by making a false suggestion that the late Tony Lutwama did not leave any widow or children; and that the defendant has never filed an inventory or account of the estate despite holding the letters of administration.

Section 234 of the Succession Act provides that the grant of letters of administration shall be revoked for just cause, which is stated to include, among other things, that the grant was obtained fraudulently by making a false suggestion or concealing from court something material to the case; the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant though the allegation was made in ignorance or inadvertently; or the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account under Part XXXIV of the Act, or has exhibited an inventory which is untrue in a material aspect.

On that basis alone I would revoke the letters of administration granted to the defendant in respect of the estate of the late Tony Lutwama.

I do not however agree with learned counsel's submissions that the proceedings to obtain the grant were defective merely because they were based on the defendant's lies. There is no evidence that the process of granting the grant was flawed with irregularities or that due process was not observed by court. The lies told to court by the defendant should in my opinion not be visited on the court where due process of the law was observed and where court had no means or opportunity to detect the defendant's fraud.

On the plaintiffs' prayer for general damages, there is evidence that the defendant has already used the grant to the prejudice of the late Lutwama's estate by selling off property comprised in Kibuga Block 16 Plot 259 at Rubaga. Annexure **A** to the 2nd plaintiff's sworn witness statement shows that the defendant was granted letters of administration to the estate of the late Tony Lutwama on 17th June 2005. A

certified true copy of the certificate of title to property comprised in Kibuga Block 16 Plot 259 on the record shows that the defendant's name was registered on the same title on 04/07/2006 as administrator of the estate of the late Tony Lutwama, Administration Cause No. AC 499 vide Instrument No.KLA299748 at 2.10 pm. The same document shows the same land was transferred to a one Betty Kyomuhendo on the same date at 2.12 pm vide Instrument No.KLA299748. Annexure **D** to the 2nd plaintiff's statement shows that the defendant sold off the land to Betty Kyomuhendo vide a sale agreement executed between the two on 26th May 2006.

It is trite law that damages are the direct probable consequence of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. General damages must be pleaded and proved (**Moses Kizige V Muzakawo Batolewo [1981] HCB 66**). In **Assist (U) Ltd V Italian Asphalt & Haulage & Another HCCS 1291/1999, unreported**, inconvenience was held to be a form of damage. In this case, it is my opinion that the defendant's using the fraudulently obtained grant to sell off the property forming part of the estate of the late Tony Lutwama prejudiced that estate as well as the beneficiaries to the estate. This is registered land located in a prime area in Kampala. This would entitle the plaintiffs to general damages as beneficiaries to the estate. I would in the circumstances award general damages in the sum of twenty million Uganda Shillings (20,000,000/=).

All in all, I find that the plaintiffs are entitled to the orders sought against the defendant.

I therefore enter judgment for the plaintiffs against the defendant for:-

- a) A declaration that the defendant obtained the grant by intentional deliberate untrue false allegations and concealing from court material information.
- b) An order revoking and/or annulling the letters of administration to the estate of the late Tony Lutwama granted to the defendant by this court on 17th June 2005 vide **AC 499/2005 In the Matter of the Estate Of Tony Lutwama**.

- c) A citation against the defendant directing him to surrender and deliver to the court the letters of administration granted to him by this court on 17th June 2005 vide *AC 499/2005 In the Matter of the Estate Of Tony Lutwama*.
- d) An order directing the defendant to make a just and true inventory or account of all and singular the personal effects and property of the late Tony Lutwama.
- e) A declaration that the defendant is in breach of the Administration Bond to the High Court of Uganda and in default of the same Bond that bound him to administer the estate according to the law.
- f) A permanent injunction restraining the defendant from any further dealing in the estate of the late Tony Lutwama.
- g) General damages in the sum of U. Shs.20,000,000/=
- h) Costs of the suit.

I so order.

Dated at Kampala this 4th day of March 2015.

Percy Night Tuhaise

Judge.