

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**CIVIL SUIT NO. 52 OF 2012**

**1. PIARASINGH**  
**2. HAVINDER SINGH JHASS.....PLAINTIFFS**

**VERSUS**

**SUKHVEER KAUR (Administrator of the estate of the late TARLOCHAN SINGH JHASS.....DEFENDANT**

**BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE**

**JUDGMENT**

The plaintiffs brought this suit against the defendant for a declaration that the defendant fraudulently obtained letters of administration in respect of the estate of the late Tarlochan Singh Jhass; an order for revocation of letters of administration issued to the defendant vide Administration Cause No. 51/2012; an order that the defendant files a detailed inventory over the deceased's estate; an order that letters of administration of the estate of the late Tarlochan Singh Jhass be granted to the plaintiffs; an order distributing the deceased's properties among the beneficiaries; an order for a true and correct statement of account dealings with the estate of the late Tarlochan Singh Jhass; an order for the delivery to the plaintiffs the duplicate certificates of title for all the properties constituting the estate; an order of permanent injunction restraining the defendant from undertaking any further dealings with the estate of the late Tarlochan Singh Jhass; an order to pay compensation for the loss and damage willfully and negligently occasioned to the estate of the late Tarlochan Singh Jhass; general damages; costs of the suit; and interest.

The plaintiffs' case is that the late Tarlochan Singh Jhass (deceased), who was a son to the 1<sup>st</sup> plaintiff and brother to the 2<sup>nd</sup> plaintiff, died intestate on 20/11/2011, leaving behind a large number of properties and dependants/beneficiaries. It is the plaintiffs' case that the deceased was, at the time of his death, married to Mrs. Balwinder Kaur Jhass and not to the defendant; that on 18/01/2012 the defendant applied for letters of administration purportedly as a widow and sole beneficiary of the estate of the late Tarlochan Singh Jhass without the knowledge and or consent of the deceased's family members; that on 17/02/2012 the High Court granted the defendant letters of administration vide Administration Cause No 51/2012; that the defendant has psychologically tormented, neglected and starved the ailing and aging parents of the deceased

with verbal threats to evict them from their son's apartment which they occupy saying that they should go back to India and let her enjoy her home; that the defendant has been intimidating the plaintiffs and other beneficiaries of the estate; and that she has confiscated certificates of title to various properties with the aim of depriving them of their legitimate share in the estate. The plaintiffs contend that the defendant falsely and fraudulently obtained letters of administration the estate of the late Tarlochan Singh Jhass.

The defendant pleaded in her defence that she is the lawful widow to the deceased; that she lawfully and without fraud obtained letters of administration to the estate of the late Tarlochan Singh Jhass as his lawful widow; that at no material time did she fraudulently obtain letters of administration in respect of the estate of the late Tarlochan Singh Jhass; that it was her genuine belief that she was lawfully married to Tarlochan Singh Jhass; that she married Tarlochan Singh Jhass through Indian and Hindu ceremonies in India in the presence and participation of the plaintiffs and their whole family on 06/08/2008; that the plaintiffs or other persons did not object to the marriage but accepted her as a wife to the deceased; that they also firmly and convincingly assured her of no legal impediment to the marriage; that by their conduct and treatment they led the plaintiff to believe that a legal and proper marriage had been conducted which stops them from claiming or asserting otherwise; that the defendant and the deceased lived alone together as husband and wife; and that no loss, wastage or damage has been occasioned to the estate and that the plaintiffs' acts or other conduct is misconceived and a threat to the estate. The defendant contends that the plaintiffs are not entitled to the prayers made in the plaint and prays this court to dismiss their suit with costs.

The plaintiffs were represented by learned counsel Joel Olweny. The defendant was represented by learned counsel Sam Bitangaro.

The facts agreed on in the joint scheduling memorandum signed by both counsel were that:-

- On 20/11/2011 Mr. Tarlochan Singh Jhass died intestate leaving behind both movable and immovable properties.
- The defendant in her capacity as widow petitioned the High Court for letters of administration and was granted the same on 17/02/2012.
- In May 2012, the plaintiffs filed civil suit no. 52/2012 challenging the grant of letters of administration.

Counsel for both sides agreed on three issues which were set out in the joint scheduling memorandum. The fourth issue was framed by court in the course of writing the judgement. The matter was therefore deliberated on along the following issues:-

- i) Whether the defendant's marriage to Tarlochan Singh Jhass was valid.
- ii) Whether the grant of letters of administration was proper.
- iii) Whether the defendant is the sole beneficiary to the estate of Tarlochan Singh Jhass.

iv) What remedies are available to the parties.

***Issue i: Whether the defendant's marriage to Tarlochan Singh Jhass was valid.***

Section 2(w) of the Succession Act defines a wife as a person who at the time of the intestate's death was validly married to the deceased according to the laws of Uganda; or married to the deceased in another country by a marriage recognized as valid by any foreign law under which the marriage was celebrated.

PW1 Harvinder Singh Jhass (2<sup>nd</sup> plaintiff) stated in his sworn witness statement that Tarlochan Singh Jhass, who was his brother, had married Baulwinder Kaur on 08/03/1987 before his demise; that he was present when the deceased married Baulwinder Kaur in India; that the two separated after some marital disagreements; that the deceased later married Sukhveer Kaur (defendant) in 2008, with whom they lived with for about three years before he died. He stated under cross examination that he was present when the deceased married Baulwinder Kaur under Sikh religion in India; and that he saw the marriage certificate to the marriage. PW1 stated during cross examination that Baulwinder Kaur was still alive.

PW2 Kirpil Singh Bandal, Chairman of the Sikh community in Uganda, stated during cross examination that when a Sikh marriage is conducted they give a marriage certificate; that he was a friend of the deceased; and that he knew Baulwinder Kaur. He stated however that he did not see the marriage certificate. In re examination, he stated that he did not know about the deceased's marriage with Baulwinder Kaur but he knew about it and had seen pictures of it.

It is the plaintiffs' evidence that Baulwinder Kaur was still alive. She was listed in the plaint as a widow to the late Tarlochan Singh Jhass. However, she was not called as a witness, nor was the priest who conducted the marriage under the Sikh religion in India. PW2 Kirpil Singh Bandal the Chairman of the Sikh community in Uganda stated during cross examination that he knew about the marriage and had seen pictures of it. The plaintiffs annexed a photocopy of the marriage certificate regarding the marriage between Baulwinder Kaur and Tarlochan Singh Jhass (deceased) as annexure **B** to the plaint. They also listed it as document no. 2 in the plaintiffs' list of documents in the joint scheduling memorandum signed by counsel to both sides. It was neither produced nor marked by this court for identification, nor was it tendered or admitted in evidence as an exhibit. The pictures of the marriage ceremony between the deceased and Baulwinder Kaur referred to by PW2 were also not tendered in evidence as exhibits.

Learned Counsel for the plaintiffs stated in his submissions that a copy of the marriage certificate was exhibited as **P2**. With due respect, this statement is not correct. The record of proceedings and the entire court record clearly show that, other than listing it in their list of documents in the joint scheduling memorandum and annexing a photocopy of the same to the plaint, the plaintiffs never tendered the marriage certificate to court for purposes of it being admitted in evidence, let alone it being given an exhibit number. After the hearing and filing of submissions the plaintiffs' lawyers submitted to court, under cover of letter which was not copied to the other counsel, a

document they referred to as a marriage certificate in respect of the marriage between Baulwinder Kaur and Tarlochan Singh Jhass (deceased). The photocopy of the document was annexed to the pleadings, but it was not tendered in evidence. It was consequently not cross examined on by the opposite counsel.

The purpose of exhibiting documents is for them to be formally admitted on the court record as evidence. In this case where the document was not exhibited it does not form part of the court record. For those reasons, I did not rely on the document since it was neither tendered in evidence in the course of the trial nor was it part of the authentic evidence on court record.

Section 101(1) of the Evidence Act provides that whoever desires court to give judgment to any legal right or liability depending on the existence of facts he/she asserts must prove that those facts exist. Section 101(2) of the same Act provides that the burden of proof lies on that person who is bound to prove the existence of any fact.

In the given circumstances, on the balance of probabilities, based on the evidence that was adduced during the trial, It is my finding that the plaintiffs have not discharged their burden of proving that Baulwinder Kaur and Tarlochan Singh Jhass (deceased) were legally married under the Sikh laws in India.

Regarding the defendant, she stated in her sworn witness statement that she married the deceased in India on 6<sup>th</sup> August 2008 under the Sikh religion upon fulfillment of cultural rituals, after which they moved and resided in Uganda. The defendant's counsel submitted that the defendant's marriage certificate was tendered in evidence as exhibit **D1**. With respect, no such exhibiting was done by this court. It was only listed as document number 2 in the joint scheduling memorandum sworn by counsel for both sides. It was also mentioned as an attached document to the defendant's sworn witness statement as annexure **SB1**. The document was therefore, as was the case for the plaintiff, never tendered in evidence during the trial as to form part of the evidence adduced during the trial.

However, unlike in the plaintiffs' case, a copy of the defendant's marriage certificate already formed part of the record in **Administration Cause No. 51/2012: The Estate of Tarlochan Singh Jhass** from which this suit arose. The said Administration Cause shows that the defendant petitioned for, and was granted letters of administration as a widow in respect of the estate of Tarlochan Singh Jhass (deceased). It is indicated at the back of the copy of the grant on the record that the original marriage certificate was taken out on 23/02/2012 by Anne Karungi of M/S Bitangaro & Co Advocates. The photocopy of the marriage certificate that remained on the court record states that a marriage ceremony of Tarlochan Singh Jhass was solemnized with Sukhveer Kaur on 06/08/2008 according to holy rites at V. Boparai Kalan Distt. The certificate was signed by a Pritpal Singh.

The definition of a wife under section 2(w) of the Succession Act, as stated above, includes a person married to the deceased in another country by a marriage recognized as valid by any

foreign law under which the marriage was celebrated. In this case where the defendant never tendered the marriage certificate as an exhibit during the trial, but where, nonetheless the court record shows that her marriage certificate had earlier been relied on by this court to make a grant in her favour as a widow, and where the plaintiff has particularly failed to discredit this evidence as analyzed above, I have no option but to find for the defendant that there is evidence on record regarding the defendant's marriage to Tarlochan Singh Jhass (deceased).

Issue i is answered in the affirmative.

***Issue ii: Whether the grant of letters of administration was proper.***

It is an agreed fact in the joint scheduling memorandum that, “*the defendant in her capacity as widow petitioned the High Court for letters of administration and was granted the same on 17/02/2012*”.

Section 201 of the Succession Act provides that when the deceased has died intestate, those who are **connected with the deceased** either by **marriage** or by **consanguinity are entitled to obtain letters of administration of his or her estate** and effects in the order and according to the provisions contained in the Act. Section 202 of the same Act provides that subject to section 4 of the Administrator General's Act, administration shall be granted to the person entitled to the greatest proportion of the estate.

Section 5(1) of the Administrator General's Act provides that no grant shall be made to any person, except an executor appointed by will or the widower or widow of the deceased or his or her attorney duly authorized in writing, until the applicant has produced to court proof that the Administrator General or his or her agent has declined to administer the estate, or until the applicant has produced proof of having given to the Administrator General fourteen days definite notice in writing of his or her intention to apply for the grant.

It is clear from the foregoing provisions that a widow, widower, executor, or their duly authorized attorneys do not require certificates of no objection from the Administrator General before they apply for letters of administration. This was the basis of the Supreme Court decision in **Administrator General V Akello Joyce Otti & Another Civil Appeal 15/1993**. In addition, there are a number of court decisions to the effect that a widow is the proper person to administer the estate of her deceased spouse. See **Re Kibiego [1972] EA 179; Sarah Sebowa & 5 Others V Peter Sebowa [1991] HCB 95**.

The record of **Administration Cause No. 51/2012: The Estate of Tarlochan Singh Jhass** shows that the defendant advertised the notice of her application to petition for letters of administration to the estate of Tarlochan Singh Jhass in **The Observer** newspaper 26<sup>th</sup> – 29<sup>th</sup> 2012, at page 43. There is nothing on record to show that any caveat was lodged within the stipulated time by anyone to stop the court from issuing the grant.

Thus, based on the adduced evidence and the applicable laws, it my finding that the letters of administration were validly granted to the defendant.

Issue ii is therefore answered in the affirmative.

***Issue iii: Whether the defendant is the sole beneficiary to the estate of Tarlochan Singh Jhass.***

The plaintiffs pleaded that they were dependants of the late Tarlochan Singh Jhass, hence beneficiaries his estate. The other dependants listed in paragraph 4(a) of the plaint are Mrs. Balwinder Kaur Jhass (widow), Mrs. Nasib Kaur (mother), Nimal Jit (sister), Satman Singh (nephew), Ravinder Singh (nephew), Kuljir Singh (nephew), Ashmeet Singh (nephew), Sonia Kaur (niece), Jaspreet Kaur (niece), and manpreet Kaur (niece).

The defendant, on the other hand, stated in her written statement of defence that she and the deceased lived alone by the time of his death. The record of **Administration Cause No. 52/2012: The Estate of Tarlochan Singh Jhass** shows that the defendant presented herself as the widow and sole survivor of Tarlochan Singh Jhass (deceased) in her petition for letters of administration to her late husband's estate. She stated during cross examination that the deceased never looked after his parents, and that he did not have dependants.

Section 2(g)(i) & (ii) of the Succession Act provides that a dependant relative, for purposes of succession, includes a wife, a husband, a son or daughter under eighteen years of age or a son or daughter of or above eighteen years of age who is wholly or substantially dependant on the deceased, a parent, a brother or sister, a grandparent or grandchild who, on the date of the deceased's death, was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his or her station.

The foregoing, in my opinion, suggests that it is not enough to be in the stated relationship to the deceased. The person claiming to be a dependant relative must, in addition, prove his or her dependence to the deceased wholly or substantially on the date of the deceased's death.

The 1<sup>st</sup> plaintiff stated in his sworn witness statement that he was being looked after by his son Tarlochan Singh Jhass before he died; that the deceased used to pay all his bills including medical and upkeep up to the time of his demise; that he suffered a fatal accident that led to the fracture of his leg which has since confined him to a wheelchair; that because of the misfortune his eldest son (the deceased) looked after his needs; and that when his son died all the benefits ceased. Piara Singh (1<sup>st</sup> plaintiff) was not cross examined on his sworn witness statement. His counsel informed court that he was critically ill in India and therefore not able to travel to Uganda for the court hearing. However his counsel substituted him with his wife Nasib Kaur (PW3) who filed a sworn witness statement.

PW3 stated in her sworn witness statement that she was the mother of the deceased; that between 1995 and 2000 she was staying in Punjab with her husband; and that their son the late Jhass was

looking after them by giving them money. She stated during cross examination that sometimes their son Jhass would send money and he would sometimes come to India. When challenged to show remittances or transfer forms from courier companies to prove that the late Jhass was sending money to her or her husband, she explained that the deceased never sent money through Western Union; that the deceased was a frequent flier who would bring the money physically or send it through relatives. She testified under cross examination that she has ever contributed one million five hundred rupees, equivalent to one million five hundred thousand Uganda Shillings to the late Jhass's business; that they used to help him until he was settled because they had that money; and that they now have no other way to survive.

PW1 Harvinder Singh Jhass (2<sup>nd</sup> plaintiff) stated during cross examination that he is a businessman and owns a shop of spare parts in Arua; and that his parents were living in India with the support of the deceased as their son. He testified during cross examination however that the deceased used to go to India or send relatives to give money to his parents.

The plaintiffs did not call any of the relatives who used to be sent by the deceased to give money to his parents in India, as proof of their dependency on the deceased, nor did they avail any documentary evidence to prove their claims that the deceased used to give them money or support them or pay the 1<sup>st</sup> plaintiff's medical bills. It was incumbent for them to do so under section 101 of the Evidence Act but they failed to adduce such evidence.

The plaintiffs' evidence does not show that the plaintiffs or any other listed dependants were living with the deceased. The deceased's parents (1<sup>st</sup> plaintiff and PW3) were living in India while the deceased was living in Uganda with the defendant. They apparently came to live in Uganda after the death of the deceased. Contrary to the claims that they were dependants of the deceased, PW3 testified that they contributed to the deceased's business because they had the money. The 2<sup>nd</sup> plaintiff (PW1), a brother to the deceased, also listed in the plaint as a dependant of the deceased, stated himself that he is a businessman and owns a shop of spare parts in Arua. There is nothing in his sworn witness statement or his testimony to show that he was also a dependant relative of the deceased as pleaded in the plaint.

The plaintiffs also included nieces in their list of dependants set out in their plaint. Section 2(g) (i) & (ii) of the Succession Act does not mention nieces in the list of those who qualify to be dependant relatives. Secondly the plaintiffs adduced no evidence to show that the said nieces were wholly and substantially dependant on the deceased to prove their claims of being the deceased's dependant relatives or rebut the defendant's evidence that her late husband had no dependant relatives. The plaintiffs have, on a balance of probabilities, failed to discharge their burden of proving that they, or any of the other persons listed in the plaint, were dependants of Tarlochan Singh Jhass.

In the circumstances, it is my finding that PW1, PW3 (1<sup>st</sup> plaintiff), and all the other dependants listed in the plaint were not dependants of Tarlochan Singh Jhass within the meaning of section

2(g)(ii) of the Succession Act. They do not therefore qualify to be beneficiaries his estate. There is also no adduced evidence before court of the deceased being survived by any children. This would leave the widow to be the sole beneficiary of the estate.

Issue iii is answered in the affirmative.

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

The plaintiffs prayed for various orders as highlighted at beginning of this judgement.

On the prayer for a declaration that the defendant fraudulently obtained letters of administration in respect of the estate of the late Tarlochan Singh Jhass there was no evidence adduced to prove fraud by the defendant in applying for letters of administration of her husband's estate. The defendants did not adduce any evidence to show that the defendant made false declarations or concealed any information from court in the course of her applying for letters of administration. Their claim against her must fail.

The same goes for their prayers for an order that letters of administration to the estate of the late Tarlochan Singh Jhass be granted to the plaintiffs; an order distributing the deceased's properties among the beneficiaries; an order for the delivery to the plaintiffs the duplicate certificates of title for all the properties constituting the estate; an order of permanent injunction restraining the defendant from undertaking any further dealings with the estate of the late Tarlochan Singh Jhass; an order to pay compensation for the loss and damage willfully and negligently occasioned to the estate of the late Tarlochan Singh Jhass; general damages; and for costs of the suit and interest.

On the prayer for revocation of letters of administration issued to the defendant vide Administration Cause No. 51/2012, section 234 of the Succession Act Cap 162 provides that the grant of probate or 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.

It is already a finding of this court that the plaintiffs have failed to discharge their burden of proving their claims against the defendant as pleaded, particularly that the grant was obtained fraudulently by making a false suggestion or concealing from court something material to the case.



The plaintiffs also prayed for orders that the defendant files a detailed inventory over the deceased's estate, and for a true and correct statement of account dealings with the estate of the late Tarlochan Singh Jhass. Section 278 of the Succession Act requires the executor or administrator to, within six months from the grant of probate or letters of administration, or within such further time as the same court may from time to time appoint, exhibit an inventory containing a true and full estimate of all the property in possession, and all credits and debts owing by any person to which the executor or administrator is entitled in that character, to the court which granted the probate or letters of administration. In the same manner, the executor or administrator shall, within one year or such other time as the court may from time to time appoint, exhibit an 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. The said legal provisions are mandatory. Also see **Paulo Kavuma V Moses Sekakya & Another Civil Suit No. 473/1995**.

The record in the instant case shows that the defendant obtained the letters of administration on 17/02/2012. This suit was filed against the defendant on 25/04/2012. The plaintiffs immediately procured an interim order against the defendant on 26/04/2012 restraining her from, *“selling, leasing, transferring, alienating and or disposing of any properties of the estate...and also from evicting the applicants until the main application is heard and disposed of.”* The main application which was heard and determined much later on 27/01/2015 also ended in issuance of a temporary injunction, hence preserving the *status quo* until the main suit was heard and determined. It is apparent from the circumstances of the case that the defendant has for most of the duration of this litigation, been prohibited from dealing with or managing the estate. Thus she was not in position to file inventories and accounts of the estate for as long as the injunctions were in place.

Section 234 of the Succession Act provides that the grant of probate or letters of administration may be revoked or annulled for just cause. The definitions for just cause under section 234(2)(e) is that the person to whom the grant was made has **“willfully and without reasonable cause”** omitted to exhibit an inventory or account in accordance with Part XXXIV of the Succession Act, or has exhibited under that part an inventory or account which is untrue in a material aspect.

In this case it is clear the defendant did not **“willfully and without reasonable cause”** omit to file an inventory or account of the estate as to justify a revocation of the grant issued in her favour under the Succession Act. The evidence on record shows that the orders issued by court in the course of the instant litigation prohibited her from dealing with the estate even though she was the administrator. The defendant's failure to file the inventory and accounts of the estate has not been shown to be willful and without reasonable cause. On that basis, I decline to revoke the letters of administration issued to her in **Administration Cause No. 52/2012: The Estate of Tarlochan Singh Jhass**.

That having been said however, the law requires administrators of estates to file inventories and accounts within stipulated times. This court is empowered under section 33 of the Judicature Act

to grant such remedies, on such terms and conditions it thinks just, as any of the parties is entitled to in respect of any legal or equitable claim, so that matters in dispute may be completely or finally disposed of and multiplicities of legal proceedings are avoided. This is in addition to section 98 of the Civil Procedure Act which leaves this court with inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of court process.

It is in that respect that this court, to ensure protection of the estate, will require the defendant to file inventories, within six months, and accounts of the estate of the late Tarlochan Singh Jhass, within one year from the date of this judgment.

All in all, save for the plaintiffs' prayers to order the defendant to file an inventory and account of the estate, the plaintiffs' suit against the defendant is dismissed with costs.

**Dated at Kampala this 14<sup>th</sup> day of November 2016.**

Percy Night Tuhaise

**Judge.**