

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 273 OF 2014
ARISING FROM CIVIL SUIT NO. 166 OF 2015

- 1. AJIAMBO DIANA ROSE**
- 2. NAMAWERO SANDRA**
- 3. WAFULA BRIAN.....APPLICANTS**

VERSUS

**KALSON NGOLOBE Administrator of the Estate of the late Nafuna Everlyne Jessica vide
HCT 00 CV AC 407/2006.....RESPONDENT**

BEFORE: HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application by chamber summons brought under sections 218, 234(e) of the Succession Act cap 162, section 33 of the Judicature Act Cap 71, and Order 41 rules 1, 2 & 9 of the Civil Procedure Rules (CPR) for orders that a temporary injunction be issued restraining the respondent, his agents, servants, workmen or any person deriving instructions from him from using the letters of administration obtained by the respondent as administrator of the estate of the late Nafuna Everlyne (also referred to as Were in other documents) vide AC 407/2006 until the final determination of the main suit; that the said administrator be directed to abstain from administering the said estate in his capacity as administrator more particularly intermeddling in the affairs of M/S Goodman Agencies specifically in its claim for Ug.Shs.14,485,547,872/= from the Attorney General of Uganda; that the respondent, his agents, delegates or those claiming under him be stopped from receiving distributing or in any way alienating any property or part of any money due to M/S Goodman Agencies more specifically Ug.Shs.14,485,547,872/= from the Attorney General of Uganda forming part of the estate of the late Everlyne Were pending the hearing of the main suit; that the same parties be stopped from intermeddling or otherwise interfering with the administration of the same estate pending the hearing of the main suit or until further orders of court; and that an order be made to appoint Nicholas Were as a neutral interim

administrator/*administrator pendete lite* to care - take the administration and management of the affairs of the late Everlyne Were pending the hearing and disposal of the main suit.

The application is supported by the affidavits of the 1st and 2nd applicants, namely Ajiambo Rose and Namawero Sandra. The application sets out numerous grounds, most of which are relevant to the main suit, but briefly, for purposes of this application, the relevant grounds are that the suit property in the deceased's estate to which the applicants are entitled is in immediate danger of waste or alienation by the respondent; that the applicants stand to suffer irreparable damage to which adequate compensation would not be sufficient if the order is not issued and that the applicants have instituted HCCS No 166/2015 against the respondent with high probability of success.

The application is opposed by the respondent through his affidavits in reply, together with the affidavit in reply of Saad Seninde who deponed the affidavit as his attorney. The parties' counsel made oral submissions on the application.

The background is that the applicants filed Civil Suit No 166/2015 against the respondent seeking revocation of letters of administration granted to him in AC 407/2006 regarding the estate of the late Everlyne Were, alleging that they were obtained fraudulently. The respondent/defendant denied the allegations in his defence. The suit is pending before this court. The applicants/plaintiffs in the meantime successfully applied for an interim order of injunction before the Registrar of this Court, and also filed this application.

The questions to be determined are whether there is a *prima facie* case with possibility of success, and whether the applicant might otherwise suffer irreparable damage not easily compensated in damages. If court is in doubt it will decide the question on the balance of convenience. Overall, there should be a pending suit and a *status quo* to be preserved. See **Kiyimba Kaggwa v Haji Katende [1985] HCB 43.**

On whether the applicants have established a *prima facie* case with possibility of success, the applicant has to satisfy court that there is merit in the case. It does not mean that one should succeed. It means the existence of a triable issue or serious questions to be tried which raise a *prima facie* case for adjudication.

In this case, the pleadings in the main suit reveal the plaintiffs to be alleging that the defendant fraudulently obtained letters of administration to the estate of the late Everlyne Nafuna Were by making false suggestions or concealing facts from the High Court. The defendant denies it and contends that he is the lawful administrator of the estate in question.

On basis of the pleadings, it is my opinion that there are serious triable issues which raise a *prima facie* case for adjudication. It is not for this court at this stage to go into the merits of the main suit. This will be done during the hearing of the main suit. I have therefore refrained from addressing the voluminous affidavit evidence adduced by both sides which extensively concentrated on the merits of the main suit.

On whether the applicant will suffer irreparable damage if the application is not allowed, irreparable injury does not mean there may be physical possibility of repairing injury. It means the injury must be substantial or material, not easily atoned for in damages. In determining this, courts look at the evidence on record, the circumstances of the case and the remedy sought.

The 1st and 2nd applicants aver in paragraphs 58 of their generally identical supporting affidavits that they stand to suffer irreparable damage to which adequate compensation would not be sufficient if the temporary injunction is not issued since the estate of the deceased is worth over fourteen billion Uganda shillings. The respondent avers in his affidavit in reply that the applicants have not demonstrated the irreparable damage to be suffered.

The estate in this case is shown to consist of colossal sums of money due from the Attorney General to M/S Goodman Agencies where the deceased is stated to be a shareholder. If the injunction is not granted, the respondent, who currently holds the letters of administration to Everlyne Were's estate, will access the said money in the course of his administering the estate of the deceased shareholder, before the issue of whether he obtained the grant lawfully is determined in the main suit. The effect if not to render the main suit nugatory, would be that should the applicants be successful in the main suit by having the letters of administration revoked, they will have to reverse an estate already administered involving colossal sums of money. This, in my opinion, would cause irreparable damage not easily atoned by damages.

On the balance of convenience, a temporary injunction restraining the respondent from administering the estate can only mean that he will still go on to administer the estate if the case is eventually resolved in his favour. The balance of convenience, in the given circumstances, lies

in favour of the applicants who stand to suffer most if the application is not allowed. It is only fair that the estate is preserved until the main suit is resolved.

The applicants also prayed for an order to appoint Nicholas Were as a neutral interim administrator/*administrator pendete lite* to caretake the administration and management of the affairs of the late Everlyne Were pending the hearing and disposal of the main suit.

Section 218 of the Succession Act provides that a court may, pending any suit touching the validity of a will of a deceased person or for obtaining or revoking letters of administration appoint an administrator of an estate of the deceased person who shall have all rights and powers of a general administrator other than a right of distributing the estate.

The applicants' ground for praying for Nicholas Were's appointment as a neutral interim administrator of their late mother's estate, as revealed by the application and the affidavits (paragraphs 19 and 20) is that the said Nicholas Were is the widower to their mother the late Everlyne Nafuna Were. The respondent denies that Nicholas Were is a widower to their late mother in paragraph 2 of his affidavit in reply. The applicants have not adduced any evidence to rebut this, other than repeating their averments in their supplementary affidavits.

The respondent further states that Nicholas Were lacks integrity and cannot administer the estate in good faith, having been found by the High Court of forging the signatures of the deceased Everlyne to transfer her shares of M/S Goodman Agencies to himself. This averment is repeated in the affidavit in reply of Saad Seninde who deponed it as the respondent's attorney. The respondent attached annexure **A** to his affidavit in reply, which is a copy of a judgement in ***Nicholas Were V Sam Ssewanyana & Another Company Cause No 44/2007 Arising Out of CS No 719/2007***. Saad Seninde also attached Annexure **A** to his affidavit in reply, which is a copy of a court ruling in ***Attorney General V M/S Goodman Agencies Ltd & Another MA 361/2015 Arising out of HCCS 719/1997, Constitutional Petition No 03/2008 & Constitutional Appeal No 05/2010***.

The 1st applicant's affidavit in rejoinder and her counsel's submissions are that there is a pending appeal against the decision in ***Nicholas Were V Sam Ssewanyana & Another Company Cause No 44/2007 Arising Out of CS No 719/2007*** where it was stated that the applicants' alleged transfers of shares by the deceased were a ploy on behalf of the applicant (Nicholas Were). No copy of any court document pertaining to the purported appeal was attached or annexed to the

applicants' affidavits to support the applicants' averments and submissions. That however may not matter much in the circumstances of this case. Nevertheless, the copies of court judgements annexed by the respondent's affidavits in reply evolve around management, proprietorship and entitlements to M/S Goodman Agencies Ltd where the deceased Everlyne Nafuna is stated to have had shares. The judgements, without this court's necessarily addressing whether Were is the culprit or not, show that Nicholas Were was part of the litigation concerning M/S Goodman Agencies Ltd where both Nicholas Were and the estate of Everlyne Nafuna Were apparently claim interest.

The appointment of an administrator *pendete lite*, or a neutral interim administrator as the applicants preferred to call him, is meant to protect the estate of the deceased pending the conclusion of the litigation concerning the estate. The interim administrator so appointed may manage general affairs of the estate, including collecting rents or any monies due to the estate, but not distributing the estate. See ***Wilson Tayebwa & 5 Others V Mary Katwoha & 2 Others MA 60/2012 Arising from HCCS No 14/2012***. It follows therefore that such person should be well placed to preserve the estate. Such person, in my opinion should be impartial, objective, or neutral, so that the estate is preserved without personal claims or interests on it.

I have considered the circumstances and dynamics of this application concerning the estate and the person proposed to be appointed a neutral or interim administrator. The evidence on record shows Nicholas Were to be at the centre of litigation concerning M/S Goodman Agencies Ltd where the deceased Everlyne Nafuna Were had shares now forming part of her estate. The applicants have also not supported their averments to this court's satisfaction on Nicholas Were's status in the estate of the late Evelyn Nafuna especially after their averments of his being a widower were challenged by the respondent. Much as there may be need to appoint such administrator, it is my opinion that Nicholas Were would not be a neutral administrator in the said estate.

In the premises for the given reasons, I allow the application for temporary injunction against the respondent, in all the aspects as prayed by the applicants. However, for reasons already stated above, I decline to appoint Nicholas Were as an administrator *pendete lite* to the estate of the late Everlyne Nafuna.

Costs of the application will be in the cause.

Dated at Kampala this 27th day of January 2016.

Percy Night Tuhaise

Judge.