

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**CIVIL SUIT NO.185 OF 2014**

1. LUWEMBA GODFREY
2. BOGERE TONNY
3. SEBALAMU HENRY
4. NALULE ZALIKAH.....PLAINTIFFS

**VERSUS**

1. BADDA TOM KIMBOWA
2. SENDEGE G. WILLIAM.....DEFENDANTS

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

**JUDGMENT**

The plaintiffs brought this suit against the defendant for revocation and annulment of letters of administration granted to them by the High Court of Uganda at Kampala on 23/05/2007 vide HCT-00-CV-AC-257-2007 in respect of Moses Grace Kibuuka's estate; invalidation of any transactions whether sale or otherwise by the defendants in respect of Moses Grace Kibuuka's estate, a permanent injunction, general damages, costs of the suit, and any other remedy that court deems fit.

The plaintiffs and others are beneficiaries to the estate of the late Moses Grace Kibuuka (deceased). The plaintiffs' case is that in 2007 the defendants, together with the late Nankya Jane Nabbowa, without the knowledge or consent of the plaintiffs and other beneficiaries to the estate of the late Moses Grace Kibuuka (deceased), forged a certificate of no objection to the estate of the late Moses Grace Kibuuka on basis of which they were granted letters of administration to the deceased's estate by the High Court of Uganda at Kampala vide HCT-00-CV-AC-257-2007.

The defendants alleged in their petition that the deceased was survived by only two children that is, Tom Badda Kimbowa (grandson), Sendege George William (son) and Nankya Jane (daughter), yet the deceased had other children, namely Tonny Kisuule, Kizito, Nansubuga, and Nankya, all of whom, though now deceased, were survived by children among whom are the plaintiffs together with others. The defendants also alleged in their petition that the value of the deceased's estate was worth Uganda Shillings 10,000,000/= (ten million) only. The defendants did not also disclose to court that Buruli Block 230 Plot 7 now comprised in Plot 256 measured approximately 240 acres hence costing over Uganda Shillings 200,000,000/= (two hundred million).

The plaintiffs further allege that the defendants, using the letters of administration, have sold off part of the deceased's land formerly comprised in Buruli Block 230 Plot 7 thereby acquiring a new plot number 256; and that the issues were handled by clan leaders in vain. The plaintiffs contend that they have never condoned nor consented to the defendants' obtaining of the letters of administration and consequent sale of the suit land; that as grandchildren and hence beneficiaries to the estate, they have never received their respective shares which ought to have been their parents; and that the defendants' fraudulent acts amount to a deprivation of the plaintiffs' beneficial entitlement in the suit property.

The defendants did not file a defence to the suit upon which, on application by the plaintiffs, the Registrar of this court entered a default judgement against them under Order 9 rule 6 of the Civil Procedure Rules (CPR). The matter came before this court for formal proof of the plaintiffs' case. The plaintiffs' side 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 the late Moses Grace Kibuuka's estate to the defendants.
- ii) Remedies available to the plaintiffs.

***Issue i: Whether there exists just cause for the revocation of the grant of letters of administration of the late Moses Grace Kibuuka's estate to the defendants.***

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.

Luwemba Godfrey (PW1), who is the 1<sup>st</sup> plaintiff, states in his sworn witness statement that he is a biological brother to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and to the 1<sup>st</sup> defendant, a cousin to the 4<sup>th</sup> plaintiff and a nephew to the 2<sup>nd</sup> defendant. He also states that he is the customary heir and son to his late father Tony Kisuule; that the defendants made a number of false suggestions in the petition for letters of administration, namely that the late Moses Grace Kibuuka was survived by only two children, and not disclosing to court that the deceased had other children.

This evidence is corroborated by Ddamulira Julius (PW2) who stated in his sworn witness statement that he is the head of the Mulwooza lineage from which the late Moses Grace Kibuuka (deceased) emanates and also a paternal uncle to the plaintiffs; that the deceased had five children namely Mariam Nansubuga, Tonny Kisuule, Nankya Jane, George William Sendege (2<sup>nd</sup> defendant) and Lawrence Kizito who have all died except George William Sendege; that the deceased left behind a will; that the defendants sold off part of the deceased's land comprised in Buruli Block 230 Plot 256 formerly Plot 7 without the consent and/or knowledge of the plaintiffs and other beneficiaries; and that as a result the beneficiaries to the estate have suffered inconvenience and damage. He annexed a copy of the will of the late Moses Grace Kibuuka as annexure **A** to support statement.

The sworn witness statements from the plaintiffs' side show that the defendants obtained the grant by making false statements, namely that the late Moses Grace Kibuuka was survived by only two children, and not disclosing to court that the deceased had other children. This evidence is corroborated by copies of the grant and of the defendants' petition in in HCT-00-CV-AC-257-2007, annexed to the sworn witness statement of Luwemba Godfrey (PW1) as **C** and **D**

respectively. The sworn witness statements of Luwemba Godfrey (PW1) and Ddamulira Julius (PW2), to the contrary, show that the deceased was survived by five children namely Mariam Nansubuga, Tonny Kisuule, Nankya Jane, George William Sendege (2<sup>nd</sup> defendant) and Lawrence Kizito.

The plaintiffs also state in their sworn witness statements that the defendants made deliberate omissions on a number of issues to deprive the plaintiffs and beneficiaries of their interests in the estate of the late Moses Grace Kibuuka. The omissions include the fact that the late Moses Grace Kibuuka had other children, namely Tonny Kibuuka who died and was survived by 13 children; plus Kizito and Nansubuga who both died and were not survived by any children. The other omission by the defendants is manifest in their statement in their petition in HCT-00-CV-AC-257-2007 that the value of the deceased's estate was worth Uganda Shillings 10,000,000/= (ten million); and that the properties left by the deceased are mailo land comprised in Buruuli Block 230 Plot 7 at Kiguzo Kakoge, plus a residential house and a kibaja at Waluteta Village. The plaintiffs' adduced evidence, to the contrary, shows that the defendants did not disclose to court that land at Buruuli Block 230 Plot 7, now comprised in Plot 256 at Kijaguzo and Kakoge was measuring approximately 240 acres hence costing over Uganda Shillings 200,000,000/= (two hundred million). This is corroborated by the certified copies of the White Page White Page and area schedule to the land comprised in Buruli Block 230 Plot 7 and the new Plot 256, annexed to the sworn witness statement of Luwemba Godfrey (PW1) as **E** and **F** respectively.

The defendants did not also disclose in their petition that the deceased jointly owned another piece of land at Makerere as tenants in common with two of his siblings, namely Bulasio Nsubuga, Isirayiri Lule, and Isaaka Mubiru. The defendant's petition further stated that the deceased died intestate, yet it was within their knowledge that the deceased left a will dated 13/05/1980 which was used by the clan elders in their presence during the deceased's last funeral rites. A certified copy of the will and its English translation are annexed to the sworn witness statement of Luwemba Godfrey (PW1) as **G1** and **G2** respectively. The existence of the will was confirmed by PW2 Damulira in paragraph 6 of his sworn witness statement. The will clearly distributes the deceased's estate to the beneficiaries.

It is also the plaintiffs' evidence that the defendants forged a certificate of no objection upon which they were granted letters of administration to the estate of the late Moses Grace Kibuuka.

A copy of the forged a certificate of no objection was annexed to the sworn witness statement of Luwemba Godfrey (PW1) as **A**. Annexure **A** shows the certificate of no objection to be falling under Mengo Administrator General's Cause No. 2570/2007 regarding Kibuuka Moses Grace (deceased). It also shows that it was issued by the Administrator General on 22/01/2007 in favour of Banda Tom Kimbowa (grandson), Sendedge G. William (son) and Nankya Jane Nabbowa (daughter).

The court record contains a letter ref. no. **FD/DR/GC/16** dated 25/04/2016 from the Deputy Registrar of this court requesting the Administrator General to inform court about the authenticity of the certificate of no objection (Annexure **A**). The Administrator General's response, ref. no.**P.12** dated 16/06/2016, is annexed as **B** to the sworn witness statement of Luwemba Godfrey (PW1). In reference to the certificate of no objection serial number 19788, the Administrator General stated in his response that their office has never issued a certificate of no objection in respect of the estate of Kibuuka Moses Grace; and that reference no. ME/AC/2570/2007 is not allocated to Kibuuka Moses Grace. This makes it clear that the certificate of no objection issued to the defendants was forged.

The plaintiffs have adduced evidence that the defendants used the forged certificate of no objection to be granted letters of administration vide the grant issued by this court in HCT-00-CV-AC-257-2007, annexed as **C** to the sworn witness statement of Luwemba Godfrey (PW1). PW2 Damulira Julius stated in paragraph 7 of his sworn witness statement that the defendants used the said grant to sell off part of the land comprised in Buruuli Block 230 Plot 7 thereby acquiring a new plot No. 256 measuring 93.795 hectares as opposed to the former 97.0 hectares. This is confirmed by the area schedule to the land comprised in Buruli Block 230 Plot 7 and the new Plot 256 annexed as **F** to the sworn witness statement of Luwemba Godfrey (PW1). This prompted Luwemba Godfrey to lodge a caveat on the certificate of title on 14/07/2014 vide Instrument No. 117480, as evidenced on the White Page certified White Page to the land comprised in Buruli Block 230 Plot 7 and the new Plot 256, annexure **E** to the sworn witness statement of Luwemba Godfrey (PW1).

The plaintiffs' allegation that the defendants have never filed a true inventory and account in respect of the estate of the late Moses Grace Kibuuka is confirmed by the court record of **AC 257/2007 Estate of Moses Grace Kibuuka (Deceased)** which shows that the defendants have

never filed a true inventory or true account of the properties of the estate. This is in breach of the Administration Bond they signed, since it bound them to administer the estate according to the law by filing true inventories and accounts pertaining to the estate in respect of which they was granted the letters of administration.

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 estate of the late Moses Grace Kibuuka was survived by only two 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 Moses Grace Kibuuka 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 of the grant of letters of administration regarding the late Moses Grace Kibuuka'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 defendants that the defendants obtained the grant of letters of administration in respect of the estate of the late Moses Grace Kibuuka by making a false suggestion that the estate of the late Moses Grace Kibuuka was survived by only two children; and that the defendants has never filed an inventory or account of the estate despite holding the letters of administration. These clearly fall among the grounds that would justify revocation of the grant of letters of administration under section 234 of the Succession Act highlighted above. On that basis alone I would revoke the letters of administration granted to the defendants in respect of the estate of the late Moses Grace Kibuuka.

The plaintiffs prayed for invalidation of any transactions whether sale or otherwise by the defendants in respect of Moses Grace Kibuuka's estate. However there was no evidence adduced by the plaintiffs to show the specific transactions by sale or otherwise of the estate. The parties affected by the transactions were not sued or heard in this matter. I therefore decline to issue the order for invalidation of any transactions whether sale or otherwise by the defendants in respect of Moses Grace Kibuuka's estate.

The plaintiffs prayed for general damages against the defendants. Annexure C to the sworn witness statement of Luwemba Godfrey (PW1) shows that the defendants were granted letters of administration vide the grant issued by this court in HCT-00-CV-AC-257-2007 on 23/03/2007. A certified true copy of the certificate of title to property comprised in Buruuli Block 230 Plot 256 on the record shows that the defendants' names were registered on the same title on 12/07/2007 as administrators of the estate of the late Moses G. Kibuuka on basis of HCT-00-CV-AC-257-2007, vide Instrument No.BUK 70877 at 9.30 am. This was to the prejudice of the estate of late Moses Grace Kibuuka as well as the beneficiaries to the estate who had been clearly provided for in the deceased's will.

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 considered opinion that the defendants' using the fraudulently obtained grant to deal with the property forming part of the estate of the late Moses Grace Kibuuka prejudiced that estate as well as the beneficiaries to the estate. This is registered land. 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 thirty million Uganda Shillings (30,000,000/=).

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

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

- a) Revocation and annulment of letters of administration granted to the defendants by the High Court of Uganda at Kampala on 23/05/2007 vide HCT-00-CV-AC-257-2007 in respect of Moses Grace Kibuuka's estate.
- b) An order that the defendants make a full and true inventory of the property and credits of the estate of the late Moses Grace Kibuuka, and to render a true account of the assets and properties of the said estate and the manner in which they were distributed and/or dealt with.

- c) A permanent injunction against the defendants, their agents and persons deriving authority from them from further dealing with the estate of Moses Grace Kibuuka.
- d) A declaration that the defendants obtained the grant by intentional deliberate untrue false allegations and concealing from court material information.
- e) General damages in the sum of U. Shs.30,000,000/= (thirty million)
- f) Costs of the suit.

I so order.

**Dated at Kampala this 16<sup>th</sup> day of August 2016.**

Percy Night Tuhaise

**Judge.**