

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS CAUSE NO. 01 OF 2016

1. SHEIKH MUYINGO AHMADA
2. NSIMBE UMAR.....APPLICANTS

VERSUS

THE ADMINISTRATOR GENERAL.....RESPONDENT

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE
RULING

This is an application by notice of motion brought under sections 36, 37 & 38 of the Judicature Act cap 13 and rules 3 6 & 7 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 for an order of judicial reliefs, namely that an order of mandamus does issue against the respondent ordering him to issue a certificate of no objection to the applicants; and that costs of the application be paid by the respondent.

There are numerous grounds for the application. They are briefly that the applicants are beneficiaries of the estate of the late Amulani Kewaza who were unanimously given permission by other beneficiaries to seek letters of administration of the said estate, but that the respondent has unreasonably refused to give them a certificate of no objection.

The application is supported by the affidavit of the 2nd applicant Nsimbe Umar. The respondent did not file any affidavit in reply. The record shows the respondent was served with the Notice of Motion on 18/04/2016 and he acknowledged service as per the affidavit of service of Tenywa Enock. The applicants' counsel was therefore granted leave to proceed *ex parte* under Order 9 rule 20(1)(a) of the Civil Procedure Rules. However, whether a case proceeds *ex parte* or not, the burden on the part of the plaintiff to prove the case to the required standards remains, as was held in **Yoswa Kityo V Eria Kaddu [1982] HCB 58**.

The applicant's case is briefly that the late Amulani Kewaza died intestate in 1959 leaving several properties which included various pieces of land. The applicants who were nominated by a family meeting applied for a certificate of no objection from the respondent to save the late Amulani Kewaza's estate from being wasted. The respondent refused to issue the certificate of no objection upon which the applicants filed this application. The applicants contend that the respondent's refusal to issue a certificate of no objection to the applicants is irrational, unreasonable or in bad faith against the applicants.

Section 36 of the Judicature Act cap 13 provides that the High Court may make orders of mandamus, prohibition and certiorari. Judicial review can only be granted on three grounds namely illegality, irrationality and procedural impropriety – Also see **Council of Civil Service Unions V Minister for the Civil Service [1985] AC 374**. The first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is a procedural ground because it aims at the decision making procedure rather than the content of the decision itself - **Aggrey Bwire V The Attorney General & Anor Civil Application No. 160 of 2008 Mpigi Bahigaine JA**, as she then was. In **John Jet Mwebaze V Makerere University Civil Application No. 353/2005**, Kasule J, as he then was, stated that prerogative orders look to the control of the exercise and abuse of power by those in public offices rather than at providing final determination of private rights which is done in normal civil suits.

The applicants' evidence, as deduced from the supporting affidavit of Nsimbe Umar (2nd applicant) is that the applicants and several others are beneficiaries of the estate of Amulani Kewaza (deceased) who died in 1959; that the applicants were unanimously nominated by the family to seek letters of administration to the estate; that the deceased owned several properties some of which he distributed to several beneficiaries by way of certificates of succession, but for other properties he died before distributing them; that none of the beneficiaries transferred the properties distributed to them by way of certificates of succession until the law under which they were distributed was repealed, rendering the certificates useless; and that fraudsters started forging documents to claim ownership of the deceased's property and most of it started going to waste.

The 2nd applicant also states in his supporting affidavit that the applicants, who were duly appointed by the beneficiaries for that purpose, applied for a certificate of no objection from the respondent in 2013 and brought the foregoing to the respondent's attention; that the respondent wrote to the Chief Administrative Officer Mpigi asking him to convene a family meeting for the estate of the deceased which was duly convened and minutes taken; that various family meetings were held at the respondent's office and that sometime in April 2015 the respondent indicated he was clarifying something but has since failed, refused and/or neglected to issue the certificate of no objection.

The choice of the applicants to administer the estate is evidenced by copies of the Mpigi District Chief Administrative Officer's letter to the respondent dated 16/10/2014, and the minutes of the family meeting of 20th September 2014 annexed as **C** to Umar Nsimbe's supporting affidavit. The deceased's distribution of the estate to some beneficiaries by way of certificates of succession is evidenced copies of the said certificates, annexures **A1 – A6** to Umar Nsimbe's supporting affidavit. The impending wastage of the estate is evidenced by a copy of a preliminary police report on alleged intermeddling of the deceased's estate dated 4th May 2015, annexed as **B** to Umar Nsimbe's supporting affidavit.

The applicants maintain that the respondent's actions are irrational and unreasonable; that the respondent has acted in bad faith against the applicants and the beneficiaries; and that it is only fair and just that the orders sought be given. They prayed that an order of mandamus be issued against the respondent ordering him to issue a certificate of no objection to the applicant; and that costs of the application be paid by the respondent. The applicants' counsel submitted in his written submissions that the respondent has failed to carry out its duty of issuing the certificate of no objection which is imposed upon it by an Act of Parliament.

Section 5 of the Administrator General's Act requires intending applicants for a grant of probate or letters of administration, except for widows/widowers of the deceased or executors in a will, to produce to court proof that the Administrator General or his/her agent has declined to administer the estate, or proof of having given the Administrator General fourteen days' written notice of the intention to apply for the grant. Section 201 of the Succession Act requires that in intestacy those connected with the deceased by marriage or consanguinity are entitled to obtain letters of administration of the estate.

It is clear from the foregoing legal provisions that the Administrator General has a statutory duty to issue certificates of no objection to intending applicants for grants if he/she is not interested in administering the estate himself/herself or through an agent. The Succession Act also requires estates to be administered within given time schedules. The import of section 278 of the Succession Act, for instance, is that an estate, unless court extends the time, should be administered within a year after obtaining the grant.

In the instant case, there is undisputed evidence that the applicants were unanimously nominated by the deceased's family members in a family meeting to administer the estate. They duly applied for a certificate of no objection from the respondent in 2014. The minutes of the family meeting where they were nominated reveal that the 1st applicant is a child of the deceased while the 2nd applicant is a grandchild of the deceased. The applicant's sworn evidence has not been rebutted by the respondent. On the authority of **Massa V Achen [1978] HCB 279**, an averment on oath which is neither denied nor rebutted is admitted as the true fact. The applicants are entitled to administer the deceased's estate under section 201 of the Succession Act since they are connected with the deceased consanguinity.

Mandamus is used to compel performance of a statutory duty. It is used to compel public officers to perform duties imposed upon them by an Act of Parliament. It is evident from the provisions of the Administrator General's Act cited above that the Administrator General is a public officer and the duty of issuing a certificate of no objection is a statutory duty imposed on him by the Administrator General's Act. The respondent has not adduced any evidence to justify his refusal or failure to issue the certificate of no objection to the applicants who were unanimously nominated in a family meeting.

In the premises, for reasons given, and on the authorities cited, I would grant the following orders against the respondent:-

1. An order of mandamus does issue against the respondent ordering him to issue a certificate of no objection to the applicants.
2. Costs of the application be paid by the respondent.

Dated at Kampala this 16th day of August 2016.

Percy Night Tuhaise

Judge.