

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

CIVIL SUIT NO.02 OF 2014

1. VICTORIA NAMUDDU

2. NASSALI PROSSY.....PLAINTIFFS

VERSUS

SULAIMAN LUKWAGO.....DEFENDANT

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

JUDGMENT

The plaintiffs brought this suit against the defendant for revocation/annulment of grant of letters of administration issued to the defendant vide Administration Cause No. 440/1987 in respect of the estate of the late Yosamu Sembajjwe, an order that the defendant makes a full and true inventory of the property and credits of the estate of the late Yosamu Ssembajjwe and to render a true account of the assets and properties of the said estate, an order for general damages for inconvenience and loss occasioned to the plaintiffs, and for costs of the suit.

The plaintiffs' case is that they are adult female Ugandans and daughters of the late Yosamu Sembajjwe; that sometime in January 1971, their father died of natural causes leaving behind a widow and eleven children; that the plaintiffs are the only surviving beneficiaries and children of the late Yosamu Sembajjwe; that sometime

in 2008 or thereabouts, the plaintiffs, wishing to share the estate of their late father, discovered that the title for the land comprised in Bulemezi Block 17 Plots 94 and 96 were missing; that after a search at Bukalasa Land office, the plaintiffs discovered that the defendant had fraudulently obtained letters of administration for the estate of the late Yosamu Sembajjwe claiming to be his heir, and, though a minor, had himself registered as proprietor; and that the defendant, without the knowledge and consent of the beneficiaries of the estate, stealthily and fraudulently obtained letters of administration from the High Court Kampala vide Administration Cause No. 440/1987.

When the matter was called for hearing, the plaintiffs' counsel prayed court to be allowed to proceed *ex parte* under Order 9 rule 10 of the Civil Procedure Rules, on grounds that the defendant was served but filed no defence. There is a sworn affidavit of service on the court record sworn by a Wamala Wycliffe Richard of M/S Nyanzi, Kiboneka & Co Advocates stating that the summons to file a defence was served by substituted service. A copy of the "Daily Monitor" newspaper of 09/10/2014 was attached to the affidavit of service showing the published summons to file a defence on page 35. There is no explanation on record as to why the defendant or his counsel did not file a defence or attend court. The matter therefore proceeded *ex parte*. 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 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 to the defendant in respect of the estate of the late Yosamu Sembajjwe.

- 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 to the defendant in respect of the estate of the late Yosamu Sembajjwe.

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 2nd plaintiff Nassali Prossy (PW1) stated in her sworn witness statement that she was born to the late Yosamu Sembajjwe and Kevina Nabiddo in 1964; that her father died in 1971; that following a meeting with her sister Victoria Namuddu (1st plaintiff) and all other beneficiaries of the estate, they resolved to find out about the status of the land at land office; that they discovered that the defendant had registered himself on the land as an administrator of the estate of the late Yosamu Sembajjwe; that he had lied to court that the deceased left eight daughters, two sons, and that he was the customary heir and son of Yosamu Sembajjwe; that the defendant was prosecuted for the fraud, convicted of forgery and theft, and

subsequently imprisoned; and that the defendant was a minor aged approximately fourteen years of age at the time he committed the offence.

This evidence is confirmed by the evidence of Ssali William (PW2) who in his sworn witness statement states that he was born to Edward Mugerwa a son of the late Yosamu Sembajjwe; that the defendant is his younger brother and the plaintiffs are their paternal aunts; that his grandfather was survived by a widow, 12 children 3 of whom were male; that Ssali Erasmus was installed as their grandfather's heir; that Erasmus and all other children of the late Yosamu Sembajjwe have since passed on except the plaintiffs. The evidence is further corroborated by the certified true copies of the certificates of title to land comprised in Bulemezi Block 17 Plots 94 and 96 annexed to the witness statement of PW1 as **C1** and **C2** respectively, as well as the proceedings and judgement to Criminal Case No 017/2009 Chief Magistrate's Court of Luwero, annexed as **J1** and **J2** to the same witness statement.

It is clear from the sworn witness statements and annextures that the defendant obtained the grant by making false statements that he was a son and heir of the late Yosamu Ssembajjwe. The plaintiffs' evidence that the defendant made untrue allegations on basis of which he was granted letters of administration to the late Yosamu Ssembajjwe's estate is corroborated by the certified true copies of the court documents in AC 440/1987 which confirm that the defendant actually made the fraudulent statements in his petition for letters of administration to the estate of the late Yosamu Ssembajjwe. Annextures **J1** and **J2** to Prossy Nassali's witness statement, which are copies of the proceedings and judgement to Criminal Case No 017/2009 Chief Magistrate's Court of Luwero, reveal that the said court found that the accused stole the certificate of title from Victoria Namuddu (1st plaintiff in the instant case) and caused it to be transferred into his names.

The plaintiffs pleaded that the defendant has never filed a true inventory and account in respect of the estate of the late Yosamu Ssembajjwe. The court record of AC 440/1987 from which the instant suit arose does not 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.

The plaintiffs have discharged their burden of proof by adducing unrebutted evidence that the defendant falsely claimed to be a son and heir of Yosamu Sembajjwe and went ahead to obtain the letters of administration in respect of the estate which he used to register himself on the deceased's certificates of title. 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 Yosamu Ssembajjwe 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 Yosamu Ssembajjwe'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

Yosamu Ssembajjwe by making a false suggestion that the late Yosamu Ssembajjwe left eight daughters and two sons and that he was the customary heir and son of Yosamu Sembajjwe. The defendant has also never filed an inventory or account of the estate despite holding the letters of administration. All this would justify the revocation of the grant under section 234 of the Succession Act highlighted above.

On the plaintiffs' prayer for general damages, there is evidence that the defendant fraudulently obtained the letters of administration to the estate of the late Yosamu Ssembajjwe to the prejudice of the beneficiaries who were legally entitled to administer the estate and benefit from the estate as spelt out in the will of the late Yosamu Ssembajjwe. They did not get to enjoy the said entitlements due to the defendant's fraudulent acts.

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 fraudulently obtaining the grant and using the same to register the land forming part of the estate into his own names caused inconvenience to the plaintiffs. This would entitle them to general damages as beneficiaries to the estate. I would in the circumstances award general damages in the sum of twenty five million Uganda Shillings (25,000,000/=).

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 the following orders:-

- a) Revocation/annulment of grant of letters of administration issued to the defendant vide Administration Cause No. 440/1987 in respect of the estate of the late Yosamu Sembajjwe.
- b) The defendant shall make a full and true inventory of the property and credits of the estate of the late Yosamu Ssembajjwe and render a true account of the assets and properties of the said estate.
- c) General damages of twenty five million Uganda Shillings (25,000,000/=) for inconvenience and loss occasioned to the plaintiffs.
- d) Costs of the suit.

I so order.

Dated at Kampala this 16th day of August 2016.

Percy Night Tuhaise

Judge.