

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

ADMINISTRATION CAUSE NO 12 OF 1997

MARGRET OYIKA WADRI:.....PLAINTIFF

VERSUS

STEPHEN ANDAMA

BARAKIA WADRI

MARIAM ANGUPARU

SUSAN EZARU WADRI:.....DEFENDANTS

SUNDAY WADRI

(By his next friend Stephen Andama)

BEFORE: THE HONOURABLE MR. JUSTICE AUGUSTUS KANIA

JUDGMENT

This suit is brought by Margret Oyika Wadri the widow of the late Farmenus Wadri who died intestate on 31.8.1997. By it the plaintiff seeks the following reliefs:-

- (a) A declaration that she is a fit and proper person to administer the estate of the deceased.
- (b) An order lifting the caveat lodged against her application for letters of administration to the estate of the deceased.
- (c) An order that letters of Administration be granted to the plaintiff.
- (d) Costs of the suit.
- (e) Any other relief which this court may deem necessary in the premises.

The facts that led to this suit briefly are as follows. On 31.8.1997 the late Parmenus Wadri died intestate in a Kampala Hospital. On 24.9.1997 the Plaintiff who had been customarily married to the deceased applied for letters of Administration to the estate of the deceased. Notice of the said

application was published in the Sunday Vision Edition of the 12.10.1997, it was then that Stephen Adam, also since deceased, lodged a caveat prohibiting grant of letters of Administration to the plaintiff. The plaintiff then initially brought this suit against the said Stephen Andama, but Barahia Wadri, Mariam Anguparu, Susan Enaru Wadri and Sunday Wadri who are defendants Nos 2, 3, 4, and 5 respectively were joined in the course of these proceedings because all of them one way or the other objected to the plaintiff being granted letters of Administration to the estate of the deceased exclusively. Defendants No 2 and 3 claimed to be a wife of the deceased while No.5 was joined as the son of the deceased.

At the commencement of the hearing of this suit the following five issues were framed for determination:-

1. Whether the plaintiff is entitled to administer the estate of the deceased.
2. Whether the 4th defendant is a widow of the deceased
3. Whether the 5th defendant is a son of the deceased
4. Whether the defendants are beneficiaries to the estate of the deceased.
5. Whether defendants 1, 2, 3, and 4 are entitled to apply for letters of Administration to the estate of the deceased.

With regard to the first issue whether the plaintiff is entitled to the grant of the letters of Administration to the estate of Parmenus Wadri deceased Mr. Jogo Taby, learned Counsel for the defendants submitted that under the provisions of Sections 201 and 202 of the Succession Act as amended by the Succession (Amendment) Decree No 22/972 the plaintiff is not entitled to a grant of letters of Administration to the Estate of the deceased because the grant goes to the person with the greatest interest in the estate. He pointed out that under Section 28 of the Act it would be the 5th defendant best qualified to apply for grant of the letters. Mr. Jogo Tabu contended that the plaintiff could only apply for the grant to the estate of the deceased if she issue and published a citation calling upon defendant No 5 to accept or refuse letters of Administration. Counsel argued that this is so because defendant No. 5 being the sole child of the late Permenus Wadri was entitled to 75% of the estate constituting the biggest interest in the said estate.

Mr. Dagira learned counsel for the plaintiff submitted that the plaintiff having proved that she is the widow of the deceased she takes precedence over all other persons wishing to apply for letters of Administration to the estate as was held in Erinesti Babumba & 2 Others vs Nakasi Kizito C.S no 173 of 1987. Counsel attempted to distinguish Bulasio Konde vs Bulandina Nankya and Nuwa Bumboka C.A No 7 of 1978 on which Mr. Jogo Tabu based his submission arguing that it related to the provisions of S 28(1) (b) of the succession Act as amended by the Succession (Amendment) Decree whereas the present case is governed by Section 28(1) (a).

Mr. Dagira submitted that even if the court was to declare defendant No 5 Sunday Wadri a lineal descendant no grant of the letters to the estate of the deceased could be granted to him in preference to the plaintiff.

The plaintiff testified that she is the widow of the deceased having been customarily married on 16. 12. 1995 to the deceased and that the said marriage was contracted according to Kuman customary marriage practices. She also testified that the said marriage was registered and she tendered the marriage certificate in evidence and the same was exhibited as P.I. DWI Stephen Andama, DW 2 Mariam Anguparu and PW3 Susan Ezaru all admitted in their testimony that the plaintiff was married to the deceased. It is therefore not in dispute that the plaintiff is a widow of the widow of the deceased.

Section 200 of the Succession Act as amended by the Succession (Amendment) Decree generally provides that when a deceased person has died intestate those connected to him whether by marriage or consanguinity are entitled to obtain letters of Administration to his estate in the order of precedence as provided for in the Act. Section 201 of the Act provides that the precedence of applying for such letters is to be determined by the share in the estate. A person entitled to the greatest share of the estate shall have the precedence over other persons.

That this is the law has been conceded to by Mr. Dagira and restated in the cases of Christine Male & another vs Sylifiya Mary, Namanda & another /1982/HCB 140, Erinesti Babumba & 2 others vs Nakasi Kizito HCCS 173/1987, Cissy Nabakka Kantinti vs Alexandri Kalemera HCCS No 684 of 1991 and Tereza Olowo & 2 others vs Rosette Bwekembe & another Pobate & Administration cause No 1/98

In the instant case the plaintiff has proved that she is a widow of the deceased and therefore a beneficiary entitled to a portion of the estate of the deceased as provided for under the provisions of S 28 of the Succession (Amendment) Decree and entitled to administer the estate of her deceased husband. However whether the plaintiff has precedence to apply and administer the said estate over all other persons related to the deceased can only be decided by determining the individual shares of the other persons related to the deceased.

The second issue to resolve is whether the 4th defendant Suzan Ezaru “adri is a wido of the deceased entitled to apply for the letters of Administration to his estate. DW1 Stephen Andama gave evidence that he was informed that the deceased married the 4th defendant in 1981 according to Lugbara customary marriage practices but he did not attend the ceremony. DW2 Mariam Anguparu testified that the 4th defendant was customarily married to the deceased in 1981 and bride wealth was paid consisting of 10 heads of cattle, 14 goats, 10 sheep, six chickens, six hoes, six blankets, four mats, two great coats, two gomases, 1 bow 6 arrows, 1 pair of gumboots and 1 pair of ladies shoes according to Lugbara customary practices.

DW2 Mariam Anguparu further testified that she used to talk to the plaintiff before the deceased died about her relatives including the fourth defendant. She also introduced the 4th defendant to the plaintiff after the deceased had died.

DW3 Susan Ezaru who is the 4th defendant testified that she is a widow of the deceased of the deceased having been married as testified to by PW 2 Mariam Anguparu. She testified that besides the bride wealth which was paid in her presence the deceased had to pay shs. 1,500,000/= (One million five hundred thousand only). In installments, the last installment was paid but not in her presence. Her evidence was also that she had lived apart from her late husband since 1985.

The plaintiff denied any knowledge of the 4th defendant as a widow of the deceased. It was her evidence that she came to hear that the 4th defendant had been a wife of the deceased when she had filed an application for letters of Administration. Her evidence was further that the 4th defendant showed up neither in Kampala nor in Mbale when the body was brought here nor in Arua where the deceased was eventually buried. The plaintiff according to her testimony was introduced, in church both in Arua and Mbale as the only widow of the deceased. The same

person Atiku Joseph, a first cousin of the deceased, who had introduced her in church as the only widow and made the same introduction at the burial. The plaintiff also testified that though she was very close and friendly to the 1st defendant, the 2nd defendant, 3rd defendant and other relatives of the deceased none of them told her the deceased had.

Though DW1 Stephen Andama and DW2 Mariam Anguparu on their evidence seem to suggest the bride wealth or bride price for the 4th defendant was fully paid, her own evidence is that besides the bride price in kind the deceased or his father was required to pay an additional shs 1,500,000/= in installments. Her evidence was that the last such installment was paid in 1986 which was not in her presence. It is trite that a customary marriage is validly contracted if the bride price is fully paid. The 4th defendant claims that part of the dowry or bride price was to be paid by defendant 2 Barahia Wadri in cash to the tune of shs 1,500,000/= and installments. Her evidence is that such amount was paid, the last installment being in 1986 but in her absence. The 4th defendant does not say how she got to learn such installment was paid. Even the 2nd defendant Barahia Wadri who according to the 4th defendant had the duty to pay the shs 1,500,000/= does not testify to that effect though he was a party to these proceedings. If the full dowry was to be completed by the payment of shs 1, 500,000/= by installments, as I am inclined to has not been proved on a balance of probabilities that it was fully paid as to constitute a valid marriage between the deceased and the fourth defendant.

The evidence of DW1 Stephen Andam, DW2 Mariam Anguparu and DW3 Susan Ezaru is that the 4th defendant was married to the deceased in 1981 and that the two had produced the 5th defendant who was born on 3.11.1980.

Though the plaintiff had been married to the deceased for a barely two years before the latter died and they had no child between them, when the deceased died the family members chose the plaintiff to apply for letters of Administration with the 1st defendant in preference over the 4th defendant. It is also revealing that when the 1st defendant first lodged a caveat prohibiting grant of letters of Administration to the plaintiff on the 22nd October, 1997 he never mentioned the existence of the 4th defendant in his affidavit in support of the caveat. It was only in the affidavit of the 4th defendant in support of another caveat lodged on 1.12.1997 that she declared herself a widow of the deceased. I have no doubt in my mind that if the 4th defendant had been validly married to the deceased the time of the death of the latter she would naturally have been chosen

by the family to apply for letters of Administration jointly with the plaintiff and the 1st defendant. She would also have lodged a caveat in the first place promptly the time the 1st defendant lodged the one on 22.10.1997 on her behalf and on behalf of her son the 5th defendant. The above not being the case, I am not satisfied that 4th defendant has proved on a balance of probabilities that she is a widow of the deceased.

Mr. Dagira submitted that even if the 4th defendant is found to be a widow of the deceased she is not entitled to administer the estate of the deceased as her alleged marriage was not registered. He argued that though the non registration of a customary marriage did not render the marriage invalid, the parties could not found a cause of action on it.

He relied for this proposition on the case of Mastula Nantongo Mugisha vs Enock Kakuru & Ors HCCS NO 161/1993. Mr. Joogo Tabu submitted that that class of cases apply to where witnesses of the marriage did not testify unlike the present case where the witnesses who attended the customary marriage testified to it having taken place.

In the case of Mastula Nantongo Mugisha vs Enock Kakuru & Ors (Supra) whether the people who witnessed the alleged marriage testified or not was not the issue. The issue in fact was the effect of sections 5(1) and 10 of the customary marriage (Registration) Decree. Section 5(1) of that Decree provides:-

“(1) The parties to a customary marriage shall as soon as may be but, in any event not later than six months after the date of completion of the ceremonies of marriage, attend at the office of the registrar of the marriage district in which the customary marriage took place, with at least two witnesses to the marriage ceremonies, to register details of the marriage.”

Section 19 of the Decree makes it an offence for the parties to breach the provisions of section 5(1) punishable by a fine not exceeding five hundred shillings.

The learned Judge in that case concluded rightly in my view, that though section 10 of the Decree does not render a marriage void for failure to register, on principles of the law of contract parties thereunder can not found a cause of action on it is incapables of proof. I respectfully

agree. The alleged customary marriage between the 4th defendant and the deceased not having been registered, the 4th defendant can not base her claim on it.

In the result for the above reasons I find that the 4th defendant is not a widow. The second issue is answered in the negative.

As regards the third issue of whether the 5th defendant is the son of the deceased. DW1 Stephen Andama DW2 Mariam Anguparu and DW3 Susan Ezaru all testified that the 5th defendant is the son of the deceased having been born in November, 1980. The defence produced a birth certificate in respect of the birth of the 5th defendant which indicated that he was born 3. 11. 1980 of the 4th defendant to the deceased. It was exhibited and marked D4.

The plaintiff contested the paternity of the 5th defendant on the grounds that the deceased had never told her the 5th defendant was his child and that DW3 Mariam Anguparu with whom the plaintiff was very friendly never mentioned the child.

Mr. Dagira submitted that the fact that SW3 Mariam Anguparu at one stage admitted she had a son called Sunday which is the first name of the 5th defendant, 5th defendant was not living with any of his parents and the fact that the birth certificate was obtained after the death of the deceased lead to the inference that the birth certificate is a set up and that it has been proved the 5th defendant is the child of the deceased.

Mr. Dagira submitted that even if the 4th defendant is found to be a widow of the deceased she is not entitled to administer the estate of the deceased as her alleged marriage was not registered. He argued that though the non registration of a customary marriage did not render the marriage invalid, the parties could not found a cause of action on it.

He relied for this proposition on the case of Mastula Nantogo Mugisha vs Enock Kakuru & Ors HCCS NO 161/1993. Mr. Joogo Tabu submitted that that class of cases apply to where witnesses of the marriage did not testify unlike the present case where the witnesses who attended the customary marriage testified to it having taken place.

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effect of Sections 5(1) and 10 of the customary marriage (Registration) Decree. Section 5(1) of that Decree provides:-

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Section 19 of the Decree makes it an offence for the parties to breach the provisions of Section 5(1) punishable by a fine not exceeding five hundred shillings.

The learned section 10 of the Decree does not render a marriage void for failure to register, on principles of the law of contract parties thereunder can not found a cause of action on it as it is incapable of proof. I respectively agree. The alleged customary marriage between the 4th defendant and the deceased not having been registered, the 4th defendant can not base her claim on it.

In the result for the above reasons I find that the 4th defendant is not a widow. The second issue is answered in the negative.

As regards the third issue of whether the 5th defendant is the son of the deceased. DW1 Stephen Andama DW2 Mariam Anguparu and DW3 Susan Ezaru all testified that the 5th defendant is the son of the deceased having been born in November, 1980. The defence produced a birth certificate in respect of the birth of the 5th defendant which indicated that he was born on 3.11.1980 of the defendant to the deceased. It was exhibited and marked D4.

The plaintiff contested the paternity of the 5th defendant on the grounds that the deceased had never told her the 5th defendant was his child and that DW3 Mariam Anguparu with whom the plaintiff was friendly never mentioned the child.

Mr. Dagira submitted that the fact that DW3 Mariam Anguparu at one stage admitted she had a son called Sunday which is the first name of the 5th defendant, the 5th defendant, the 5th defendant was not living with any of his parents and the fact that the birth certificate was obtained after the

death of the deceased lead to the inference that the birth certificate is a set up and that it has been proved the 5th defendant is the child of the deceased.

In matters relating to the birth and parentage of a child birth certificate issued under the Births and Deaths Registration Act Cap 190 is conclusive proof of the date of birth and the paternity or maternity of such a child See Yosamu Bisanga Vs Barnabas Aihile C.A 8/78 and Tereza Olowo & 2 others vs Rosette Bwekembe & Another Mbale Probate & Administration cause NO 1/1998.

Once such a birth certificate is produced there is a presumption that the date of birth and the parents of the child and all other details stated there in are correct. This presumption can however be rebutted by evidence that the entries therein are false or that the birth Certificate is a forgery.

In the instant case the defence produced and exhibited the birth certificate in respect of the 5th defendant that he was born on 3.11.1980 to the deceased. Though Mr. Dagira challenged the birth certificate as having been set up, he did not adduce any evidence to support his contention. In the absence of contradictory evidence. I find that the birth certificate exhibit D4 is conclusive evidence that the 5th defendant is the son of the deceased. The third issue is accordingly answered in the affirmative.

As regards the 4th issue which is whether the defendants are beneficiaries to the estate of the deceased, the categories of relatives and dependants entitled to benefit from the estate of a person who dies intestate of a person who dies intestate are spelt out in Section 28 of the Succession Act as amended by the Succession (Amendment) Decree. These include a customary heir, a wife, a lineal descendant and a dependant relative.

Evidence was adduced by the defence in respect of the 2nd defendant Barakia Wadri and the 3rd defendant Mariam Anguparu, and this was conceded to by Mr. Dagira that they were dependant relatives. I accordingly find the 2nd and 3rd defendants dependant relatives of the deceased in terms of Section 28 of the Succession Act and therefore entitled to benefit from the estate of the deceased who died intestate. The first defendant who is since deceased by his own evidence was not a dependant relative nor in any other class of the beneficiaries under Section 28 of the Succession Act as amended by the Succession (Amendment) Decree. Even if he had lived he

would not have been entitled to benefit from the estate of the deceased. As the 4th defendant Susan Ezaru has failed to prove that she is a widow of the deceased or that she falls in any of the categories under Section S 28 of the Succession Act she is not entitled to any proportion of the estate of the deceased the 5th defendant having been proved to be the child of the deceased is entitled to benefit from the estate of the deceased. Because the deceased died intestate and left a widow, a lineal dependant and dependant relatives, his estate shall be divided under the provisions of Section 28 1(a) of the Succession Act as amended by the Succession (Amendment) Decree. The answer to the 4th issue is that only the 2nd, 3rd, and 5th defendants shall be entitled from the estate of the deceased.

I now finally turn to the issue of whether defendant's 1, 2, 3, and 4 are entitled to apply for letters of Administration to the estate of the deceased. Having found that the 4th defendant was not a wife to the deceased and did not fall in any of the categories to benefit from the estate of the deceased she is not entitled to apply for letters of Administration to the estate of the deceased. Having found that the 4th defendant was not a wife to the deceased and did not fall in any of the categories to benefit from the estate of the deceased she is not entitled to apply for letters of administration to that estate. The 1st defendant having died can not get a grant to the estate of the late Parmenus Wadri. After the demise of the 1st defendant Miriam Anguparu was substitute as next of friend to the 5th defendant. In this instant case under the provisions of the Succession Act as amended by the Succession (Amendment) Decree and particularly Section 201 thereof the 5th defendant would be the most entitled to deceased as he is entitled to the greatest proportion of the said estate under Section 28(1) (a) iv. Though no grant can be granted to a minor which the 5th defendant is, there is nothing irregular in giving a grant to a minor who claims his portion in an estate by next of friend. In the circumstances I would grant the letter of Administration to the 3rd defendant Miriam Anguparu. I have however taken into account the acrimony and bitterness with which this estate was contested between the plaintiff and the defendants. It is not only the duty of the courts to make grants but also to give orders that will protect both the estate and the interest of the beneficiaries. Considering the history of this case, giving the grant to the 3rd defendant alone would leave the interest of the plaintiff unprotected. The interests of the 5th defendant would equally not be protected if the grant was to be given to the plaintiff because through out these proceedings the plaintiff did not recognize him as the

child of the deceased. In these circumstances I invoke the provisions of Section 224 of the Succession Act as amended the Succession (Amendment) Decree that the court is empowered to associate any person with the person to grant letters of Administration if it thinks it is proper to do so. Therefore though the 5th with an entitlement to the greatest portion of the estate of the deceased is the most entitled to the grant through his next of friend. I consider it proper it proper that the plaintiff be associated with the 3rd defendant. In the result caveat lodged by the 4th and 5th defendants is vacated and letters to the Estate of the late Permenus Wadri are granted jointly to the 3rd defendant and the plaintiff. The costs of both parties shall be paid out of the estate.

Sgd. AUGUSTUS KANIA

JUDGE

6.1.2000