

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

MISCELLANEOUS CIVIL APPLICATION No. 0053 OF 2016

(Arising from HCT-08-CV-0023-2014 in the matter of the Estate of the

Late. Javuru Apollo Michael (deceased)

And

In the matter of an application for revocation of letters of administration and grant instead to Piwa Clare and Biywaga Joan.

RULING

This is an application for revocation of letters of administration that were granted by this court on 23rd March 2015, to the applicants jointly with one Javuru Smith Godwin (now deceased) in respect of the estate of the late. Javuru Apollo Michael of Onjuku Upper village, Forest ward, Nebbi Town Council.

The application is made by way of notice of motion under the provisions of section 98 of the *Civil Procedure Act*, Cap 71, Section 234 (2) (d) of the *Succession Act*, Cap 239 and Order 52 rules 1, 2 and 3 of the *Civil Procedure Rules* SI 71-1. It is supported by the affidavit of the first applicant. Having read the pleadings, I considered it unnecessary to hear the applicants in a viva voce submission.

The main thrust of the application is that whereas the grant of 23rd March 2015 was made to the three of them, viz; Piwa Clare, Biywaga Joan and Javuru Smith Godwin, the latter co-administrator unfortunately died on 3rd January 2016. As a result, the grant has become inoperative, hence the application for revocation.

Section 234 (2) (d) of the *Succession Act*, permits courts to revoke letters of Administration that have become “inoperative.” A grant may have been properly made but for a reason that has occurred as a result of subsequent events, it may become necessary for the court to revoke the grant for practical reasons. For example where an administrator becomes incapable of managing

his affairs by reason of mental or physical incapacity, the grant will be revoked, as it was in *the Goods of Galbraith [1951] p 422*.

The object of the power to revoke a grant is to ensure due and proper administration of an estate and protection of the interests of those beneficially interested. The principle was enunciated *In the goods of William Loveday [1900] P 154 thus;*

The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto, and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make a fresh grant.

There is only one way in which the name of an administrator of an estate may be removed from a grant and that is by revocation of the grant and the making of a fresh grant. A court cannot simply strike out the name of one administrator from a grant and continue on without revoking the grant. A fresh grant should be made because a grant is a public document and often must be produced to third parties as proof that the holder is the personal representative and thus enable him or her to administer the estate.

Where a grant to two or more administrators is revoked however, and a new grant is issued to one of the original administrators, a court does not require the continuing administrator to prove once more all the matters which were proved in order to obtain the original grant (*see Gould v Gould [2005] NSWSC 914 at 9 per Campbell J*). In this case it will not be necessary to go through the entire process of applying, advertising etc.

Regarding the application before me, I have perused annexure “B” to the affidavit in support of the motion. It is a short death certificate Reg. No. 01610020 issued by a medical officer at Arua Regional Referral hospital certifying that Javuru Smith Godwin died at that hospital on 3rd January 2016. I am therefore satisfied that the grant made by this court on 23rd March 2015 has become inoperative by reason of the death of one of the joint administrators, At the time of his

death, it is averred in paragraph six of the affidavit in support that the administrators were yet to distribute the estate. The applicants have made out a proper case for the revocation of that grant and it is hereby revoked.

Instead, in order to ensure the due and proper administration of the estate and protection of the interest of those beneficially interested, I direct, order and hereby make a fresh grant in respect of the estate of the late Javuru Apollo Michael, to the surviving administrators; Piwa Clare (widow of the deceased) and Biywaga Joan (daughter of the deceased). There is no order as to costs.

Dated at Arua this 1st day of July 2016.

Stephen Mubiru

Judge

01/07/2016

Ms. Sharon Ngayiyo, Court Clerk

Ms. Piwa Clare, 1st applicant, present

Ms. Biywaga Joan, 2nd applicant, present

Court: The Ruling is delivered in the presence of the above mentioned parties.

Stephen Mubiru

Judge

01/07/2016