THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS APPLICATION No. 121 Of 2017

(ARISING FROM ADMIN CAUSE NO. 143 OF 2016)

NDIKIMWIZA PHOEBY :::::::::::::::::::: APPLICANT

Versus

1. **IKOBA DAWSON NVIRI**
2. **NAIKOBA HADIJA ::::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

The applicant NDIKIMWIZA PHOEBY brought this application against the respondents IKOBA DAWSON NVIRI and NAIKOBA HADIJA praying for orders that:

1. An order be made to remove the respondents from a certificate of No Objection and application for letters of administration in Adm Cause No. 143 of 2016
2. Letters of Administration for the estate of the late Ikoba Sula be granted to the applicant alone as widow
3. Costs of the application

There are several grounds listed, on which this application is based, which are particularised in the applicant's affidavit in support. She avers that she is the widow of the late Ikoba Sula who was a resident of Lubanyi in Butagaya Sub County in Jinja District. The respondents are siblings (brother and Sister) of the deceased and were jointly, with the applicant, granted a certificate of no objection to apply for letters of administration for the estate of the deceased. According to her affidavit in support the deceased was survived by 10 children. Her rejoinder states the number of children to

have been 15. When the matter was due for identification of the applicants in Court, the respondents refused to sign the identification forms or to indeed appear for the identification. The applicant was forced to write to The Administrator General requesting that the respondents be deleted from the issued certificate of no objection. She was advised to get a court order instead. She averred that the estate of the deceased is being wasted away. That the respondents have their own families to ran and have such a tight schedule that they do not have the interest and time for the family of the deceased, therefore the prayers should be granted.

In reply, the respondents in their affidavits which are virtually identical to each other state the deceased was survived by 15 and not 10 children. Then that prior to the lodging of the application, it had been agreed that one Namuyena Annet, who is now deceased and was a widow of the late Ikoba, should have been a co petitioner for letters of administration. However the applicant produced a certificate of no objection comprised only of the three parties to this matter and Namuyena had been left out. That because the applicant had not complied with the earlier understanding the respondents refused to sign identification forms when the applicant brought them. It is also stated that the petition includes and lists land in Lubanyi which does not form part of the estate as it was not property of the deceased. The respondents both aver that they have enough time and are available to take care of the estate. It is also deposed that the applicant has not shown what irreparable loss she would suffer if this application is not granted and as such her application has no merit.

When this application came up for hearing the parties were granted leave to file written submissions which are on record and shall not be reproduced here.

The respondents started by raising a point of law regarding the applicant failing to cite any law on which the application is based.

The general rule is that where an application omits to cite any law at all but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted (See **Bwengye v Haki Bonera HCMA No 33 of 2009**). This court is clothed with unlimited jurisdiction in all matters and can competently entertain this application to its conclusion. Failure to cite the law under

which the application was brought was not fatal to this application. The case of **Bwengye** (supra) therefore applies with equal force in these circumstances.

The second objection raised was that the applicant was illiterate and did not understand English. As such her affidavit should have been interpreted to her but in this case there is no indication that her affidavits were read, translated and properly explained to her. As such the affidavits offend the provisions of **The Illiterates Protection Act Cap 78.**

First of all, the respondents have not furnished any proof that the applicant is indeed illiterate.

Secondly, and specifically in these circumstances, this court is of the view that there is no mischief or injustice shown to be suffered by the respondents. Besides if indeed the applicant were illiterate then as the law provides, the names and address of the person who drew up the affidavits is furnished as is required by Section 3 of **the Illiterates Protection Act.** According to the Act giving the names and address of the person who drew up the affidavits would imply a statement that the drafter was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her. Here the name is indeed given on one of the affidavits as Anguria, Aogon and Co advocates. The second affidavit has no name.

I am however of the view that this court should in the interest of justice investigate the merits of the application. The Supreme Court held in the case of ***Re Christine Namatovu Tebajjukira [1992 – 93] HCB 85*** that:

> ***"The administration of justice should normally require that the substance of disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights."***

The above is a general position applied on a case by case basis. I am of the view it applies in the instant case where no proof of illiteracy is shown on the part of the applicant.

Turning now to the application, the applicant deposes that the respondents as co applicants for letters of administration have refused to appear before the court for the

identification preceding the grant of such letters of administration. The respondents on the other hand do not deny refusing to appear for identification and justify their actions giving a number of reasons.

Firstly that the applicant averred the deceased had 10 children when in fact they were 15 in number.

I find that the applicant did indeed state in her affidavit in support of this application that there were 10 children. That appears to have been corrected in the affidavit she filed in rejoinder where she states the children are 15 in number.

Then the petition for letters of administration states and names 15 children as surviving the deceased. The number given in the petition is the one the court would rely on in the event the grant was made. It is the same number consistently given in all other documents and meetings regarding the estate of the deceased.

The other complaint is that it had been agreed between the parties here that there would be four applicants for letters of administration including one Namuyena Annet who is now deceased. That in breach of this agreement the applicant presented only the three parties here to Court in her application for the grant of letters of administration.

I have examined the entire process of the application for the letters of administration in this matter. The minutes from the office of the Administrator General clearly show that it was these three (the applicant and both respondents) who were presented for a grant of a certificate of no objection. Secondly, at a family meeting which both respondents attended on the 10th of October 2015, it was agreed that the three parties herein apply for a grant of letters of administration.

It was on the basis of this information that the Administrator General granted a certificate of 'No Objection' to the applicant and both respondents.

The above also holds true for the land named as constituting the estate of the deceased. The respondents complain that the applicant has included in the petition land in Lubani LC I that does not belong to the estate.

However looking at the documents already referred to above, I find that the questioned land was part of the property listed as belonging to the deceased during the

meetings and no objection about it was raised not least by the respondents. There is no justification as matters stands now to state that this falls outside the estate.

In sum, all the objections by the respondents are based on deliberate misrepresentations aimed at misleading this court. It therefore appears that the averment by the applicant that the respondents have no interest in the proper management of the estate of Ikoba Ssula is true.

Ultimately, this Court has unlimited Jurisdiction in all matters. Under Section 33 of **The Judicature Act the High Court** may grant remedies a party in a matter is entitled to in any legal claim properly before the Court to finally determine all matters in controversy before it.

In light of the above, the applicant is the widow of the deceased and entitled to a share of the estate. On that basis she may apply for letters of administration and would not need a certificate of 'No Objection' as a pre-condition for the grant to be made to her.

Then considering the misrepresentations made by the respondents about the application process, I find that they are both not proper persons for a grant of letters of administration to manage the late Ikoba's estate in the circumstances of this case.

In the result this court orders that:

1. The respondents IKOBA DAWSON NVIRI and NAIKOBA HADIJA are expunged from the Certificate of No Objection issued in Admin Cause No 143 of 2016.
2. Letters of administration for the estate of the late IKOBA SULA are hereby issued to the NDIKIMWIZA PHOEBY.
3. The applicant is granted costs of this application.

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Michael Elubu

Judge

22.11.2017

5-12-17.

Applicant absent but Mrs present.
Mr. Allan for the respondents.
Court: Clerk.
Court: Ruling delivered in the presence of the above.