THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION NO. 24 OF 2019

SENDEGE DEO ……. APPLICANT/ JUDGMENT CREDITOR

VERSUS

NANONO ANNAMARIA

NOWE NABYONGA BETTY …….. RESPONDENTS

RULING

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA

Introduction

This ruling is in respect of an application brought by way of Notice of Motion under section 222 of the Succession Act Cap. 162, Section 98 of the Civil Procedure Act, Cap. 71 and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1. The application seeks for orders that, Nanono Anamaria (hereinafter referred to as **the 1st respondent**) and Nowe Nabyonga Betty (hereinafter referred to as **the 2nd respondent**) be appointed administratrix of the estate of the late Monica Nansubuga (herein after referred to as **the deceased**) who was the defendant and judgment debtor in **Civil Suit No. 76 of 2012**, for purposes of completing the case by way of execution of the decree arising there from and that the costs of the application be provided for.

Appearance and Representation.

When the application first came up for hearing on **24th October 2019**, the applicant, Sendege Deo, was in court and represented by Counsel Kangaho Edward but was consequently represented by Counsel Mandela Araali and Counsel Okwir Yovino, all of Kangaho & Co. Advocates. The respondents at first were both not represented but later, on 22/11/2021, a notice of change of advocates was filed in this honourable court from Lukwago & Co. Advocates to the effect that they had been instructed by the 1st respondent to take over the conduct of this matter.

The application

The application is supported by the affidavit of Sendege Deo (hereinafter referred to as **the applicant**). The 1st respondent also filed her affidavit in reply and a supplementary affidavit in reply to the application to which the applicant made a rejoinder to. Both counsel filed written submissions, citing authorities and the same have been considered in this ruling.

Facts

The facts as deduced from the pleadings and written submissions by counsel are as follows:

The applicant (then plaintiff) instituted **Civil Suit No. 76 of 2012** in this honourable court against the deceased (then the defendant) and the said suit was determined in favour of the applicant on **13th December 2016** (a copy of the plaint and said judgment were attached to the application and marked "A" and "B" respectively) but the defendant unfortunately passed away before the commencement of the execution process. The applicant was then advised by his lawyers to pursue and/or complete the execution process against the estate of the deceased by seeking court

for an order to appoint the 1st and 2nd respondents as administrators of the deceased's estate because the 1st and 2nd respondents are the biological children of the deceased. It is against this background that this application was brought to this honorable court for determination of the issues raised in the said application.

The issues for determination as per the applicant's Notice of Motion are;

1) *whether Nanono Anamaria and Nowe Nabyonga Betty can be appointed administratrix of the estate of the late Monica Nansubuga who was the defendant/ judgment debtor in Civil Suit No. 76 of 2012, for purposes of completing the case by way of execution of the decree arising there from; and*
2) *costs for this application be provided for.*

Resolution of the issues

Issue 1: Whether Nanono Anamaria and Nowe Nabyonga Betty can be appointed administratrix of the estate of the late Monica Nansubuga who was the defendant/ judgment debtor in Civil Suit No. 76 of 2012, for purposes of completing the case by way of execution of the decree arising there from.

The applicant in his affidavit in support of the application avers that the Bill of costs was taxed but before they could commence the execution process, the then defendant/judgment debtor passed away and that he had been advised by his lawyers that the respondents being the biological children of the deceased could be appointed as administratrix for purposes of completing the execution process of the decree in Civil Suit No. 76 of 2012.

The applicant in his affidavit further states that since there hasn't been any administrators of the said estate, it is fit and proper that the respondents who are the

biological children of the deceased be appointed administratrix and that the respondents will not be prejudiced in any way if they are appointed administratrix of the deceased defendant/ judgment debtor.

In reply to the applicant's affidavit in support of the application, the 1st respondent with the advice of her lawyers averred that the application was vexatious, misconceived, bad in law, an abuse of court process and brought in bad faith and sought to move court to dismiss it with costs. The 1st respondent stated that the deceased never informed her about any suit against her or anyone claiming any interest whatsoever from her during the deceased's lifetime.

The 1st respondent also averred in her affidavit in reply that she was not aware of any property forming the estate of the deceased and that to the best of her knowledge and belief, the deceased distributed the whole of her estate to the beneficiaries before she passed away which beneficiaries have also since sold off to third parties.

Further still, the 1st respondent stated that she had no interest in the disputed land if any, and that she was personally frail suffering and /or battling with high blood pressure and unable to cope with the stress associated with managing an estate which was unknown to her. The 1st respondent attached the medical reports in her supplementary affidavit in reply which I had an opportunity to look at.

In rejoinder, the applicant averred that the 1st respondent's affidavit in reply was bad in law, incurably defective for not conforming with the laws that govern affidavit evidence. He further contended that it was filed out of time without seeking leave from court to do so and as such, the 1st respondent's affidavit in reply should be struck off the record.

The applicant also stated that in the event that the 1st respondent is not interested in being appointed as the deceased's administratrix, she could propose a person ready

to act as such and in response to the supplementary affidavit in reply, the applicant proposed the 2nd respondent to be appointed as the administrator of the deceased since she has not filed any affidavit challenging the said appointment.

The applicant's written submissions address on the law that governs the said application to wit; section 222 of the Succession Act, Cap. 162 that provides as follows:

"*When it is necessary that the representative of a person deceased is made a party to a pending suit, **and the executor or person entitled to administration is unable or unwilling to act**, letters of administration may be granted to the nominee party in the suit, limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same way or in any other court between the parties, or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution*." [Emphasis mine]

Also, reference is made to section 98 of the Civil Procedure Act, Cap. 71 that provides for the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court. He also relied on Order 52 of the Civil Procedure Rules that allows all applications including the present one where there is no particular procedure prescribed for the same, to be brought by way of Notice of Motion.

The case of **Kalumba Benjamin & Another Versus Kakira Sugar Works & Another Miscellaneous Application No. 4611 Of 2014** was also referred to in the applicant's written submissions in which citing the case of **Copper Versus Smith [1884] 26 CHD 700** where it was observed that;

"*I think it is a well established principle that the object of court is to decide the rights of the parties, and not to punish them for the mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights…*"

The applicant in his written submissions therefore prays that court invokes its inherent powers given to it to grant Letters of Administration to the respondents in order to enable the execution process to go on, failure of which shall lead to abuse of process of court which section 98 of the CPA seeks to prevent.

In reply to the applicant's written submissions, the 1st respondent's counsel, while relying on the case of **Attorney General & Another Versus James Mark Kamoga & Another Supreme Court Civil Appeal No. 8 of 2004** reiterated the 1st respondent's averments in the affidavit in reply, vehemently opposing the application deeming it to be vexatious, misconceived, bad in law, an abuse of court process and brought in bad faith and prayed that the application is dismissed with costs to the 1st respondent.

The applicant did not file any submissions in rejoinder.

I have read the court record and I take note of the fact that the applicants made many unsuccessful attempts to serve the respondents with the said application. Whereas the 1st respondent confirmed that she is a daughter to the deceased, the 2nd respondent makes no reply to the application, making it difficult for court to make any findings pertaining her relationship with the deceased. Besides, the applicant has not made any effort to convince court on the alleged relationship. Therefore, this application is summarily dismissed against the 2nd respondent for reasons that the applicant has not proved the existence of any relationship between the deceased and the 2nd respondent so as to be entitled to administer her estate.

I also take cognizance of the fact that the 1st respondent filed her affidavit in reply way out of time without seeking leave of court and that her affidavit in reply and supplementary affidavit in reply were defective to the extent that they did not state the particulars of the translator and the date when the translation was done.

Ordinarily, the 1st respondent's affidavit and supplementary affidavit in reply should have been struck off the record immediately. However, striking off the affidavits of the 1st respondent would mean that the applicant has even failed to convince court that the 1st respondent is a biological daughter of the deceased and therefore entitled to be appointed as an administrator of the deceased's estate. The 1st respondent in her affidavit in reply to the application confirms that she is a daughter to the deceased. It is for that reason that the affidavit in reply and supplementary affidavit in reply are admitted so that the said application is handled on its merits or substantively.

Thus, in resolution of issue 1 stated above, I agree with counsel for the applicant that the 1st respondent is a person entitled to administer the estate of the deceased since she is the biological daughter of the deceased and would therefore be entitled to a grant of Letters of Administration under section 201 of the Succession Act, Cap. 162.

However, the 1st respondent in her affidavit in response to the application states that she is not aware of any property forming the estate of her deceased mother. According to her and to the best of her knowledge, the same was distributed by the deceased to the beneficiaries before she passed away, which beneficiaries have also sold off to other third parties. The 1st respondent also states that she is both unwilling and unable to administer the estate of her late mother because she cannot administer

a non-existent estate. She further states that she is suffering from high blood pressure as such she cannot cope with the stress associated with managing an estate, if any.

I also note the use of the word "**may**" in section 222 of the Succession Act, Cap. 162 to further state that the said Letters of Administration are issued by court at its own discretion. Court would not issue Letters of Administration to a nominee who has categorically expressed her ignorance to the suit which was against her deceased mother. She has also expressed unwillingness and inability to be an administrator of her mother's estate, if any.

The 1st respondent in her affidavit in reply insists that her late mother distributed all her property when she was alive and she has no estate left for administration. Under the law, Letters of Administration are issued for purposes of administering property and credits of the deceased person. In the instant case, whereas there is evidence that there are credits of the deceased to be administered, there is no evidence to the existence of the property of the deceased that would enable the administrator to deal with the credits. The applicant has not at all made any effort to prove to court that there is property for the 1st respondent to administer for purposes of execution which the applicant is seeking for. Thus, granting Letters of Administration to the 1st respondent would not serve the interest of justice. It would appear as if court is imposing responsibility on someone without justifiable cause and such order would be redundant and inoperative.

From the foregoing, issue one is resolved in the negative. Nanono Anamaria and Nowe Nabyonga Betty cannot be appointed administratrix of the estate of the late Monica Nansubuga who was defendant/judgment debtor in Civil Suit No. 76 of 2012, for purposes of completing the case by way of execution of the decree arising there from.

In the event that the applicant still believes that there is an estate of the deceased to administer for purposes of execution, the appropriate procedure would be to involve the office of the Administrator General, who is the Public Trustee of persons who die intestate under the law.

The application is hereby dismissed on the above grounds and in the premises each party should bear its own costs.

I so order.

Dated at Kampala this 3rd day of December 2021.

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Alice Komuhangi Khaukha

Judge.
3/12/2021