

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 043 OF 2021**

KATUSHABE GENEROUS:..... PLAINTIFF

VERSUS

TUKAMUHEBWA GODFREY :..... DEFENDANT

JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] In this Suit, the Plaintiff sued the Defendant for a declaration that the Defendant fraudulently obtained Letters of Administration to the Estate of the late **Turyatunga Innocent** in **Administration Cause No. 065 of 2019**, an Order for the revocation of the Letters of Administration, an Order that the Plaintiff is the rightful Administrator for the Estate, an Order of Permanent Injunction restraining the defendant from administering, undertaking any further dealings by use of sale, lease, mortgage, charge or in any other manner detrimental or adverse to the interest of the Plaintiff or in any way intermeddling with the Estate, general damages and costs of the suit.
- [2] The Defendant was duly served with the summons and the Plaintiff of this suit and as per the Affidavit of service on record dated 20th May, 2021, the Defendant failed to file the defence within the time provided. As a result, upon an application by

the Plaintiff the suit was set down for hearing ex parte under the provisions of **0.91.11 (CPR)**.

[3] **Counsel Legal Representation**

The Plaintiff, was represented by **Mr. Kwesiga Wilison** and **Mugisha Peter** who upon the closure of the Plaintiff's case, filed written submissions for consideration in the determination of this suit.

The Plaintiff's Case

[4] It is the Plaintiff's case that the Plaintiff is a biological mother of the deceased **Turyatunga Innocent** who died in an accident while on duty at the employers' camp at Nalweyo, Kakumiro District. The deceased was working for a Chinese construction, **China Wu Yi Construction Company** as a Mechanic. While at work, on 19th May, 2019 he was knocked down dead by the company vehicle.

[5] The employer admitted the incident and made contributions to the deceased's burial expenses. After the burial, the father of the deceased **Ntwirenabo Charles (Pw2)** was invited by the company to its offices for consideration of the payments to the bereaved family, the deceased's benefits.

[6] The Plaintiff applied for Letters of Administration and secured the Grant on the 19th November, 2019 from the Chief Magistrate's Court, Hoima at Kakumiro vide Kakumiro Court **Administration Cause No. 23 of 2019** (P.Exh. 1) for purposes of securing the deceased's benefits.

[7] The Plaintiff and her husband **Ntwirenabo Charles (Pw2)** proceeded to the company office and presented the Grant for purposes of securing the deceased's benefits and this is when

they were informed that the Defendant obtained the Grant from High Court and acquired the deceased's benefits. Thereafter, the Plaintiff found that the Defendant upon receipt of the benefits of the deceased fled the village and his whereabouts are now unknown. The Defendant is a step brother to the deceased, the deceased's father **Ntwirenabo Charles** having produced him from a different woman, not the Plaintiff, the mother of the deceased.

- [8] **Mr. Kwesiga**, Counsel for the Plaintiff submitted that unknown to the Plaintiff, the defendant colluded with some company officials, secured a grant from **High Court Masindi under Administration Cause No. 65 of 2019** dated 21st January, 2020 (P.EXh. 2) with the help of the company officials, hurriedly proceeded and obtained the deceased's benefits/compensation to the detriment of the Plaintiff and his family.

Issues for Determination of the Suit

- [9] 1. *Whether the Defendant rightly or fraudulently obtained Letters of Administration for the Estate of the late Turyatunga Innocent.*
2. *Whether the Plaintiff rightly obtained Letters of Administration for the Estate of the late Turyatunga Innocent.*
3. *What remedies are available to the parties.*

Issues 1 and 2

- [10] It is evident from the pleadings and the evidence of both the Plaintiff (Pw1) and her husband (Pw2) that the Plaintiff obtained her Letters of Administration in respect of her deceased's son Estate on 19th November, 2019 from the Chief Magistrate's

Court of Hoima at Kakumiro (**P.Exh. 1**) for purposes of securing her deceased son's benefits from the employer company before the Defendant obtained his grant from the High Court Masindi on 21st January, 2020 (**P.Exh. 2**).

[11] The Defendant obtained the grant for the Estate of the late **Turyatunga Innocent** during the subsistence of another grant obtained by the deceased's mother. There is no suggestion that the Defendant first caused for the revocation of the Plaintiff's grant before applying or during the application for the 2nd grant or that the Plaintiff's grant was obtained from Court without jurisdiction. The available evidence is that the deceased left no property as he was still staying with his parents (**Pw1** and **Pw2**) save for the benefits he was expecting from his employer. The benefits were yet to be determined and ascertained.

[12] According to **S.180 of the Succession Act**, an administrator of the deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such. Letters of Administration entitle the Administrator to all rights belonging to the intestate. It follows therefore that after the grant of Letters of Administration, no person other than the person to whom the same has been granted has the power to act as representative of the deceased until the Letters of Administration has or have been recalled or revoked; **S. 264 of the Succession Act**.

- [13] It is trite that a Grant remains valid until revoked. Even in cases where a Grant has been obtained by fraud, so long as the Grant remain unrevoked, the grantee represents the Estate of the deceased: See **Anecho v Twalib and 2 Ors H.C.C.S. No. 09/2008 [2018] UGHCLD 30** where Court cited and approved the proposition in **Gilbert William James Pais & Anor [1993] (2) Kar. J 301.**
- [14] In the instant case, there now exist 2 concurrent grants over the same Estate. Such a scenario has, definitely dire and embarrassing consequences and therefore Court cannot allow the 2 grants to stand. The Court has power to revoke a grant at its discretion, having regard to all circumstances. The Defendant in this case proceeded to apply for a Grant from the High Court during the existence of another grant in respect of the same Estate obtained by the mother of the deceased. He proceeded to apply for a grant from the High Court Masindi without revocation of the previous one. As I have already observed, the previous grant was and remain valid until it is revoked and since the 2 concurrent grants over the same estate are not permitted to stand, one of them has to be revoked.
- [15] In the present circumstances where the Plaintiff is a biological mother of the deceased and therefore the closest kindred who first applied for Letters of Administration in respect of her deceased's son Estate, and the Defendant on the other hand being a mere step brother of the deceased who obtained the grant over the same estate without having the previous grant revoked, I find that the Defendant's grant was wrongly obtained. The 1st issue is found against the Defendant. The Plaintiff is found to had rightly obtained Letters of Administration for the Estate of the late **Turyatunga Innocent.**

Issue No. 3: What remedies are available to the parties

[16] As I have already observed, 2 concurrent grants on the same Estate cannot be permitted to stand. The Defendant is found to have wrongly obtained the 2nd set of the grant. Besides, since he obtained the grant on 21st January, 2020, he has never filed an inventory in accordance with **S. 278 (1) of the Succession Act**. In the premises, I exercise my discretion and proceed to accordingly revoke the Defendant's grant and declare the Plaintiff as the rightful Administrator of the Estate of the late **Turyatunga Innocent**.

[17] In conclusion, Judgment is entered in favour of the Plaintiff with orders that

- (a) The Defendant wrongly and illegally obtained Letters of Administration vide **H.C.A.C. No. 065 of 2019** for the Estate of the late Turyatunga Innocent.
- (b) Letters of Administration vide **H.C.A.C. No. 065 of 2019** are accordingly revoked.
- (c) The Plaintiff is the rightful Administrator of the Estate of the late Turyatunga Innocent.
- (d) Costs of the suit are awarded to the Plaintiff.

Signed, Dated and Delivered at Masindi this **26th day of August, 2022**.

Byaruhanga Jesse Ruyema
JUDGE