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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No.82 of 2022

*(Arising from High Court Administration Cause No. 41 of 2008)*

In the Matter of the Estate of the Late Aedeke John Omuto formerly of

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Pokor village, Pokor parish, Kobwin Sub-county, Ngora district

and

In the Matter of an Application to Strike out the name Isalit Anna Grace

in the letters of administration and grant instead to Okello Aedeke

Solomon (Son) to the deceased.

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background:

20 This application is brought by way of Notice of Motion under Section 98  
of the Civil Procedure Act, Cap 71, Order 52, Rules 1 and 2 of the Civil  
Procedure Rules (as amended), and Section 234(2)(d) of the Succession  
Act, Cap 162, for orders that:

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- i) the name Isalit Anna Grace (deceased) in the grant of letters of  
administration vide Soroti High Court Administration Cause no.41  
of 2008 be struck out.
  - ii) the grant instead be granted to Okello Aedeke Solomon, the  
applicant herein.
  - iii) costs of this application be provided for.



5 The application was anchored on grounds contained in the affidavit in support of the application deposed by Okello Aedeke Solomon (hereinafter referred to as "the applicant") which briefly are;

a) The applicant is a biological son of the Late Aedeke John Omuto who died in 2008.

10 b) Upon the death of the Late Aedeke John Omuto, the applicant together with his mother; Isalit Anna Grace applied for letters of administration vide Administration Cause No.4 of 2008.

c) Having satisfied the grounds for a grant of letters of administration, this Court on 14<sup>th</sup> May, 2009 issued Letters of administration for the estate of the Late Aedeke John Omuto to  
15 the applicant and the said Isanit Grace.

d) Isalit Anna Grace, the co-administrator passed away on 27<sup>th</sup> December, 2021 making the grant under Administration Cause No.4 of 2008 inoperative and difficult for the applicant to  
20 effectively manage the estate.

e) That it was resolved by a family meeting held on the 31<sup>st</sup> day of December, 2021 that the administration of the estate of the Late Aedeke John Omuto be granted to the applicant.

f) That the applicant swore this affidavit in support of his  
25 application to strike out the deceased administrator's name from the grant of letters of administration vide Soroti High Court

5 Administration Cause No. 41 of 2008 and grant instead to the applicant.

2. Issues:

10 The issue for this court's determination is whether the applicant has fulfilled the grounds for the revocation of the grant of letters of administration of the estate of the Late John Aedeke Omuto following the death of a co-administrator in the earlier grant and whether the applicant can be granted letters of administration as a sole administrator of the said estate.

3. Representation:

15 The applicant was self-represented.

4. Decision of the Court:

20 This application is in essence seeking the revocation of letters of administration that were granted by this court on 14<sup>th</sup> May 2009, to the applicant jointly with one Isanit Grace (now deceased) in respect of the estate of the late John Aedeke of Pokor village, Pokor Parish, Kobwin sub county, Ngora district, but also to confirm the surviving administrator as the sole administrator of the estate of the late John Aedeke.

25 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 applicant. I have perused the application and also the written submission filed by the applicant which I will not reproduce here but I have considered in this ruling.

  
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5 The main thrust of the application is that whereas the grant of 14<sup>th</sup> May  
2009 was made to two administrators, that is, Isanit Grace and the  
applicant, the former co-administrator, unfortunately, died on 27<sup>th</sup>  
December 2021. As a result, the operation of the grant of letters of  
administration had become inoperative, hence this application to strike  
10 out the deceased's name with a new grant is made solely to the applicant.

I am aware that the Succession Act and; specifically, Section 234 of the  
Succession Act was amended in 2022. Nonetheless, the amended  
provisions appear not affect the law which existed prior to section 234 (5)  
of the Succession Act (As Amended), 2022.

15 Section 234(5) of the Succession Act as amended in 2022 provides thus;

**Court may, in the same process for revocation of letters of  
administration, grant letters of administration to another  
person where court determines that such a person is a fit  
and proper person to be granted letters of administration  
20 under the Act.**

Section 234 of the Succession Act, Cap 261 as it was provided as follows;

Revocation or annulment for just cause:

(1) The grant of probate or letters of administration may be revoked  
or annulled for just cause.

25 (2) In this section, "just cause" means

(a) that the proceedings to obtain the grant were defective in  
substance;



5 (b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the  
10 allegation was made in ignorance or inadvertently;

**(d) that the grant has become useless and inoperative through circumstances; (emphasis mine)**

Or

(e) that the person to whom the grant was made has wilfully and  
15 without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

Section 234(2)(d) of the Succession Act thus empower a court to revoke  
20 letters of administration for just cause where it has become “inoperative” as a result of intervening circumstances.

Thus, a grant that may have been properly made but for a reason that has occurred as a result of consequential events, may require a Court to revoke such grant for practical reasons.

25 For example, where an administrator becomes incapable of managing his affairs by reason of mental or physical incapacity, a grant can be revoked, as was held in *In the Goods of Galbraith [1951] P 422*.

5 In the case of *In the Goods of Galbraith [1951] P. 422* at 422  
Karminski, J stated:

10 *“...but in the present case there is the clearest possible  
evidence that both the surviving executors are men of  
very advanced age and suffering from such a degree of  
physical and mental infirmity as makes a continuance of  
their duties impossible.”*

The above position has equally been noted by the High Court of Uganda  
in *In the matter of the estate of the late Javuru Apollo Michael  
(deceased) High Court Miscellaneous Civil Application No.  
15 0053 of 2016 (arising from HCT-08-CV-0023-2014*, wherein  
Justice Stephen Mubiru held that the death of the administrator renders  
the grant inoperative.

It should also be noted that a court possesses and, when it becomes  
necessary, exercises the power of revoking or annulling for a just cause,  
20 any grant which it has made.

In the *Galbraith case above*, the court revoked the letters of  
administration on account of the mental incapacity of the administrators.

A court will also revoke letters of administration to ensure proper  
administration of the estate and interests of all the beneficiaries of the  
25 estate.

This principle was articulated in case of *In The Goods of William  
Loveday (1900) P. 154* where Jenne P. at page 156 stated:

30 *“After all, 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 could see no good reason why the Court*



5            ***should not take fresh action in regard to an estate where  
it is made clear that its previous grant has turned out  
abortive and 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  
10            the estate, and it turns out that the person so appointed  
will not or cannot administer, I do not see why the court  
should not revoke an inoperative grant and make a fresh  
grant.”***

In this application, the applicant has led evidence to show that a grant was  
15            issued by this court to him and his late mother, one Isalit Anna Grace on  
14<sup>th</sup> May 2008.

He has led evidence that the Isalit Anna Grace died on 27<sup>th</sup> December,  
2021, a fact which is evidenced by the death certificate attached to  
affidavit. According to the applicant, the original grant thus has become  
20            inoperative as a result of the death of one of the grantees making it  
impossible for the single remaining grantee to carry out the dual  
responsibilities of the grantees in the letter of administration as was  
required under the law hence this application to strike out the name of the  
now late Isalit Anna Grace and to make a fresh grant to the applicant.

25            The law appears silent on the issue on how the administration of an estate  
which is jointly granted to two or more grantees can be carried out where  
one of the administrator is either dead or incapable of carrying such duties  
other than by way of revocation of the earlier grant and the making of a  
fresh one.

30            This is because, it would appear to me that a court is not empowered to  
simply strike out the name of one administrator from a previous grant and  
letting its operations to continue on without revoking such earlier grant.

5 That being the case, the cautious and legal approach would be for the court to revoke its earlier grant and issue a fresh one.

In the instant matter, it has been clearly proved that the interest of the proper administration of the estate of the late Aedeke John Omuto be taken into account on the basis that the earlier grant *vide*  
10 ***Administration Cause No.41 of 2008*** to the applicant and to the late Isalit Anna Grace, is now inoperative following the demise of the latter.

Accordingly, I would find that justice of this matter would require that the letters of administration previously issued be revoked upon the death of the co-administrator.

15 The next question for consideration which I think is of extraordinary importance is whether the applicant is a fit and proper person for the grant of letters of administration.

Justice Stephen Mubiru in the ***In The Matter of An Application for Revocation of Letters of Administration and Grant Instead to***  
20 ***Piwa Clare and Biywaga Joan (Miscellaneous Civil Application 53 of 2016)*** was of the opinion that where a grant to two or more administrators is revoked and a fresh one made in respect to one or more of the original administrators, there is no need to prove afresh all the matters that were proved in order to obtain the original grant. I am  
25 equally of a similar opinion and inclined to agree with that logical position for in my considered view, I would not be persuaded that where an applicant had earlier been approved by court for the grant of letters of administration jointly with another, unless circumstances is shown to the contrary, there would be no need for the court again to delve into the  
30 matters that were already ably dealt with by it when it issued the earlier grant.





5 This is because, when granting letters of administration, a court is guided by a number consideration such as consanguinity, nature of interest, the safety of estate and probability of proper administration, which have to be taken into consideration.

See: *Ndugga Francis Ddiba v. Nansikombi Rita and others*  
10 **[1980] HCB 79.**

The applicant in this case is a son of the deceased and qualifies as a fit and proper administrator of the estate of his late father. Besides, there is no caveat filed opposing this grant in addition to this application being unopposed.

15 More so, under paragraph 5 of the affidavit in support of this application, the applicant ably states that after the death of his co-administrator, a family meeting was convened resulting in the applicant being chosen as the sole administrator of the estate of the late Aedeke John Omuto which fact is proved the minutes of the family thereto attached.

20 The law under Section 234 (5) of the Succession Act (As Amended), 2022 provides thus;

**Court may, in the same process for revocation of letters of administration, grant letters of administration to another person where court determines that such a person is a fit and proper person to be granted letters of administration under the Act.**  
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The foregoing provision of the law permits a court to appoint administrators in the same process of revocation.

In the terms, as already stated, I would find that the grant having been  
30 revoked, Okello Aedeke Solomon, a son of the late Aedeke John Omuto, would be found to be a fit and proper person to be granted letters of

5 administration as remain the sole administrator for the estate of his late  
father Aedeke John Omuto.

In the premises, I would allow this application and make the following  
orders;

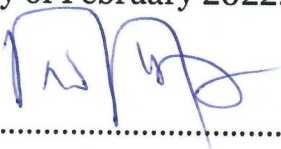
10 a) The letters of administration, vide **Administration Cause  
No. 41 of 2008 of the estate of the late Aedeke John  
Omuto, granted to Isalit Anna Grace (now) and  
Okello Aedeke Solomon** are revoked.

15 b) Okello Aedeke Solomon being now the sole administrator of  
the estate of the late **Aedeke John Omuto**, is found as a fit  
and proper person, and is thus **granted the letters of the  
estate of the late Aedeke John Omuto as its sole  
administrator.**

c) I make no order as to costs since the application is *ex parte*.

Dated at Soroti on this 8<sup>th</sup> day of February 2022.

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Hon. Justice Dr Henry Peter Adonyo

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Judge