

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
CIVIL SUIT NO. 118 OF 2018**

**1. GORETTI AYANO
2. APOLLO SARAH PLAINTIFFS**

VERSUS

JOYCE CAROLYN ANGOM BRUMLEY..... DEFENDANT

BEFORE: HON. LADY JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

Introduction

The Plaintiffs' claim is for;

- a) An order for revocation of letters of administration in respect of the estate of the late ELEL OBOTE MIKE
- b) An order compelling the Defendant to surrender to this Honorable Court the above mentioned letters of administration
- c) An order for a comprehensive and true statement of account of all dealings with the estate of the late ELEL OBOTE MIKE
- d) A grant for letters of probate of the estate of the late ELEL OBOTE MIKE to the 1st Plaintiff
- e) A declaration that the Defendant was fraudulent in applying for letters of administration
- f) A permanent injunction restraining the Defendant from undertaking any further dealings with the estate of the late ELEL OBOTE MIKE.
- g) General damages, costs of the suit and interest thereof from the date of judgement till payment in full.

Background

Ellel Obote Mike died on the 16th December 2017 and the 1st Plaintiff was allegedly appointed as the executrix of the will of the late Ellel that was read after burial on 24th December 2017 during a family meeting. The 1st Plaintiff alleged to be a widow of the late Ellel and the 2nd Plaintiff is a daughter to the deceased.



After the burial, the Defendant allegedly entered the deceased's home and took all the documents relating to the deceased and divided the property in his home to relatives unknown to the Plaintiffs.

The Plaintiffs were later summoned by the assistant Administrator General a one Rahmat Nakaliika to the Administrator General's office where they were informed that the Defendant was in the process of applying for letters of administration. Twontoo Oba, the lawyer who read the will and the Plaintiffs informed the assistant Administrator General that the deceased had left a will and a copy was handed to her. The Defendant was however not in attendance during this meeting.

It is alleged that the assistant Administrator General then asked the 1st Plaintiff and Twontoo Oba to leave the office so that she could counsel the children of the deceased. The 2nd Plaintiff insisted that the deceased had clearly laid out his intentions in the will. Later on, all parties were asked to state their relationship to the deceased together with their names and signatures and they left the office.

The 1st Plaintiff then started the process of getting letters of probate but was later shocked to find out that the letters of administration had been issued in the names of the Defendant. It is alleged that the Defendant unlawfully obtained a death certificate from Apac having failed to get the same from Lira from where the deceased died.

The Plaintiffs contend that the letters of administration held by the Defendant were obtained illegally and in fraudulent manner and the same should be revoked.

The Plaintiffs pleaded the following particulars of fraud and illegality;

- Applying for letters of administration having been in attendance at the funeral when the will was read in a family meeting.
- Obtaining a death certificate from Apac having failed to the same from Lira where the deceased died
- Filing a petition and other documents marred with falsehoods
- Obtaining letters of administration without the actual consent of the beneficiaries and no family meeting.

Defendant's defence and counterclaim

The Defendant alleged that the 2nd Plaintiff consented in writing to her obtaining the letters of administration and further contends that the plaint does not disclose a cause of action against the Defendant a preliminary objection will be raised to that effect.

The Defendant alleged that the said will was tainted with a lot of fraud and forgeries in as far as it alludes that the 1st Plaintiff was the lawful wife with knowledge that at the time of execution of the will, the 1st Plaintiff had been separated from the deceased for over 25 years and was married to a one Joseph Orogot with whom she has 6 children. Furthermore, that the alleged will did not mention three of the deceased's children and purports unknown persons to be children of the deceased.

The Defendant averred that she was officially given the deceased's documents as a final instruction from the deceased. The Defendant alleged that ever since she got letters of administration on 24th April 2018, she has never made any attempt to sell the estate properties however in an attempt to preserve the same, she directed that all rent from the rented properties of the deceased go to the bank account of the deceased in Stanbic bank and froze any withdrawals from the said account.

The Defendant further contends that Dr. Aine refused to issue her the death certificate unless he was given plot 14 in Lira which is part of the deceased's estate. The death certificate was rightly obtained from Apac district which is the right district under which Agwiciri village falls.

That the deceased was incapable of making a valid will by reason of illness/unsoundness of mind as disclosed in the death certificate.

COUNTERCLAIM

In the counterclaim, the counterclaimant/Defendant prayed for;

- a) A declaration that the 1st Plaintiff is not a widow and a beneficiary under the estate of the late Elal Mike Obote.
- b) A declaration that the purported will attached to the plaint is a forgery and or was allegedly made when the late Elal Mike Obote was of unsound mind.
- c) A declaration that the late Elal Mike Obote died intestate.
- d) A declaration that the Defendant/counterclaimant is the lawful and only appointed administrator of the Estate of the late Elal Mike Obote
- e) An order directing all the children of the late Elal Mike Obote for a DNA test to ascertain the actual beneficiaries under the estate
- f) A permanent injunction restraining the Plaintiffs and their agents, servants or anyone deriving authority from them from continuing to intermeddle with the estate of the late Elal Mike Obote
- g) General damages for intermeddling with the estate of the late Elal Mike Obote and inconveniences suffered by the counterclaimant
- h) Punitive damages against the Defendants on counterclaim for intermeddling with the estate of the late Elal Mike Obote
- i) Interest on (g) and (h) above at 28 %



j) Costs of the suit.

Background to the counterclaim

The Defendant averred that she is a daughter and beneficiary to the estate of the late El-el Mike Obote aka Michael El-el aka El-el Ogowang who died intestate on the 16/12/2017 and that at the time of his death, the deceased was single and survived by 5 (adult) children to wit;

- Angom Joyce Carolyn Brumley aged 44 years
- Acheng Pamella aged 30 years
- Apollo Sarah Obote aged 21 years
- Talwoko Racheal aged 27 years
- Apollo Sarah Marion aged 28 years

The Defendant further contended that she applied for and was granted letters of administration vide Administration Cause No. 022 of 2018 after all due process was followed. That prior to the issuance of the said letters of administration, members of the family of the late El-el were invited for a meeting/consent at the office of the Administrator General and all the children of the late including the 2nd Plaintiff consented to the counter claimant/Defendant being the Administrator.

The counterclaimant/ Defendant contends that the Plaintiffs/Defendants by counterclaim have made it impossible for the counterclaimant to properly and legally administer the estate of the late El-el Mike Obote due to constant intermeddling by the Defendants by counterclaim. As a result, the estate is at risk of being wasted at the hands of the Plaintiffs.

The counterclaimant also pleaded particulars of fraud against the Defendants by counter-claim;

- a) The late El-el Mike Obote was born on 9/09/1946 and not 10/10/1947 as alleged in the will.
- b) The alleged will and petition mentioned Akullu Hellen, Angom Hellen and Aceng Grace as children of the late El-el Mike Obote whereas not and for this the counter claimant prays that all children be subjected to a DNA test.
- c) The alleged will mentioned the 1st Plaintiff/Defendant by counterclaim as a widow and the only beneficiary yet the late El-el Mike Obote was single after having separated with the 1st Plaintiff for over 25 years and that the 1st Plaintiff was married to a one Joseph Orogot with whom she begot six (6) children.
- d) Intentionally omitting all the known children of the late Mike El-el Obote.
- e) The alleged will stated that the mother to the counter claimant as Akello Sarah (deceased) yet the counter claimant mother is known as Lydia Acaa who is still alive and residing in Kitgum

- f) The will was purportedly made on 8/6/2017 and witnessed on 29/11/2017 in the office of Twontoo & Co. Advocates
- g) Forging a certificate of no objection from the office of the Administrator General in favor of the 1st Plaintiff/ 1st Defendant by counterclaim.

Representation

At the hearing on the 21st and 22nd November 2022, Patrick Nasinyama appeared for the Plaintiffs who were present in court and Madinah Bako appeared for the Defendant/Counter-claimant who was out of the country but appeared via zoom. The parties duly filed written submissions after the conclusion of the hearing.

Issues for Determination

At the joint scheduling, the parties agreed to the following issues for determination which will be adopted by court with slight modifications;

1. Whether the late Elel Mike Obote left a valid will and if so, whether he died testate.
2. Whether the Defendant/ counter claimant lawfully acquired letters of administration for the estate of the late Mike Elel Obote alias Elel Michael
3. Who are the rightful beneficiaries of the Estate of the Late Elel Mike Obote alias Elel Michael.
4. Which Party is guilty of intermeddling with the estate of the late Mike Elel Obote alias Elel Michael
5. What remedies are available to the parties.

RESOLUTION

Issue One: Whether the late Elel Mike Obote alias Elel Michael left a valid will and if so, whether he died testate

Black's Law Dictionary 7th Edition defines a will as a document by which a person directs his or her estate to be distributed upon his or her death.

Section 50(1) of the Succession Amendment Act provides for the execution of unprivileged wills. It provides that, except as provided by this Act or other law for the time being in force, every testator not being a member of the armed forces employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his or her will according to the following provisions—

- (a) the testator shall sign or affix his or her mark to the will, or it shall be signed by some other person in his or her presence and by his or her direction;



(b) the signature or mark of the testator or the signature of the person signing for him or her shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will;

(c) the will shall be attested by two or more witnesses, each of whom must in the presence of the testator, sign and write his or her name and address on every page of the will except that it shall not be necessary that more than one witness be present at the same time.

Section 50(2) provides that, where a person attesting a will does not write his or her name or address on a page of a will as required in subsection (1) (c), the will shall be valid except that the page of the will which does not bear the name or address of the testator shall, unless otherwise directed by court, be void.

The 'alleged' will of the late Elal Obote Mike is attached to the Plaintiff's trial bundle marked 'PE2'.

Counsel for the Plaintiffs submitted that a judgment on admission should be entered to the fact that the deceased died testate. I respectfully disagree with the submissions of Counsel for the Plaintiffs. Simply because DW1 confirmed that indeed a will was read did not conclude that the deceased died testate. The pleadings of the Defendant contend as to the validity of the will and not to its existence. Therefore, Order 13 Rule of the Civil Procedure Rules and the decisions as cited by counsel for the Plaintiffs are not applicable in the circumstance. The duty of this court is to look into whether what is purported to be the will of the late Mike Elal Obote is a valid testamentary disposition

The alleged will

Justice Henry Kawesa in the case of **Beatrice Asire Malinga V Jonathan Malinga HCCS No. 13 of 2013** which was also relied on by Counsel for the Defendant in the written submissions stated that for a Will to be valid, the provisions of Section 50 of the Succession Act must be conformed to. A Will must be in writing, dated and signed by the testator, it must be witnessed by two or more attesting witnesses who must see the testator write, sign or affix his mark. In the case of **Estate of James Ngengi Muigai (deceased), Nairobi High Court Succession Cause No. 523/1996, Koine J.** noted that a Will must be in writing, signed by the testator attested to by two or more competent witnesses who must see the testator write, sign or affix his mark on the document.

PW2 - Twontoo Obonyo Bosco Ambrose who was the deceased's lawyer gave evidence during cross examination that the deceased made the will on 8th June 2017 without any witnesses but returned on the 29th November 2017 with two witnesses to attest to the will. He further stated that he explained to the witnesses that the contents were confidential and only showed them where to sign. PW2 further stated that when the first witness finished signing, he called



the second witness to also sign. And that the deceased explained to these witnesses in the presence of PW2 that they were attesting to a will.

However, there were three witnesses to the purported will to wit, Dr. Stephen Aine, Opio James Jeba and Okwir Patrick instead of two as alleged by PW2. Opio James Jeba gave evidence as DW4. He stated that he found the deceased with PW2(Twontoo Obonyo) in the latter's office and the secretary, a one Okello Okidi brought him papers to sign which he signed. DW4 confirmed to this court in examination in chief and cross examination that he did not understand what he signed because he thought that they were documents that were part of the deceased's prior ongoing court case.

Furthermore, DW4 in his testimony averred that on reaching the hospital on the 29th November and not finding the deceased, medical personnel informed him that the deceased was at his lawyer's office. On reaching the office of PW2, DW4 testified that he is the only one who signed the purported will on the 29th November and after he had signed he left with the deceased and took him back to the hospital.

I find that there are irregularities in the testimony of PW2. PW2 states in cross examination that the deceased came with two witnesses however there are three witnesses that attested to the will. DW4 in his testimony stated that he was the only one who signed the will on the 29th November 2017 after which he left with the deceased. I have no doubt that the two other witnesses 'attested' to the will but I am convinced that they did so when the deceased was not present.

The purported will does not conform to the requirements that are espoused in **section 50(supra)**. As stated in the **Beatrice Malinga case(supra)**, the attesting witnesses must witness the testator sign and affix his signature on the document. It is clear from DW4's testimony as the only attesting witness who gave evidence that he did not see the deceased affix his signature or sign the purported will and am convinced that the other two witnesses also did not witness the deceased signing nor was the deceased present when these witnesses attested to the will.

Section 47 of the Succession Amendment Act provides that a will or any part of a will, the making of which has been caused by fraud, undue influence, duress, coercion, mistake of fact or by abuse of position of trust or vulnerability, which takes away the free will of the testator, is void."

According to DW4's testimony, on the 29th November 2017 the deceased was in PW2's office and the 2nd Plaintiff was outside the office. DW1 in her testimony gave evidence that on the 29th November 2017, she received a call from the 2nd Plaintiff informing her that she (2nd Plaintiff) was with the deceased and he had signed the will. Furthermore, DW1 informed this court that the 2nd Plaintiff



said that she (the Defendant) was in the will but Sarah Apollo Obote (PW5) was not in the will. PW4 stated in cross examination that she had gone to visit the deceased around late November of 2017.

DW2 - Robert Bogere who is an assistant Administrator General also gave his testimony that from the inconsistencies in the will and the fact that only the particulars of the Plaintiffs were correct and not the deceased's other children would show that there was participation by the Plaintiffs in making the will.

DW1 also testified that the 2nd Plaintiff, her sister Sonia Aamito and the 1st Plaintiff's current husband are the ones who took the deceased from his medical bed to sign the will and the 2nd Plaintiff had called her confirming that she was with the deceased on the 29th November 2017.

The testimonies of DW4 and DW1 place the 2nd Plaintiff (PW4) to have been with the deceased on the day when he purportedly signed the will. The 2nd Plaintiff even states that she went to visit the deceased in late November 2017. Despite the fact that she does not mention the date she visited the deceased, 29th November is within the ambit of 'late November' and it is suspicious that PW4 knew the contents of the will yet it was supposedly a confidential document. It is quite convenient that only the particulars of the Plaintiffs were captured as correct and the rest had errors. The Plaintiffs seem to have had an influence in making of this purported will.

Black's Law Dictionary 7th Edition defines undue influence as the improper use of power or trust in a way that deprives a person of free will and substitutes another's objective.

I am persuaded by the assertions of DW2 that there must have been some influence by the Plaintiffs in making of the 'purported will' because it is not a coincidence that PW4 was with the deceased on the same day that the will was signed and she had prior knowledge of the contents of the will.

Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The Defendant has discharged the evidential burden to prove that there was no valid will left by the late Elal Mike for reasons of non-conformity with section 50 of the succession act and undue influence in making the will. Therefore, the Will dated 8th June 2017 is void and in the premise the late Elal Obote Mike died intestate.



Allegations of fraud and inconsistencies in the will

DW1 alluded in her testimony that because of the inconsistencies in the will, there was some forgery by the 1st Plaintiff.

Paragraph 2 of the will refers to the 1st Plaintiff as 'my wife Gorette Ayano Obote'. During cross examination PW1, the 1st Plaintiff was asked whether there was a marriage between her and the deceased and she responded verbatim, 'he collected me from my parents and he introduced himself and we left together. He first came in December 1985 that is when he picked me from home.' The will which is marked 'A1' of the Plaintiff's trial bundle in paragraph 2 states the alleged marriage between the deceased and the 1st Plaintiff was in the year 2000. The year of the alleged marriage between the deceased and the 1st Plaintiff does not correspond.

DW1 and DW4 in their testimonies stated that the deceased died when he was not married and that he had never been married to the 1st Plaintiff. DW2 in his testimony stated that when the office of the Administrator General interrogated PW1 she stated that she was not a wife to the deceased. PW1 in her testimony during cross examination stated that the deceased referred her as his wife at all times.

PW1 did not provide any cogent evidence that she had been legally married to the deceased. There was no evidence of a marriage certificate filed. It is safe to say that being referred to as a wife doesn't make one a wife in the eyes of the law.

DW1 further stated that the date of birth of the deceased was 9/9/1949 and not 10/10/1947 as stated in the purported will. Annexure DE4 is the national ID of the deceased stating the deceased's date of birth as 9/9/1949.

Section 3 of the alleged will lists the deceased's children as Angom Joyce 50 years, Akullu Hellen 48 years, Angom Hellen 45 years, Sarah Apolo 28 years and Aceng Grace 25 years. However, according to the family/clan meeting minutes held on 29th December 2017, the children of the deceased were named as Angom Joyce, Acheing Pamela, Apollo Sarah, Talwoko Racheal and Apollo Sarah small. These are the same children that were summoned to the office of the administrator general.

DW1 testified that her age was wrongly stated and her mother was stated to be deceased yet she was alive and well. DW1 stated that the only information that was accurate in the will were the details concerning the Plaintiffs.

DW5: Pamela Achieng who is a daughter of the deceased also gave testimony that when the will was read her and her siblings and the clan members



rejected it. DW5 further stated that she was not content with the will because she and her other sister named Sarah Obote were not in the will but the will was full of ghost children unknown to them. Furthermore, DW5 also stated that the 1st Plaintiff had stated that she was not interested in the estate as she had not been married to the deceased but was married to another man

DW2; Robert Bogere who is an assistant Administrator General also gave his testimony that from the inconsistencies in the will and the fact that only the particulars of the Plaintiffs were correct and not the deceased's other children would show that there was participation by the Plaintiffs. DW2 further stated that the 1st Plaintiff even forged a certificate of no objection with a forged signature and serial number. The forged certificate is marked PE12.

In the case of **Fredrick Zaabwe V Orient Bank Ltd SCCA 4/2006 Katureebe JSC** (as he then was) stated, 'I find the definition of fraud in *BLACK'S LAW DICTIONARY 6TH Edition* page 660, very illustrative

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture.....A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated, dissembling, and any unfair way by which another is cheated. "Bad faith" and "fraud" are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc."

PW1 also forged a certificate of no objection from the office of the administrator general and the forged document is annexure PE12. The letter from the administrator general's office verifying that the same was a forgery is attached on page 26 of the Defendant/ counterclaimant's trial bundle.

Page 24 of the Defendant's trial bundle filed on 19/08/2019 is a family consent appointing the 1st Plaintiff (PW1) as the person to administer the estate of the deceased. The consent is allegedly signed by four of the deceased's daughters including the 2nd Plaintiff, Apolo Sarah Obote (PW5), a one Clare Ilabarot and Akurut Mary. DW1 is not included on the list nor is Pamela Achieng or Racheal Talwoko. The document is not signed by the office of the administrator general.

It is quite surprising that PW1 who claimed that the purported will left by the deceased was genuine would need a certificate of no objection or a consent



from the family and the act of PW1 to include names of daughters purporting to be daughters of the deceased in the family consent while excluding some of the known children is quite a deceitful act.

It was stated in the case of **Fredrick Zaabwe** that allegations of fraud must be strictly proven. Having in mind the provision of section 101 of the Evidence Act, the Defendant has ably provided this court with documentation to prove the Plaintiffs' deceitfulness and dishonesty.

I have already resolved that there was influence from the Plaintiffs in the making of the alleged will. From the definition of fraud in **Fredrick Zaabwe (supra)** it is no doubt that the intention of the Plaintiffs in forging the alleged will and other documents incidental to getting authority to manage the estate of the deceased was out of greed to defraud the children of the deceased of their share in the estate of their late father.

Therefore, it is the finding of this court that the 'will' purported to be the will of the late Mike Elol Obote was void for the reasons given above and thus the deceased died intestate. This issue is answered in the negative.

Issue Two: Whether the Defendant/ counter claimant lawfully acquired letters of administration for the estate of the late Mike Elol Obote alias Elol Michael

Section 2 (a) of the Succession Amendment Act defines an administrator to mean a person appointed by a court to administer the estate of a deceased person when there is no executor.

Section 1(f) of the Administrator General's Act defines letters of administration to include any letters of administration, whether general or with a copy of the will annexed or limited in time or otherwise, and also includes probate in favor of the Administrator General.

Counsel for the Plaintiffs submitted that the entire proceedings for the Defendant to obtain the grant were defective in substance and thus are just cause for revocation of the impugned letters of administration in line with section 234 (2) a) of the Succession Act as amended.

The Office of the Administrator General's Service Manual states out the procedure for acquiring letters of administration which I will summarize hereunder;

- After the file is allocated to a Legal Officer, he or she will cause a family meeting to be held either at Georgian House in the offices of the Administrator general or through the Chief Administrative Officer (CAO) of the district where



the deceased person had his or her residence. The CAO may request the concerned Sub County or Parish Chief to hold this meeting.

- The Administrator General may request additional information if he or she finds that the meeting at CAO's office was not properly held or that it was not attended by all the concerned beneficiaries.

- During this meeting above, the family is expected to nominate a person or persons to take over administration of the estate of the deceased person.

- Following the family meeting of all concerned beneficiaries, a certificate of No Objection will be issued within 28 days after the Legal handling the file has received the photocopies of identification documents of all the persons who attended the meeting; and the photographs of the persons who are applying for a Certificate of No Objection (intending administrators)

- For all beneficiaries, including children who live outside Uganda, the Administrator General requires a Power of Attorney properly made and notarized in the country where the beneficiary lives. The beneficiary must indicate that he or she agrees with the process being undertaken in Uganda, Including the persons who are being nominated to administer the estate of the deceased.

- The Administrator General issues a Certificate of No Objection to the person(s) nominated to enable them apply for Letters of Administration in the relevant Court of Law.

Counsel for the Plaintiffs further submitted that the Defendant elicited fraud regarding the existence of the testamentary disposition of the deceased. I have read the witness statement of DW1 and her testimony and in no way does she conceal the fact that there was a will. The same was communicated to the office of the Administrator General and is captured in the minutes of the meeting held on marked annexure PE8.

DW1 in her testimony stated when the will was read on the 23rd November 2017, approximately 90% of the people at the funeral objected to it. DW5 also stated during cross examination that when the will was read, the clan members rejected it. PW2 also in his testimony informed court that when the will was read, the children objected and that DW1 stated that they intended to challenge the will. Furthermore, DW1 gave evidence that when the clan advised that she proceed with getting letters of administration, the 1st Plaintiff did not object.

DW2: Robert Bogere who is an assistant administrator general gave evidence that in the event that there is a will and it is contested, the family may choose to disregard the will or the family may come to court and prove the will. He further testified that in such a scenario where the will was disregarded, the



beneficiaries of the estate proceed to the office of the administrator general and apply for a certificate of no objection.

Annexure PE3 of the Plaintiff's trial bundle is the letter signed by a one Rahmat Nakalika (assistant administrator general) inviting Pamela Acheng, Sarah Apollo, Sarah Apollo Obote, Joyce Carolyn Brumley, Racheal Talwoko and Goretti Ayano Orogot for a verification/family meeting for streamlining the administration of the estate of the Elel Mike Obote.

Annexure PE8 are the minutes of the family meeting held on 22nd January 2018 where in the assistant administrator general noted that the beneficiaries had unanimously agreed that the deceased had died intestate because of the various inconsistencies and discrepancies surrounding the signing of the alleged will.

Annexure PE7 is the family consent/resolution appointing DW1 to be granted certificate of no objection. The same is signed by Pamela Achieng, Apollo Sarah Obote and Apollo Sarah Marion (daughters of the deceased). Annexure PE6 is the Certificate of no objection awarded to Joyce Carolyn Brumley (daughter to the deceased)

Annexure DE22 is a letter dated 12th January 2018 written by the Defendant (DW1) stating that she could not attend the family/verification meeting scheduled on the 22nd January 2018 because she wouldn't be in Uganda but she requests that her name be included among any nominated administrators of the estate of the late Elel Mike Obote.

From the facts herein, the clan members rejected the will and proposed that DW1 be granted letters of administration. This rejection of the will has been confirmed to this honorable court by DW1, PW2 and DW5. The office of the administrator general duly called a family meeting regarding the estate of the deceased. From the testimonies of PW1 and PW2, the assistant administrator general asked them to leave the meeting and she (the assit. administrator general) had a closed meeting with the daughters of the deceased.

DW2 gave testimony that PW1 and PW2 were excluded from the closed meeting with the beneficiaries because they were not beneficiaries to the estate and in fact they were/are aliens to the estate.

I agree with the explanation given by DW2. PW2 and PW1 are the former lawyer of the deceased and the mother to one of his beneficiaries respectively. They are not beneficiaries to the estate of the deceased. The 1st Plaintiff is the mother to the 2nd Plaintiff who is not a minor. PW1 already averred that she was never legally married to the deceased and from the facts in the case there was never a legal marriage between the 1st Plaintiff and the deceased. Therefore, the assistant administrator general rightly secluded Mr. Twontoo Oba (PW2) and

the 1st Plaintiff (PW1) from the closed door meeting that she held with the beneficiaries.

PW4 during cross examination stated that DW1 lied that she(PW4) had given her consent for the Defendant to be the administrator of the estate of the deceased. PW4 further states that as beneficiaries they did not choose DW1 to be appointed administrator of the estate of the late Elel.

Annexure DE8 is the consent by the beneficiaries for DW1 to be granted letters of administration. PW4 confirmed that indeed that is her name and signature but however she was taken advantage of and she was not aware of what she was signing. I do not find any merit in the assertion of PW4 and I do not think that she was being truthful because PW4 has shown her deceitfulness to this court by concealing the fact that she is the one who took the deceased to sign the purported will. I do not think that a literate person such as PW4 could sign a document without knowing what it was or without reading the same.

It is alleged by the Plaintiffs that DW1 fraudulently obtained a death certificate from Apac having failed to get the same from Lira where the deceased died. Annexure DE3 is the death certificate of the deceased issued from NIRA stating the place of death as Apac. Annexure DE2 is the short death certificate also stating place of death as Apac. Annexure DE1 is another short death certificate stating the place of death as Lira.

During cross examination, DW1 gave evidence that indeed the deceased died in Lira however, Lira Municipal Council had refused to give her a death certificate because Dr Aine's clinic (where the deceased died) was unregistered. She obtained DE1 the short death certificate which stated the place of death as Lira from the Chief Administrative Officer's office. She further stated that NIRA advised her to go back to the CAO's office and change the place of death to Apac for purposes of registration so that the same would be accepted in the NIRA system because they couldn't be two different places of death.

DE2 is the second short death certificate with the place of death as Apac. DW1 further explained that to register the deceased as have died in Apac was on the direction of NIRA and not her doing.

It is not in dispute that the deceased died in Lira. DW1 gave her explanation as to why the short death certificate that she used stated the place of death as Apac. I have checked as to the authenticity of DE3 and it was indeed issued by NIRA. In as far as fraud is alleged by the Plaintiffs, I find no merit in the same because DE3 is a genuine document and I find no incidences of fraud on the Defendant as alleged by the Plaintiffs.

In the premise, I find that the Defendant in getting letters of administration followed the due process as outlined in the administrator general's service manual. A family meeting was duly called and the beneficiaries to the estate of



the deceased consented to the Defendant getting letters of administration. Following the outcome of the family meeting, the administrator general issued a certificate of no objection in favor of the Defendant after which she got letters of administration to the estate of the deceased. This issue is therefore, answered in the affirmative.

Issue Three: Who are the rightful beneficiaries of the Estate of the Late Elel Mike Obote alias Elel Michael.

Section 27 (1) b) of the Succession Amendment Act provides that;

(b) where the intestate leaves no surviving spouse or dependent relative under paragraph (a) (i) or (ii) capable of taking a proportion of his or her property the- (i) lineal descendants shall receive 99 percent; and (ii) customary heir shall receive 1 percent.

From annexure PE8, it is stated that the deceased left 5 children and this is confirmed by the minutes of the clan meeting in annexure DE5 to wit Angom Joyce (DW1), Pamella Achieng (DW5) Apollo Sarah Marion (PW4), Racheal Talwoko and Apollo Sarah Obote (PW5). The deceased did not leave a surviving spouse or heir. Therefore, the 5 daughters left by the deceased are the lineal descendants and therefore the rightful beneficiaries to the estate of the late Elel Mike Obote.

Issue Four: Which Party is guilty of intermeddling with the estate of the late Mike Elel Obote alias Elel Michael.

Section 268 of the Succession Amendment Act provides that;

(1) A person who intermeddles with the estate of a deceased person commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years, or both.

(2) A person is taken to intermeddle with the estate of a deceased person where that person, while not being the Administrator General, an agent of the Administrator General or a person to whom probate or letters of administration have been granted to by court-

(a) takes possession or disposes of the property of a deceased person; or (b) does any other act which belongs to the office of executor or administrator.

Additionally, an intermeddler is person who assumes the authority of an executor or administrator. Intermeddling includes assuming authority to administer the estate of another when a person does not have such authority.



An administrator only becomes one on getting letters of administration in respect of the estate of that particular deceased person.

Annexure PE4 are the letters of administration granted to the Defendant (DW1) on 24th April 2018. Annexure DE14, DE16, DE19 are correspondences from DW1's lawyers regarding the accounts and properties that form part of the estate of the late Elel. These correspondences all state that DW1 is the administratrix of the estate. In as far DW1 lawfully acquired letters of administration, she is the legal representative of the deceased with the authority on to deal with the properties that are part of the estate.

Annexure PE13 is a letter dated 7/6/2019 written by the 1st Plaintiff to the Branch manager of Centenary Bank as the Executrix of the will of the of the late Elel Mike Obote

The 1st Plaintiff has never acquired letters of probate or administration of the estate of the late Elel Mike Obote. The act of PW1 dealing with any property of the estate without the proper authority clearly falls under the ambit of intermeddling. Therefore, in the circumstances, the Plaintiffs are guilty of intermeddling with the estate of the late Elel Mike Obote.

Issue Five: What remedies are available to the parties

Kampala District Land Board & Another v. Venansio Babweyana, Civil Appeal No.2 of 2007, "General damages are the direct and probable consequence of the act complained of. This can be inconvenience, mental distress, loss of use of money retained or loss of profit.

A permanent injunction / perpetual injunction is intended to restrain a party from doing a specified act and is granted at the conclusion of the trial after hearing of both parties. **(Francis Babumba V Erusa Bunju [1988-1990] HCB 179).**

Counsel for the Defendants cited the case of Luzinda Marion Babirye V Ssekamatte & Ors HCCS No. 366 of 2016 where it was stated that as far as general damages are concerned; it is trite law that they are awarded at the discretion of the court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Defendant.

Exemplary damages should not be used to enrich the Plaintiff but to punish the Defendant and deter him from repeating his conduct.

I agree with the submissions of counsel for the Defendant. Punitive damages are meant to punish a party and in these circumstances, it is pertinent that the Plaintiffs are punished for intermeddling in the estate of the late Elel Mike




Obote and for their fraudulent acts. The Defendant/counterclaimant (DW1) claimed general damages for inconveniences that she has encountered by the Plaintiffs in her pursuit to administer the estate of the late El-el.

It is trite law that general damages are awarded at the discretion of the court and it is pertinent that a permanent injunction is issued against the Plaintiffs so as not to further interfere in the estate of the late El-el Mike Obote.

In conclusion, I hereby make the following declarations and orders:

1. The Plaintiffs suit is hereby dismissed.
2. The Counterclaimant/ Defendant's counterclaim is hereby successful.
3. A permanent injunction is hereby issued restraining the Plaintiffs, their agents, servants or anyone deriving authority from them from continuing to intermeddle with the estate of the late El-el Mike Obote.
4. A declaration that the Will left by the late El-el Mike Obote was void and therefore the late El-el Mike Obote died intestate.
5. A declaration that the Defendant is the lawful and only appointed administrator of the estate of the late El-el Mike Obote.
6. A declaration that the 1st Plaintiff is not a widow nor a beneficiary under the estate of the late El-el Mike Obote.
7. The Defendant is hereby ordered to file an inventory in this court within 6(six)months from the date of delivery of this Judgment.
8. General damages of UGX 10,000,000/= are awarded to the Defendant/counterclaimant as Administrator of the Estate of the Late El-el Mike Obote. The 2nd Plaintiff will not derive any benefit from this.
9. The Plaintiffs are ordered to pay punitive damages of UGX 5,000,000/= to the Defendant/Counterclaimant as Administrator of the Estate of the late El-el Mike Obote for intermeddling in the estate. The 2nd Plaintiff will not derive any benefit from this.
10. Costs be payable by the Plaintiffs/Counter-Defendants.

I so order.



Jeanne Rwakakooko
JUDGE
25/04/2023

Judgment delivered on this 8th day of MAY, 2023

X POLLO SARAH

~~Spall~~

2nd plaintiff.

BAICO MADINAH

~~A~~

Counsel for defendant

