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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

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ORIGINATING SUMMONS NO. 0016 OF 2023
(ARISING FROM ADMINISTRATION CAUSE NO. 381 OF 2011)

IN THE MATTER OF SUCCESSION ACT. CAP 162
AND

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IN THE MATTER OF THE ESTATE OF THE LATE CHRISTOPHER MUKASA KISITU
AND

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IN THE MATTER OF AN APPLICATION BY SHEM MPANGA MUKASA. LIVINGSTONE
NTAMBAZI MUKASA AND SAMUEL MWESIGWA MUKASA (SONS) OF THE LATE
CHRISTOPHER MUKASA KISITU) FOR APPOINTMENT AS ADMINISTRATORS OF THE
ESTATE OF THE LATE CHRISTOPHER MUKASA KISITU

AND

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IN THE MATTER OF AN APPLICATION BY SHEM MPANGA MUKASA (SON) AND ALICE
TURYAMUREEBA (MATERNAL AUNT TO THE CHILDREN OF THE LATE
CHRISTOPHER MUKASA KISITU) FOR THE REVOCATION OF LETTERS OF
ADMINISTRATION ISSUED ON THE 19TH APRIL 2018 VIDE HCT-00-FD-AC-0381-2011

AND

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IN THE MATTER OF ISSUANCE OF FRESH LETTERS OF ADMINISTRATION
APPOINTING ALICE TURYAMUREEBA (MATERNAL AUNT TO THE CHILDREN OF THE
LATE CHRISTOPHER MUKASA KISITU) AND SHEM MPANGA MUKASA (SON) OF THE
LATE CHRISTOPHER MUKASA KISITU

Before: LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

RULING

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The application is brought by way of Originating Summons under S.234 (2)(d) and (5) of the
Succession Act. S.33 Judicature Act, S.98 CPA, 0.37(1)(a), 2(a) and (b), 8 of the CPR and S.48
of the CPA. It is for the determination of the following questions;

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1. Whether there is a just cause for the revocation of Letters of Administration granted to Shem
Mpanga Mukasa, Livingstone Ntabazi Mukasa and Samuel Mwesigwa Mukasa (sons of the
late Christopher Mukasa Kisitu).

5 2. Whether it is prudent to issue fresh Letters of Administration to the estate of the late Christopher Mukasa Kisitu to ensure the due and proper administration of his estate and protection of the interests of those beneficially interested.

10 3. Whether Alice Turyamureeba is a fit and proper person to serve, alongside the surviving administrators, in the administration of the estate of the late Christopher Mukasa Kisitu.

15 4. If so, the existing Letters of Administration be revoked and fresh Letters of Administration be issued appointing Shem Mpanga Mukasa, Livingstone Ntabazi Mukasa and Alice Turyamureeba as the administrators of the estate of the late Christopher Mukasa Kisitu to ensure the due and proper administration of the estate and protection of the interests of those beneficially interested.

5. That costs of this application be in the cause.

20 The application is supported by the affidavit of Shem Mpanga Mukasa with grounds briefly that Livingstone Ntabazi Mukasa, Samuel Mwesigwa Mukasa and Shem Mpanga Mukasa were appointed administrators of their late father's estate on 19/4/2018. Unfortunately, Samuel Mwesigwa Mukasa died on 10/06/2020 and Livingstone Ntabazi Mukasa died on 19/4/2023 leaving only Shem Mpanga Mukasa as the sole administrator of the estate.

25 The family of the late Christopher Mukasa Kisitu accordingly recommend their maternal aunt Alice Turyamureeba to be appointed an administrator together with the surviving administrator Shem Mpanga Mukasa.

30 The suit also seeks to revoke the current Letters of Administration and consequential issuance of fresh Letters of Administration

- 5 The suit is also supported by the affidavit of Sarah Ainomugisha the widow of the late Christopher Mukasa Kisitu, a non-party to the suit.

There is no evidence of service of the Originating Summons and there is no indication of who the respondents to the suit are.

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Hearing and representation:

The applicants were represented by counsel Kusingula Anthony. There were written submissions on file and highlights of the submissions were made by counsel orally in court.

15 **Issues for the determination of this court:**

1. Whether the suit by Originating Summons is properly before court.
2. Whether costs should issue.

Determination of the issue by this court:


Issue 1: Whether the suit by Originating Summons is properly before court.

- 20 0.37 of the CPR is on Originating Summons for matters that are essentially straight forward and can be easily disposed off when the questions before court are dismissed.

- 25 In the instant case, questions 1 and 2 are direct and non-contentious and are indeed good for determination by way of Originating Summons. However, questions 3 and 4 have a substantive element of potentially contentious matters or matters that require another due process – such as identification of persons for purposes of issuance of Letters of Administration.

In the circumstances, those 2 questions cannot be comfortably disposed off by way of Originating Summons.

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-  0.37 r 11 CPR states that for matter that cannot be disposed off in a summary manner, court may dismiss the Originating Summons. I find that these Originating Summons fall within this

5 category particularly in respect of determining whether Alice Turyamureeba is a fit and proper person for appointment as a co-administrator alongside the surviving administrator to the estate of the late Christopher Mukasa Kisu.

10 Counsel for the plaintiff has cited the case of Bhafat Keshaulal Shar Manharlal Kesharlal shar regarding cases suitable for Originating Summons (OS No. 23 of 2019). I do not find that the facts of that case are in tandem with those of the instant case as the questions for determination in that case were pretty simple and straight forward. Where the matters raised by the questions for determination are complex, contentious or require a different legal process, a party cannot proceed by way of Originating Summons.

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There are a host of authorities in that regard.

The plaintiff proceeds to submit on whether there is sufficient/just cause for revocation of the current Letters of Administration issued on 19/4/2018.


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It is not in contention that S. 234(2) of the Succession Act provides for revocation of Letters of Administration for just cause where the grant becomes useless and inoperative through circumstances as submitted by the plaintiff. It is also not in contention that the death of one or more administrators renders the current Letters of Administration inoperative and therefore that they should be revoked.

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What is contentious is whether the plaintiff has proceeded correctly in the circumstances of the instant case. To try to determine by way of Originating Summons that Alice Turyamureeba is a fit and proper person for appointment as an administrator is certainly wrong as the process is much more elaborate than that availed through Originating Summons.

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 Additional, this court would be reluctant to consider issuance of fresh Letters of Administration by way of Originating Summons.

The normal practice for matters regarding revocation of Letters of Administration and issuance of fresh ones is by Notice of motion under 0.52 r 1 and 2 of the CPR. I do not see how the instant case is any different from cases of a similar nature.

10 **Issue 2: Whether costs should issue.**

As no case has been made to justify costs and in view of the fact that the parties did not attend court, costs will not issue.

15 In the premises, I dismiss the application without costs as the parties have not attended court and advise that a proper application by Notice of motion be instituted for consequential orders to follow.

Dated at Kampala this.....^{2nd}.....day of.....^{November}.....2023.

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Hon. Lady Justice Dr. Christine A. Echokit
Judge.

25 Right of appeal explained.