

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
ORIGINATING SUMMONS NO.001 OF 2022

[Arising from Administration Cause No.095 of 2021]

TUMUSIIME DAN & 4 OTHERS

PLAINTIFFS

VERSUS

JANET NORAH TUSHEMEREIRWE

DEFENDANT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiffs who are children of the late Bigirimana Stanley whose estate is administered by the Defendant brought a suit by Originating Summons for the determination of several questions:-

1. Whether or not the defendant as the Administrator of the estate of late Bigirimana Stanley should continue to hold Letters of Administration?
2. Whether the defendant has fulfilled her duties as an Administrator of the estate?
3. Whether by failing to exercise her duties granted to her by the High Court on 15th November 2021 the defendant is in contempt of court?
4. Whether the defendant should be penalized to pay Shillings 200,000,000/-?
5. Whether the court should supervise distribution of the properties forming the estate of late Bigirimana Stanley
6. Whether the Plaintiffs are entitled to costs of the suit?



The Summons were supported with an Affidavit sworn by Turyatunga Edson one of the Plaintiffs. It is averred in the Affidavit that the defendant was granted Letters of Administration to the estate of late Bigirimana on 15th November 2021. The Defendant is stated not to have called a meeting to show how the estate will be distributed and takes offence when reminded of her duty by the beneficiaries.

The defendant is further said to be hiring out some of the estate land for gain and the benefits enjoyed by some and not all beneficiaries. It is also stated that the defendant has sold off some estate land for shillings 25,000,000/= in the guise of raising the money to complete the family ancestral home and accused of wasting other estate properties to the detriment of some of the beneficiaries.

The defendant filed an Affidavit In Reply contending that after obtaining the Letters of Administration and before the Certificate of title to the estate land at Kyaterekera was registered in her name, the Plaintiffs using Lawyers started making demands and approaching various offices about the distribution of the estate property.

The defendant further contends that before the distribution she was summoned to court which stalled the process to the benefit of the Plaintiffs who are in occupation of the estate land which they use and hire out some tracts for gain to 3rd parties. It is further alleged that the Plaintiffs have kept threatening the defendant urging her to relocate to her Parents' home.

Representation.

M/S MRK Advocates appeared for the Plaintiffs while M/S Lubega & Co. Advocates appeared for the defendant.

Counsel filed submissions which have been read and considered in the determination.



Preliminary Objection.

Counsel for the defendant raised a preliminary objection as whether the suit was properly filed for consideration by the court. The gist of the objection is that the matters raised in the suit are of factual controversy and require evidence which cannot be conveniently done in a suit brought by Originating Summons.

The Plaintiff's Counsel on the other hand contends that the matters raised are simple and not contentious. It is not disputed that the defendant holds the Letters of Administration, the number of beneficiaries and the extent of the estate is also known which makes it a simple matter to be handled through the procedure adopted by the Plaintiffs.

Decision.

I have carefully read the Summons and the supporting affidavit and the Affidavit in Reply filed by the defendant. I have further perused the authorities furnished by Counsel for the parties.

Originating by their nature are intended for matters that are not controversial and require no oral evidence. It is not disputed that the defendant holds the Letters of Administration to the estate and that the Plaintiffs are among the beneficiaries. What constitutes the estate is also well laid out in the Petition for Letters of Administration arising from which the defendant was appointed as the Administrator.

The questions framed for determination by the court however require evidence since their determination calls for evidence on the management of the estate to date. Whereas the defendant claims to have been working on acquiring registration of the estate land into her names which precedes distribution, it is necessary for the court to appreciate how the alleged intervention by the Plaintiffs affected the



process before she is condemned to have abused the fiduciary responsibility bestowed on her by the court.

Questions relating to the abuse of her duties as an Administrator as shown by the alleged mismanagement of the estate through hiring and selling parts of it to the benefit of a few of the beneficiaries require evidence for the court to make an informed decision as to whether she should continue to hold the Letters of Administration.

Similarly the court cannot also condemn the defendant for the alleged contempt on the basis of unverified allegations and neither can the court take over the role of supervising the distribution of the estate.

In **Kulusumbai V Abdul Hussein (1975)EA 708** it was held that the procedure by Originating Summons was intended to enable simple matters to be settled by the court without the expense of bringing an action in the usual way but not to have court determine matters which involve serious questions.

It was further held in **Nakabugo V Serunjogi[1981]HCB 58** that it is trite law that when disputed facts are complex and involve a considerable amount of oral evidence, an Originating Summons is not the proper procedure to take.

Also in Zalwango Elivason & Another V Dorothy Walusimbi & Another. HCCS No.03/2013 the same principle was enunciated.

Given the above observations I do not find the procedure adopted by the Plaintiffs appropriate to determine the questions raised and the reliefs sought. I dismiss the Originating Summons under Order 37 rule 11 of the Civil Procedure Rules.

I advise the Plaintiffs to adopt an appropriate procedure for the court to effectually determine the dispute.



Each party shall meet her costs of the suit since they are all family members and beneficiaries in the same estate.



Moses Kazibwe Kawumi

Judge

31st July 2023