

5 **THE REPUBLIC OF UGANDA**
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
MISCELLANEOUS APPLICATION No. 0149 OF 2023
(ARISING FROM HCT ADMIN. CAUSE NO. MG.9
OF 1992)

10 **IN THE MATTER OF THE ESTATE OF THE**
LATE JOHN PETER OTTO (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF
LETTERS OF ADMINISTRATION AND FOR A FRESH GRANT TO BE
15 **MADE TO ONEN EMMANUEL (SON), OTTO ANGELLA APACHO**
(DAUGHTER), CANKARA DAVID OTTO (SON) & ALIKER SOLOMON
(SON)

20 **BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

RULING

Introduction

25 The applicants brought this application under Section 98 of the Civil
Procedure Act, Cap 71, Section 234 (2) (d) of the Succession Act, Cap 162,
and Order 52 Rules 1, 2 & 3 of the Civil Procedure Rules SI-71-1 seeking
for order that the grant of letters of administration issued to Joska Otto
(widow), Onen Emmanuel (son), and Nyeko Joseph Otto (son) be revoked;
and fresh grant be made to Onen Emmanuel (son), Otto Angella Apacho
30 (daughter), Cankara David Otto (son) & Alikar Solomon (son), plus costs of
the application.

The application is supported by the affidavit of Alikar Solomon, one of the
Applicants, duly authorized by the rest of the Applicants. The Application

5 is premised on the ground that the Applicants' biological father, the late John Peter Otto died intestate on 29th December 1991, from Jinja Hospital. Consequently, Letters of Administration of the deceased's estate was first granted to Emmanuel Onen Otto and Joseph Nyeko Otto on 25th January 1993. The administrators administered the estate until the year 2018, 10 when their biological mother (the widow of the deceased), a one Joska Otto, lodged Civil Suit No. 36 of 2018, against the administrators, seeking revocation of the grant and seeking to be appointed an administrator. By consent Judgment, the grant was revoked, and the widow appointed together with the named two former administrators (Emmanuel Onen 15 Otto, and Joseph Nyeko Otto) on 8th October, 2019 by this Court (Mubiru, J.) The new administrators continued with the estate management until Nyeko Joseph Otto (son) died on 25th December, 2020, and the widow (Joska Otto) passed on, on 25th February, 2022. Their death left only Emmanuel Onen Otto, as the sole administrator. He has now been joined 20 by his present siblings in this application, so that, the subsisting grant is revoked and a fresh grant made to the four applicants.

Representation

During the hearing on 6th September, 2023, Mr. Michael Okot Obalo 25 appeared for the Applicants, who were present in Court. He informed court that he had filed submission on 29th August, 2023, and prayed to adopt it. Court allowed the request.

Issues and Legal arguments

30 In his address, learned counsel raised the issue of whether the letters of administration earlier issued on 8th October, 2019 in respect of the deceased estate, should be revoked and a fresh one granted to the Applicants. Learned counsel went on to submit that, the death of the two administrators have made administration of the estate of the late John 35 Peter Otto, impossible, inoperative and useless, under the circumstances.

5 Learned counsel deferred to section 234 (2) (d) of the Succession Act Cap
162, which permits court to revoke letters of administration that have
become inoperative. He explained that, according to the authorities, this
can be due to several reasons such as mental illness of the administrators,
physical incapacity, death of the administrator, and others, depending on
10 the circumstances of each case. He argued that, the rationale for revoking
letters of administration is to enable proper administration of the estate,
and protection of the interest of those beneficially interested. To support
his arguments, learned Counsel referenced the decision of this Court
(Mubiru, J.) in **the matter of the Estate of the late Nyeko Charles**
15 **Lukwayi, Misc. Application No. 0107 of 2020**, where the learned Judge
cited the persuasive authority of **William Loveday [1900] P, at 154.**

Learned Counsel made references to the affidavit and concluded that, the
earlier administrators having since passed on, leaving only one, it is fit and
20 proper that the letters of administration granted on 8th December, 2019,
is revoked, and a fresh grant made to the surviving administrator and his
three siblings who together have presented the present application.
Although there is prayer for costs in the Notice of Motion, learned counsel
modified the prayer in his submission, asking court not to award costs.

25 Having considered the Motion and the affidavit, and after reading counsel's
arguments, I agree with the issues as framed. I would, however, exercising
court's powers under O. 15 rule 5 (1) of the CPR and by the force of
precedent in **Odd Jobs Vs. Mubia, [1970] E.A 476**, modify the second
30 issue, thus: whether the applicants are fit and proper persons to be
granted letters of administration, and if so, on what terms?

Hudson

5 **Resolution**

Section 234 (1) of the Succession Act Cap. 162 provides, inter alia, to the effect that, the grant of letters of administration may be revoked for just cause. The meaning of just cause is provided in subsection (2) of section 234 of the Act. Under paragraph (d) just cause means where the grant has
10 become useless and inoperative through circumstances.

By the grant becoming “*useless and inoperative*”, to my mind, means, the grant is no longer fulfilling the intended or desired purpose and thus not having the usual effect. In my considered view, circumstances that render
15 a grant useless and inoperative, are varied, and will always depend on the facts of each case. Therefore, Courts have given instances where a grant of letters of administration or probate has become useless and inoperative, for instance, where an administrator becomes incapable of managing his or her affairs by reason of mental or physical incapacity for example due
20 to old age, sickness, or otherwise; and also where the administrator or administrators are deceased.

See: **In the matter of the Estate of the late Nyeko Charles Lukwayi, Misc. Application No. 0107 of 2020 (Mubiru, J.); In the matter of the**
25 **estate of the late Javuru Apollo Michael (deceased) High court Misc. Civil Application No. 0053 of 2016 (arising from HCT-08-CV-0023 of 2014) (Mubiru, J.); In the Matter of the Estate of the late Aedeke John Omuto, Misc. Application No. 82 of 2022 (arising from HC Admin. Cause No. 41 of 2008) (Dr. Henry Peter Adonyo, J.)**

30 In one similar matter court held that, by an administrator relinquishing his job of an administrator, it satisfies the requirement of section 234 (2) (d) of the Succession Act, as an administrator cannot be forced to administer an estate even though he had initially agreed to administer it.

5 See: Paulo Kavuma Vs. Moses Sekajja & another, HCCS No. 473 of 1995, digested in [1995] 3 KALR 18 (Kireju, J.) (RIP).

In my view, the raison d'être of revoking letters of administration is to ensure proper administration of the estate, and to protect the interest of the beneficiaries, which is paramount. These have been recognized by this Court. The decisions by Mubiru, J., and Dr. Adonyo, J. where the learned Judges paid deference to the persuasive case of In the Goods of William Loveday [1900] P, 154, is opposite. There, it was held:

15 **"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 can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or**
20 **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 the estate and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make a fresh grant."**

25 I agree with the above views. This is so because revocation of an inoperative and useless grant creates a path for making of a fresh grant. I also agree with the views espoused by my brother Judges, that, a court cannot simply strike the name of the administrator who has ceased to administer the estate, and continue with the surviving administrator, without first
30 revoking the useless and inoperative grant. This should be done before a fresh grant can be made.

I also agree that, there is no point in requiring the new administrators to
35 prove all matters that were necessary for the purposes of the earlier grant,

5 especially where at least one of the newly proposed administrators was an administrator with respect to the revoked grant. Thus the process of applying, advertising, obtaining letters of no objection, etc., need not be repeated in fresh grants. See: **In the matter of the Estate of the late Nyeko Charles Lukwayi, Misc. Application No. 0107 of 2020 (supra)**,
10 where the persuasive authority of **Gould Vs. Gould [2005] NSWSC 914** was followed with approval.

In the present matter, the applicants have proved that, two of the initial three administrators are now deceased. The Applicants have attached
15 death certificate of Joska Otto, and a Death Notification Form 12, submitted to NIRA, among others, in respect of Nyeko Joseph Otto.

In the circumstances, I find that the grant of the letters of administration to the original administrators has become useless and inoperative as the
20 surviving administrator will not singly serve the purpose for which the initial grant to three administrators was intended to achieve. I find this a proper case in which court ought to revoke the grant of 8th October, 2019. The same stands revoked. Consequently, the original copy of the Letters of Administration dated 8th October, 2019, issued by this court, shall be
25 returned to court, following this Order.

Regarding the prayer for fresh grant to the Applicants, Section 234 (5) of the Succession Act Cap 162, as amended in 2022 provides that:

30 **"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 this Act."** (Emphasis is mine.)

35

In the matter at hand, court has noted the minutes of the family meeting dated 25th May, 2023, in which a family resolution was made to the effect that, the Applicants be appointed new administrators of the estate of the late John Peter Otto. Therefore, I have no doubt whatsoever in my mind that, the family and the beneficiaries to the estate, have faith in the Applicants, that the Applicants will discharge their statutory duties as administrators if appointed. Furthermore, given that the Applicants are children of the deceased, and have been nominated for consideration for court appointment, I find them to be fit and proper persons to be appointed administrators of their late father's estate.

Accordingly, I hereby appoint Onen Emmanuel (Son); Otto Angella Apacho (Daughter); Cankara David Otto (Son); and Alier Solomon (Son), respectively, to administer the estate of the Late John Peter Otto.

This appointment is, however, limited to two years from the date hereof. This is in accordance with section 259 of the Succession Act (as amended) in 2022. Subsection (2) of section 259 provides:

"A person to whom letters of administration are granted under subsection (1) shall administer the estate for a period not exceeding two years." (Underlining is supplied.)

The exception to closed ended grant, under section 259 (4) of the Succession Act (as amended), where a child is the sole beneficiary, or where minors are involved, or where trust is created or where the estate of the deceased is entitled to pension, have not been canvassed in this case.

In the absence of the statutory rider to closed grant, this grant shall not be open ended. Therefore, the Applicants shall lodge in court, an interim

5 inventory not later than 14th September, 2024 and a final account by 14th September, 2025. I make no order as to costs.

Obiter

Before I take leave of this matter, I have noted that the estate has never
10 been distributed and has been administered for the aggregate period of slightly over thirty years, since 25th January, 1993. The Administrators are advised to follow the law regarding administration of the estate, as estate administration is not intended to be indefinite, contrary to the belief of some administrators, and given the current legal regime. See: **Anecho**

15 **Haruna Musa Vs. Twalib Noah & 2 others, Civil Suit No. 0009 of 2008.**

The Applicants may further obtain independent guidance from the Administrator General or his representative, on how to go about the estate management for purposes of closure, going forward. Otherwise, for the avoidance of doubt, this grant shall expire on 14th September, 2025 when
20 the Applicants shall be expected to have filed the final account, unless otherwise ordered by court. See: section 259 (3) Succession Act (as Amended) in 2022.

It is so ordered.

Delivered, dated and signed in Court this 14th day of September 2023.

30

George OKello

JUDGE HIGH COURT

5 Ruling delivered in Court

11:45am

14/09/2023

10 **Attendance**

Okot Michael Okot Obalo, counsel for the Applicants.

Applicants in court.

Avola Grace, Court Clerk

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Hudon. 14/9/2023
George Okello

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JUDGE HIGH COURT