

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA-MAKINDYE
(FAMILY DIVISION)

MISC. CIVIL APPLICATION NO. 763 OF 2021

(ARISING FROM ADMINISTRATION CAUSE NO.0081 OF 2004)

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF LETTERS OF ADMINISTRATION GRANTED TO IMELDA NYANDERA BALODHE AND MUPERE ANTHONY AND SUBSTITUTING THEREOF OF LETTERS OF ADMINISTRATION IN THE NAMES OF MONICA JACITA NBIBASE (DAUGHTER) AND JOSEPH MITALA (SON).

Before: Justice Ketrah Kitariisibwa Katunguka

Ruling.

1. This application is brought under section 98 of the Civil Procedure Act, Cap. 71, section 234(2) (d) and (e) of the Succession Act, Cap.162, Order 52 rules 1, 2 and 3 of the Civil Procedure Rules for orders that the letters of administration granted to Imelda Nyandera Balodhe (widow) now deceased and Mupere Anthony (son) on 24/3/2004 vide HC Administration Cause no.81 of 2004 be revoked; that substitute letters be granted to Monica Jacinta Ndibasa (daughter) and Joseph Mitala as (son) as the new administrators of the estate of late Balodhe Israel Jacob and costs be provided for.
2. The grounds of the application are in the notice of motion and the affidavits in support deposed by Monica Jacinta Nbibasa and the affidavit of Kaleebi Francis and are briefly that; the Letters of Administration for the estate of the late Balodhe Israel Jacob formerly of Kiwugu village Butausi Sub-county Bugabula county Kamuli district were granted to Imelda Nyandera Balodhe widow (now deceased); and Mupera Anthony (son); the mother to the applicants and the respondent has since died so the respondent Mpera Anthony is the only Administrator that even before the widow died the duo never called a family meeting or filed an inventory or made an account of the estate of the late Balodhe Israel Jacob; after the widow's death in 2008 the respondent has not filed inventory or given an account or called a family meeting;
3. He demolished the deceased father's house in 2013 and built a personal house in its place which house is inaccessible to Kaleebi Francis who is the heir; and the rest of the siblings; that the respondent has therefore made the applicants homeless; they have never made the respondent a sole administrator, he is rude arrogant and detached from the rest of the siblings; he allocated 3 acres from the estate to himself and

planted matooke for his own use leaving only 9 acres undistributed; he is emotional, a liar and un realisable; the beneficiaries have agreed that the applicants be appointed.

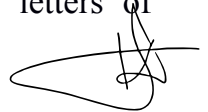
4. The application is opposed by the respondent through his affidavit in reply to the effect that he has preserved the estate and it is still intact; the siblings agreed that he continues to administer the estate after the death of their mother; he does not object to the sibling's' choice of another person to join him as an administrator but not applicants because they are unfit; the law allows him to continue being sole administrator so the death of their mother does not make the letters of administration inoperative; the applicants have not proved their claims.

Representation:

5. The applicants are represented by counsel Perry Autone Namugowa; the respondent is according to his affidavit in reply, represented by M/s Nzige Jamero & Advocates.
6. When this matter came up on 28/11/2022, Jacinta Ndibayisa and her counsel were present in court; while the respondent and his counsel were absent; there is an affidavit of service; court ordered that the respondent files submissions in reply by 30/12/2022; and counsel for the applicant was to file submissions in rejoinder by 30/1/2023 and ruling was to be delivered by email by 28/2/2023; by the time of preparing and delivering this ruling, the respondent had not filed submissions.
7. I have considered the application, the reply and submissions by counsel for the applicant; counsel cited section 234 of the Succession Act and relied on **In the matter of the estate of the late Javuru Apollo Michael and in the matter of application for revocation of letters of administration and grant instead to Piwa Clare and Biywaga Joan Arua HC MCA No.53/2016**; and **In the case of Mukisa Patrick and Anor Vs. Nabukalu Rebecca FD CS No.29/2016**; and argued that the letters of administration to the respondent should be revoked for failure to distribute the estate, failure to file an inventory by the respondent;
8. Counsel did not frame any issues. Order 5 rule 1(4) provides that issues may be of fact and law; Order 15 rule 1(5) provides that court may frame issues from the pleadings. having considered the pleadings, the issues for court's consideration are;
 1. Whether this matter is properly before court and if so;
 2. Whether the application may be granted;

Issue 1. Whether this matter is properly before the law?

3. I shall first state that the cases cited by counsel for the applicants do not support their case; the Piwa Clare and Biywaga Joan case (supra); was filed by the surviving administrators to revoke letters of administration and strike out the deceased administrator; the Mukasa Patrick case was brought for revocation of letters of



administration, but for failure by the defendant to file an inventory, for sale of estate property; and in that case, the co-administrator had allegedly renounced the letters; the above are not facts in this case;

4. The procedure in the latter case was by notice of motion supported by affidavit because all that was required was proof of death of the co-administrator; the latter was brought by way of a regular suit, by plaint, because mismanagement of an estate and purported agreement to replace an administrator cannot be proved by affidavit evidence; by the time letters of administration are granted, the process has been scrutinized by the Administrator General; an application to disband the whole process must be proved by adducing detailed evidence; that is why section 265 of the Succession Act provides and I quote;

“In any case before the High Court in which there is contention of proceedings shall take as nearly as may be the form of a regular suit according to the provisions of the law relating to civil procedure...”

In the premises, this matter is improperly before court, it is therefore hereby dismissed with costs.



Ketrah Kitariisibwa Katunguka

Judge

21/02/2023

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