

IN THE HIGH COURT OF UGANDA AT HOIMA
CIVIL SUIT NO. 07 OF 2023
(FORMERLY MASINDI CIVIL SUIT NO. 26 OF 2020)

VERSUS

Before: Hon. Justice Byaruhanga Jesse Rugyema

[1] The Plaintiffs as biological daughters and beneficiaries to the estate of the late **Bitadwa Francis Wanzala** brought this suit against the defendants who are administrators of the estate and also children of the late **Bitadwa Francis Wanzala** for orders inter alia; annulment and revocation of letters of Administration issued to the defendants, a declaration that the defendants fraudulently obtained the letters of Administration, a Grant of letter of Administration with a WILL annexed to the plaintiffs and distribution of the estate.

[2] It is the plaintiff's case that the plaintiffs are children and beneficiaries to the estate of the late **Bitadwa Francis Wanzala** who died intestate on the 29/11/2016 and his estate is being administered by the defendants.

- [3] It is the contention of the plaintiffs that they have **just cause** for this court to revoke or annul the Grant given to the defendants on the following various grounds; **(a)** the defendants' failure to distribute the estate to all beneficiaries, **(b)** using the Grant to mislead court so as to steal cattle belonging to other beneficiaries, **(c)** Running the Notice of Application in Orumuri Newspaper well knowing that it did not have circulation in Bulisa, **(d)** misrepresenting to court that the deceased died intestate and that he left 200 heads of cattle and a house at foundation level whereas not, **(e)** falsifying the family minutes to obtain a certificate of no objection from the Administrator General and **(f)** misrepresenting the value of the deceased's estate with an intention of grabbing property not forming part of the estate of the deceased.
- [4] In their Joint Written Statement of Defence, the defendants denied the plaintiff's allegations and contended that they applied and were granted letters of administration in respect of the estate of the deceased and upon securing the grant, they embarked on gathering the estate for purposes of filing an inventory in court but they were faced with opposition from the Plaintiffs who stopped them from accessing the whole estate.
- [5] The defendants filed a counter claim against the plaintiffs/counter Respondents for a declaration that the purported WILL of the late **Bitadwa Francis Wanzala** is a forgery, an order of cancellation of the said WILL, a declaration that the counter claimants were rightly appointed administrators of the estate of the deceased, among other reliefs.
- [6] The defendants/counter claimants contended that the counter Respondents in order to grab the whole estate have forged the WILL purported to belong to the deceased and they have adamantly refused to surrender the estate to the counter claimants who are the administrators for proper administration.
- [7] At scheduling, the following issues were framed for determination of the suit;
1. Whether the late Bitadwa Francis Wanzala died testate.
 2. Whether the defendants/counter claimant were rightly granted letters of administration to the estate of the late Bitadwa Francis Wanzala.

3. Whether there exist just cause to revoke and /or annul the grant of letters of administration given to the defendants/counter claimants.
4. Whether the properties listed by the defendants/counter claimants constitute the estate of the late Bitadwa Francis Wanzala.
5. What remedies are available to the parties.

Counsel Legal representation

- [8] The plaintiffs were represented by **Mr. Lubega Willy** of **M/s Lubega, Babu & Co. Advocates, Kampala** while the defendants were represented by **Mr. Simon Kasangaki** of **M/s Kasangaki & Co. Advocates, Masindi**. Both counsel filed their respective written submissions as permitted by this court for consideration in the determination of this suit.

Issue No.1: Whether the late Bitadwa Francis Wanzala died testate.

- [9] It is the evidence of **Tibiita Lilian** (PW1), daughter of the late **Bitadwa Francis Wanzala** that her father died testate on 29/11/2016 and that the deceased's WILL was brought at the burial by a one **Bagonza Bright** who had its custody and witnessed it. That it was read by **Kagoro Robert** on the day of the burial of the deceased in the presence of all the persons present who included the defendants. The WILL is on record as **P.Exh.1**. This evidence was corroborated by **Kwesiga Edward** (PW2) who testified that their father's WILL was read at his burial. The defendants' uncle **Kato Seremoth** (DW1), one of the widows **Bulandina Byaruhanga** (DW2) and the deceased's daughter **Bagiire Kabasomi Rabbeka** (DW3), in cross examination also confirmed to court that the WILL existed and it was read at the funeral of their father. **DW3** explained however, that they disagreed with the WILL because it omitted to cater for **Bulandina's** family cattle left by the deceased and certain houses at Nyapeya. It was believed that the WILL was forged by the 1st plaintiff, **Janat Asaba**, because it was clearly identifiable by virtue of **Asaba's** handwriting and that **Elina** (the deceased's first widow) was included in the WILL yet she was dead.
- [10] Counsel for the defendants submitted that the purported WILL of the late **Bitadwa Francis Wanzala** was irregular, inconsistent, invalid, a forgery,

incurably defective, unenforceable and of no effect at law because it was typed and had alterations which were hand written.

- [11] However, a part from the claims of the alleged hand written alterations, there is no evidence adduced by the defendants that the alterations were not authorised by the testator or that the thumb print on every page of the WILL was not of the testator. None of those witnesses who attested the WILL was called upon to testify about the WILL. The burden was on the defendants to prove on the balance of probabilities that the WILL which was admittedly read at the funeral of the deceased was not the deceased's WILL but a forgery. Under **S.101 of the Evidence Act** he or she who asserts must prove, See also **Lugazi Progressive School & Anor Vs Sserunjogi & Ors [2001-2005] 2 HCB 12.**
- [12] The defendants in this case failed to discharge the onus. **Bagiire Kabasomi Rabbeka's** (DW3) claims and belief that the WILL of the deceased was forged by **Janat Asaba** on the grounds that the pen alterations i.e, insertions were clearly identifiable by virtue of **Asaba's** handwriting have no basis. **DW3** merely constituted herself into a handwriting expert in the absence of any sample handwriting of **Asaba** provided for comparison and or expert report to that effect.
- [13] I have perused the copy of the WILL on the record (**P.Exh.1**). It is not correct that the WILL did not cater for the benefits of the defendants in the estate. As per the WILL, the defendants who are the children of the widow **Bulandina**, were given various heads of cattle and this included their brothers; **Kwesiga Edward** (PW2) and **Matongo Gilbert** who had been in charge of the herd. During cross examination, **PW2** admitted getting 3 heads of cattle. None of the defendants including their brothers **Matongo Gilbert** and **Kwesiga Edward** (PW2) testified denying benefiting from the heads of cattle. **Matungo Gilbert** also did not testify denying obtaining the Boat engine as his share, as per the WILL.
- [14] The WILL never tampered or upset the status quo regarding the matrimonial set up, occupation and or ownership of the widows' status upon the demise of the deceased. This is confirmed in evidence by the

mother of the defendants herself, **Bulandina** (DW2), who during cross examination testified that

"I am a resident of Nyapeya where nobody has ever chased me"

Tibiita (PW1) also during cross examination testified that

"our father left 14 heads of cattle which were being taken care of by their brother Matongo Gilbert. They are occupying their respective portions of land left to them by our father at Nyapeya."

[15] It is also not correct as counsel for the defendants put it that the WILL catered for **Nyangele Elina** (the 1st deceased's wife) when she was already dead. There is no evidence that by the time the WILL was executed i.e, on 12/3/2015, **Nyangele Elina** was dead. The available evidence as per **PW2**, (which evidence was not controverted) is that **Nyangele Elina** died in January 2018 and therefore, when the WILL in question was executed by 2015, it catered for her as she was by then alive.

[16] Again, it is also not correct as counsel for the defendants' Submitted and **DW2** claimed in her evidence that her matrimonial home was bequeathed away in the WILL. What is a fact is that at Nyapeya, as revealed by the defendants' uncle **DW1**, both the defendants and the plaintiffs have their respective matrimonial houses there. In cross examination, DW1 stated thus;

"Before shifting to Kisambura, all beneficiaries, wives were at Nyapeya but when he (the deceased) was shifting, he went with only one wife, the 3rd one."

[17] The foregoing clearly show that the deceased matrimonial home at Nyapeya is not exclusive of only the children of **Bulandina** (DW2) and therefore the deceased bequeathing his other **house** at Nyapeya and the **Makasiya trees** to the children of his other 2 wives and **Kwesiga Edward**, the son to **DW2** did not amount to rendering her homeless. She retained her matrimonial house as the children also retained the matrimonial houses of their respective mothers.

[18] In conclusion therefore, I find that the defendants' mothers' matrimonial property at Nyapeya was never bequeathed to anybody though in the deceased's WILL, the testator never recognised her as a widow for the

apparent reason that their marriage had been on rocks. There is ample evidence that the defendants recognised the existence of the WILL when they unsuccessfully attempted to have it declared a nullity vide **Chief Magistrate's Court of Masindi C.S No.04/2017** which they abandoned and opted for a Grant vide **H.C A.C No.70/2019** and as a result, the suit was dismissed for none appearance of parties on 16/1/2020 (**P.Exh.2**).

[19] In the absence of any evidence of forgery, I find that the **WILL** in question established the testator's wishes and took effect upon his demise. The WILL was therefore valid and therefore, the 1st issue is found in the positive. The late **Bitadwa Francis Wanzala** died testate.

Issue No.2: Whether the defendants/counter claimants were rightly granted letters of administration to the estate of the late Bitadwa Francis Wanzala.

3: Whether there exist just cause to revoke and/or annul the grant of letters of administration given to the defendants/counter claimants.

[20] Counsel for the plaintiffs submitted that the defendants in obtaining the Grant, they were neither appointed, elected and or consented to by the plaintiffs for the issuance of the grant to administer their late father's estate. That the defendants/counter claimants were not rightly granted letters of administration to the estate of the late **Bitadwa Francis Wanzala** for they depended on fraudulent documents and that the plaintiffs were never consulted to the appointment of the defendants to obtain the Certificate of No Objection from the Administrator General.

[21] It is the correct position of the law that under **S.5 of the Administrator General's Act**, no grant of letters of administration is to be made to any person except an executor under a WILL or the widower of the deceased until the Applicant thereof has produced to the court proof of having given the Administrator General notice. This proof is usually the certificate of no objection that is issued by the Administrator General upon notification by the intended administrators/Applicants.

- [22] In this case, upon being notified of the death of the deceased, the Administrator General instructed the Chief Administrative Officer (C.A.O) Buliisa to organise a family meeting for appointing of the competent persons to obtain the Certificate of no objection (**P.Exh.3**). The defendants were eventually appointed as competent persons to obtain the certificate of no objection at the family meeting of 5/4/2019 and they were accordingly issued one, (**D.Exh.10**). On the basis of that certificate of objection, the defendants applied and were granted letters of Administration (**D.Exh.11**) in respect of the estate of the deceased.
- [23] Counsel for the plaintiffs submitted that the defendants came up with forged minutes which they presented to the office of the Administrator General and attached copies of the attendance sheet (**P.Exh.3**) which the plaintiffs deny. Indeed, I have looked at the family meeting minutes (**P.Exh.3**), and the attached attendance list, there is no evidence that the minutes were of a meeting that was convened on 5/4/2019, rather, it is evident that the minutes are of 31/5/2019. On record, there is therefore no family meeting minutes conducted on 5/4/2019 as the defendants and their counsel claim. There are no corresponding minutes for the meeting purported to had been convened on 5/4/2019 supported by the attendance list dated then. It is therefore not correct that the defendants were appointed competent persons to obtain the certificate of no objection at the family meeting dated 5/4/2020 or 5/4/2019 (whatever the case may be).
- [24] It is in the premises therefore, permitted by this court to conclude, in agreement with the plaintiffs that there are no minutes before the CAO that were forwarded to the Administrator General for consideration before issuing a certificate of no objection to the defendants and if the minutes did exist as claimed by the defendants, they were forged to the extent that they reflected that the plaintiffs were party to them whereas not. Otherwise, in addition, the plaintiffs deny participating in even the purported minutes dated 31/5/2019 (**D.Exh.4**). The defendants have not been able to defend the authenticity of these minutes.
- [25] In conclusion, I find that there is no evidence that the plaintiffs who are beneficiaries to the estate of their late father **Bitadwa Francis Wamala**

participated in the appointment, election and or consented to the defendants as the rightful persons to get letters of administration to their late father's estate.

[26] Besides, it is clear from the report of the CAO to the Administrator General (**P.Exh.6**) that the plaintiffs never participated in the appointing of the defendants as persons to be given certificate of no objection as regards the administration of the deceased's estate. It is apparent, as clearly raised by the defendants and the CAO's report to the Administrator General dated 30/5/2019 (**P.Exh.6**) that there are very fundamental underlying problems among the deceased family that they could not agree as to who should be granted a certificate of no objection. As a result, even when the defendants were issued with a certificate of no objection and eventually the grant as revealed by the defence, the defendants have faced stiff opposition from the plaintiffs and the defendants have eventually failed to administer the estate. No inventory has ever been filed in respect of the estate since 22/21/2020 when the letters of Administration in respect of the estate of the late **Bitadwa Francis Wanzala** were issued (**D.Exh.3**).

[27] As a result of the foregoing, I find that the defendant/counter claimants were not rightly granted letters of administration to the estate of the late **Bitadwa Francis Wanzala**. The defendants fraudulently obtained a certificate of objection on the grounds that the plaintiffs participated in the appointment of the defendants as administrators of the estate of the deceased whereas not.

[28] In light of the above, I find that there exists **just cause** to revoke and/or annul the grant of letters of administration given to the defendants/counter claimants. "**Just cause**" under **S.234 of the Succession Act** has been defined to mean that

"the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making a false suggestion or concealing from court something material to the case; the grant was obtained by means of an untrue allegation of fact essential in a point of law to justify the grant...";

See **Tumusiime Paul & 3 Ors Vs Haji Wahab Semakula**, HCCS No.76/2013.

[29] In the instant case, the grant of the letters of administration was based on a fraudulently obtained certificate of no objection from the Administrator General.

[30] Besides, the defendants having failed to exhibit an inventory or account under part **XXVI of the Succession Act**, this court would still be entitled to find “just cause” for annulment and or revocation of the Grant given to the defendants in respect of the estate of the late **Bitadwa Francis Wanzala**. In the premises, letters of administration granted to the defendants vide **H.C.A.C No.70/2019** are accordingly revoked and or annulled.

Issue No.4: Whether the properties listed by the defendants/counter claimants constitute the estate of the late Bitadwa Francis Wanzala.

[31] As provided for by **Ss.101-102 of the Evidence Act**, the burden of proof is on the defendants who assert that the listed properties form part of the deceased’s estate to prove that those facts exist and are true.

[32] In the instant case, apart from listing the properties allegedly left by the late **Bitadwa Francis Wanzala**, the defendants did not adduce any form of evidence to support their claims and allegations. The plaintiffs on the other hand, supported their claims with the WILL of the deceased (**P.Exh.1**) and it is their further contention, that the parties got their share of the properties of the deceased as per the WILL.

[33] In the premises, I find that any property outside the properties mentioned in the deceased’s WILL (**P.Exh.1**) do not constitute the estate of the late **Bitadwa Francis Wanzala**.

Issue No.5: What remedies are available to the parties.

[34] The plaintiffs sought for various prayers as per the plaint which included; a declaration that the defendants fraudulently obtained letters of Administration in respect of the estate of the late **Bitadwa Francis Wanzala** and that there is just cause for cancellation of the Grant. Whereas the above

sought prayers are feasible in view of the findings of court on **issues 1-3**, the rest, to wit, grant of the letters of administration to the plaintiffs, an order of distribution of the deceased's estate, a permanent injunction against the defendants and those who derive title therein from intermeddling with the estate of the deceased and general damages for trespass appear not feasible.

- [35] In the first instance, it is the evidence of the plaintiffs that all the beneficiaries of the estate of the late **Bitadwa Francis Wanzala** got their respective shares according to the deceased's WILL, that all the properties of the deceased have since been divided as per the WILL.
- [36] It follows therefore, as counsel for the plaintiffs submitted, there isn't any of the deceased's property available to administer. In the premises, it would appear untenable to subject the estate to a fresh distribution and therefore, a fresh grant of letters of administration to the plaintiffs is in the circumstances uncalled for. However, it is evident that even if there was such need for distribution of property, the plaintiffs as administrators would also face similar challenges the defendants faced as administrators. The family is very much divided to the extent that it is not possible for it to reach a consensus and have the estate distributed to the satisfaction of the beneficiaries. It would therefore appear to me that if there is any property of the deceased worth distribution, the estate should be referred to the Administrator General for consideration of whether or not to apply for its administration under **Section 251 of the Succession Act** for purposes of ensuring that the estate does not go to waste.
- [37] In the premises, I find that upon revocation of the letters of Administration held by the defendants, still, this court finds that it is not prudent to grant the letters of administration to the plaintiffs. The estate is therefore referred to the Administrator General upon consideration of all the circumstances of the estate to consider whether or not to apply for administration of the estate of the deceased, the late **Bitadwa Francis Wanzala**, for purposes of the confirmation of the distribution already done or for the management of the residual or so much of the estate that may still be undistributed.

[38] As regards general damages, it is trite that they are in the discretion of court to compensate the aggrieved, fairly for the inconvenience accrued as a result of the actions of the defendant. They are presumed to naturally flow from the wrongful act committed by the defendant and are as a result of inconvenience and mental anguish caused due to the defendant's actions against the plaintiff, See **Ronald Kasibante Vs Shell (U) Ltd [2008] HCB 163**. In the instant case, it is the plaintiff's case that the deceased's properties were already disputed as per the will and each family is already enjoying its respective share. The claims that the defendants were using the Grant to steal other people's cattle are not supported by any evidence. No witness testified to that effect. The court ruling vide **Masindi High Court Misc. Cause No.15/2020 (P.Exh.9)** is not evidence that the defendants have stolen any of the cattle belonging to other people. I find neither party having proved any of the general damages claimed.

[39] In the premises, I find that neither the plaintiffs nor the defendants in their counter claim successfully proved their respective claims save for orders for;

1. Annulment and or revocation of the letters of Administration issued of the defendants in respect of the estate of the late **Bitadwa Francis Wanzala**.
2. That the estate is referred to the Administrator General for consideration of whether or not to apply for administration of the estate of the deceased, the late **Bitadwa Francis Wanzala**, for purposes of confirmation of the distribution already done or for the management of the residue or so much of the estate that may still be undistributed if any.
3. As the parties are all children and beneficiaries of the estate of the late **Bitadwa Francis Wanzala**, no order as to costs is issued. Both the plaintiffs and the counter claim partially succeed with the foregoing orders.

Signed, Dated and Delivered at Hoima this **22nd day of February, 2023**.

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Byaruhanga Jesse Rugyema
JUDGE.