THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV- CA- 104 OF 2013
(ARISING FROM TORORO LAND SUIT NO. 36/2012)
(ARISING FROM CIVIL SUIT NO. 66/2011)

JACKSON OYUK KASEDE :::::::::::::::: APPELLANT
VERSUS
WILLIAM ODOI NYANDUSI :::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The facts as presented by the appellant and respondent are that on the 14th July 2011, the appellant filed a suit against the respondent herein to revoke the letters of Administration granted to the respondent.

In the lower court, issues were;

a) Whether the letters of Administration granted to respondent should be revoked.
b) Whether grant of letters of Administration be made to the plaintiff/ appellant.
c) What remedies were available to the parties?

After the hearing the learned trial Magistrate decided the case in favour of respondent and dismissed the case with costs.

The appellant being dissatisfied on several grounds, based on the fact that the learned trial Magistrate did not evaluate evidence properly thereby reaching wrong findings on all the issues.

The main grounds are that:

a) Learned trial Magistrate was wrong to find that documents annexed by the respondent to his application seeking the grant were unnecessary.

b) Learned trial Magistrate erred to find that the failure to file an inventory of final account is not a ground for revoking a grant of letters of Administration.

c) The learned trial Chief Magistrate erred in law and fact when he failed to appreciate and consider the evidence of fraud adduced in court and its effect on a grant of letters of Adminstration procured through such means.

d) The decision led to a miscarriage of justice.

The duty of a first appellate court includes the duty to carefully and exhaustively re-evaluate the evidence as a whole and make its own decision on the facts.
(See: ***Pandya V R 1957 EA 336)***.

I have carefully gone through the evidence on record. I have gone through all the submissions. The arguments revolve around the questions of law whether;

1. The provision of the Succession Act are binding upon the Administration of both Big Estates and Small Estates.
2. Whether fraud was proved.
3. Whether there was any just cause for annulment /revocation of the grant of letters of Administration.

I will determine the above questions and then relate the conclusions therefrom to the grounds of appeal as presented.

1. **Whether the provisions of the Succession Act are binding upon both Big and Small Estates**.

In his arguments under grounds 3.1(a) counsel for Appellant referred to his lower court submissions and especially those in rejoinder to argue that the purpose of the family consent and certificate of no objection is to establish who would be the person to apply for the grant. He referred to Sections 201 and 202 of the Succession Act (as amended). He argued that when dealing with the Administration of the property of an intestate, administration should go to the person entitled to the greatest proportion of the estate. In this case he argued that the widow **Esther Alowo** had first priority followed by the customary heir (1st plaintiff in this case). The next would be the lineal descendants who all have equal rights to apply.

Appellant's argument/ evidence was that they did not consent and any evidence to the contrary was untrue.

In reply the defendant/ respondent also adopted the lower court submissions and re-emphasized them on appeal but with emphasis that Administration of Estates(Small Estates) is done within special laws as contained in Cap 156, and Rules made there under, alongside S1 2009/ 29, and S1 21/2009.

He referred to the fact that where special rules of procedure are available to guide court, they should be specifically followed. He argued that Section 201 and 202 of the Succession Act is not applicable to this case.

He also argued that Section 278(1) Succession Act governs only large Estates.

Having carefully analyzed the law applicable, I will begin by restating that the provisions of the Succession Act and the Administration of Estates (Small) Estates Special Provisions Act Cap 156 as amended) are to be construed as one.

The provisions complement each other, and do not conflict at all. The construction of the provisions should be "read into" and read with a view to promote consistency.

The same Acts have specifically indicated Sections thereof which should be excluded or read with necessary modifications. It is therefore not legally correct to assume that the provisions of the Succession Act do not bind the administration of Small Estates.

The import of the finding above means that whereas the provisions of the Small Estates law, are user specific to Small Estates, the principles of the law of Succession that govern intestate succession in both small and large estates are cross cutting.

It is therefore a wrong interpretation of the law to hold that when applying for letters of Administration under Small Estates, the court should not be guided by the Succession Act. I think that though the law appears to provide separately for small and large Estates, detailing as to what elaborate procedure one can use in applying for a grant, if one comes to court and presents a procedure known to be followed under large estates while applying for a small estate (as per Sections 27, 201, 202, 203, and 235 of the Succession Act, and S1 2009 No. 29, Section 2(1),

Section 10) then the court looks for exceptions. I will particularly point out that Section 10 of S1 2009 N0. 29, indicates exceptions and specific exclusions regarding applicability of the Succession Act and Administrator General's Act thereof.

However the Administration of estates (Small Estates) (Probate and Administration) rules do set out the procedure leading to a grant as follows;

> "*1(5) An application for probate or letters of Administration.*
>
> *a) Shall be subscribed by the applicant in the presence of a Magistrate.*
>
> *2 (2) Every applicant shall supply all information necessary to the court to enable the papers leading to the grant to be prepared by the court and the court shall be responsible embodying such information in proper form free of charge.*
>
> *3 (2) A court shall not allow any grant to issue until all inquires which it deem fit to make have been answered to its satisfaction*".

The argument by defence/ respondent was that it was court's duty not their duty to ensure that proper procedure and documentations are provided. I do agree. However I do quickly add, that the duty to provide the right information is on the applicant.

This is where the crux of the matter is, in that the applicant presented information including minutes of a meeting which he purported to be authority for his nomination by the appellants/plaintiffs, which they do contest! Whether the procedure adopted by the court was unusual procedure , it was what led court to the decision it made leading to the grant.

The procedure was challenged successfully by plaintiff's evidence showing that they did not participate in that process.

The grant was issued to the defendant through a process where the law required "an inquiry" but which "alleged inquiry was based on wrong "minutes of a prior meeting".

This information in my view was a relevant fact in evidence by the plaintiff to show that the defendant was not the proper person to have been presented to the court as the right applicant.

I therefore agree with the appellant that the purpose of the family consent and certificate of no objection is to establish who should be the person to apply for the grant. In Small Estates, that

requirement is satisfied by the inquiry referred to under the rules specified above. However in doing the inquiry the general principal is stated under Sections 201 and 202 of the Succession Act (as amended), the inquiry should determine that if the property is of an intestate then the administration should go to the person entitled to the greatest proportion of the estate.
According to evidence from the plaintiff /appellant there was a widow **Esther Alowo** who was entitled as a first priority. Evidence showed further that there was a heir in the person of the plaintiff, all who had lineal equal rights to apply. The evidence of the plaintiff showed that they did not consent to the grant, as required by law.

I did not find any evidence on record from the defence in rebuttal of this fact. All children and beneficiaries stood in court in opposition to this grant save DW1 **Etude Felix** a Sub County Chief who allegedly constituted the meeting of 12.11 2010, and produced minutes. **DW2 William Odoi Nyandusi** (the defendant) who only told court that everything in issue is his own property.

DW3- Odoi Tezira, wife of DW2 who claimed it is plaintiffs who appointed DW2 as their family administrator.
The legal burden which the plaintiff had was to prove the allegations of facts in their plaint (Sec 101-102-103 of Evidence Act). They were able to satisfy the burden of proof by showing that none of them consented to the choice of the defendant as an Administrator of the said Estate.
The alleged procedural guidelines provided for in law cannot be invoked to cover up this glaring anomaly.

2) Fraud

I have read the arguments on this point of law. In the determination of the first question it has been shown that the plaintiffs were able to prove that they did not consent to the choice of the defendant as a family Administrator. So how did defendant get elected?
The evidence on record as laid to court through PW1, PW2, PW3, PW4, PW5, PW6 and PW7, shows that the defendant used cunning methods to get the grant. The defence counsel points out that the process pointed out by plaintiffs as “faulty” ought not to be visited on his client but on the court.

With due respect, the learned trial Magistrate failed to assess the evidence objectively.
Instead of examining the evidence as a whole, he dwelt on what transpired in court, calling the procedure followed unnecessary and irrelevant . He thereby closed his eye to the facts and evidence which translated into the grant.
This evidence when examined as stated through the plaintiffs shows that the defendant did not go to court with "Clean hands."

The evidence on record even by his own admission showed that the defendant has committed acts of wasting the estate. He has not distributed. He has sold. He has demolished houses. He has gone to court with false minutes in which he claimed he was named the Administrator, yet the plaintiffs allege there were no such minutes. In the plaint the grounds/particulars of fraud were listed to include the following which were proved in evidence through PW1- PW7 (as per record of proceedings).

i) Claiming to have been appointed as the person to be granted letters of Administration in a meeting that took place on 12th November 2010.
ii) Concealing from court that he was opposed by plaintiffs.
iii) Concocting minutes and uttering them to court and Administrator General knowing them to be untrue.

All the above matters were sufficiently covered and proved by evidence on record. It is not deniable that the actions by the defendant were fraudulent.

The findings by learned trial Magistrate on this matter were therefore erroneous.

Just cause

From the submissions by both the appellant and respondent on this point of law, the appellant noted that once the learned trial Magistrate held that Section 234 of the Succession Act applied to the case then defendants cannot criticize it without a cross appeal. Appellant argued that even if court was to base on discretion, evidence was led to show that the letters were obtained without consent of all beneficiaries yet the defendant purported it to be so. Counsel referred to evidence of waste, failure to cooperate with family, lack of inventory and that just cause had been proved to warrant revocation of the grant.

In defence the defendant/respondent argued that there were no illegalities committed, no concealment of relevant material facts to the grant, since all parties appeared before the Chief Magistrate at the time of the grant on 19. 04. 2011.

I have looked at the record, I have noted that the witnesses save PW3, that is PW1- PW7, kept maintaining even in cross-examination that they were never aware that defendant had been chosen as Administrator.

They kept on explaining that they all along knew and believed they were simply holding a family meeting. I see in evidence of PW5 the fact that in going to the Chief Magistrate they did not know what was going on, as they were only summoned to attend. They also confirmed that defendant sold land at Pajwenda.

From that evidence I am convinced that the defendant did not go to court with clean hands. The law is that "*he who goes to equity must do so with clean hands*". The fact that the defendant in his own testimony in court and that of DW3 confirms that he regards the Estate as his personal property renders the defence of " bad faith" nugatory .

The courts are enjoined to exercise their discretion judiciously so as to subvert injustice and give justice a chance.
The facts of this case smell. The courts cannot hide under technicalities as long as justice is put on the firing line. There is no justification for any court to be informed that the Administrator of an Estate obtained the grant without consent of other beneficiaries including the widows and heir, with evidence of errors in the alleged minutes, with evidence of deliberate mismanagement by selling off estate property , failure to file an inventory to court – (all proof of a just cause) and it fails to find a just cause for annulling such a grant!!

I do not find the arguments by the defence justifiable, and I do find that the arguments by the appellant are correct, there was just cause.

Having answered all the above questions as above, I have reached the conclusion that this appeal will succeed on all grounds of appeal as argued.

The appeal is allowed. The lower court Judgment and Orders are herby set aside and replaced with Judgment for appellant, with costs. I so order.

Henry I. Kawesa

JUDGE

08.02.2017