

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

HCT-00-LD-MA-2198-2021

(Arising from LD-CS-No. 2541-2017)

1. NAKUBA ALICE :::::::::::::::::::::::::::::::::::APPLICANTS

2. MUKASA STEPHEN BUTENGEZA

3. NKAYUGIDDE PETWA MAKONZI

VERSUS

1. FRISTA NAKITENDE:::::::::::::::::::::::::::::::::RESPONDENTS

(Administrator of the estate of the late Eria Kirumira Nakalango)

2. ROBERT MUGERWA

3. KYEPA YAZID MUKALU

4. COMMISSIONER LAND REGISTRATION

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

RULING

BACKGROUND:

The Applicants brought this motion under section 82 and 98 of the Civil Procedure Act Cap 71 and O.46 r 1 & 2 and O.52 r 1&3 Civil

Procedure Rules S.171-1 and section 21 (1) (c) of the limitation act seeking the following orders that;

1. That court reviews its judgment in civil suit No.34 of 2006 be set aside and have the applicants added as co-defendants.
2. That this honorable court issues an order cancelling instruments of sub division of the suit land comprised in Busiro Block 403 plots 262 subdivided into plot 320, 322,323 that were created as a result of the judgments and ruling of this honorable court.
3. That this honorable court issues an order cancelling instruments of transfer of the suit land comprised in Busiro, block 403 plots 262 (now subdivided into plots 320, 322, 323).
4. That court issues a permanent injunction stopping any further transfers, sale, negotiations of settling squatters, mortgaging, leasing, subdividing and in any way alienating the suit land by the respondents in respect to the land comprised in Busiro block 403 plots dealing with the suit land comprised in Busiro block 403 plots 262 now subdivided into plots 320,321,322 &323.
5. Costs be provided for.

The grounds of this application are stated in the affidavits in support of the motion deponed by all the applicants dated 16th/11/2021 respectively. The gist of the affidavit is that this Honorable court passed judgment in Civil suit No.34 of 2006 and a ruling in Misc.Application No.2541 of 2017 against the 1st respondent in favour

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of the 2nd and 3rd respondents. That the effect of these decisions affected their beneficial share in their late father's estate the late Lesen Kasule Nakalago.

That they are aggrieved parties and there exists a new and important matter of evidence which was not available at the time the above decisions were made that the late Eria Kirumira Nakalago had obtained Letters of Administration fraudulently without involving the applicant. In reply the 1st respondent in her affidavit did not oppose the application and stated that she is a widow of the late Eria Kirumira Nakalago and that the suit land was matrimonial property which her late husband allegedly sold to the 2nd and 3rd respondents without her spousal consent. That she is an aggrieved party that was condemned unheard in civil suit No.34 of 2006 where court awarded the suit land to the 2nd and 3rd respondents against her interest in the same.

On the other hand, the 2nd and 3rd respondents opposed the application in their affidavits in reply and the gist of the affidavit is that this application has no merit and that similar various application have been filed and dismissed in various courts against the applicant.

That there is nothing new in this application or any new evidence found by the applicants to warrant an order of review over judgment by this Honorable Court.



At the hearing, the applicants were represented by Counsel Kanyago Annet, the 1st respondent was represented by Counsel Kenneth Nasuuna Victoria while 2nd and 3rd respondents were represented by counsel Bemanyisa Adonijah.

Both Counsel filed written submissions in this matter which I have considered.

In his submissions Counsel for the applicant submitted in length but briefly that the applicants are aggrieved persons who have suffered grievance by not being heard in a matter that involved their late father's estate and that they discovered some new and important matter of evidence which was not available to court at a time the judgment was delivered.

That the purported administrator of their late father's estate obtained Letters of Administration illegally in the court that had no jurisdiction and fraudulently without authority disposed of their late father's estate without authority.

Counsel for the Applicants formulated three issues which I have rearranged and narrowed down to four.

ISSUES:

1. Whether the applicants are aggrieved persons within the meaning of section 82 of the Civil Procedure Act.
2. Whether the application meets the criteria for review.
3. Whether application No.2197 is competent on court record.



4. Whether applicant's affidavit in rejoinder sworn on 5th/4/2022 in response to 2nd and 3rd affidavit in reply was validly filed.

RESOLUTION:

Whether the applicants are aggrieved persons?

The Applicants as 3rd parties to HCCS 34 of 2006 were duty bound to establish that they were clothed aggrieved persons as envisaged under section 82 of the Civil Procedure Act and Order 46 rule 1&2 of the Civil Procedure Rules which provide as follows;

'82. Review.

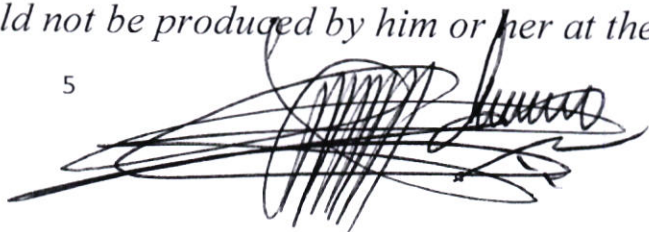
Any person considering himself or herself aggrieved-

- (a) *By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*
- (b) *By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or order as it thinks fit. '*

Under Order 46 rule 1 and 2;

1. Any person conserving himself or herself aggrieved-

- (a) *By decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
- (b) *By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the*

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time when the decree was passed or the order made, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.

In Mohamed Allibhai V W.E Bukenya Mukasa & Departed Asians Property Custodian Board Supreme Court Civil Appeal No.56 of 1996, Odoki, JSC, explained that;

'A person considers himself aggrieved if he has suffered a legal grievance. See Yusuf v. Nokrach (1971) EA 104, and In Re. Nakivubo Chemists (U) Ltd (1971) HCB 12, Ladak Adulla Mohamed Hussein v. Griffiths Isingoma Kakiiza and others Civil Appeal No. 8 of 1995 (unreported). A person suffers a legal grievance if the judgment is against him or affects his interest;

To answer the question as to whether the Applicants were aggrieved persons, this court revisited HCCS 34 of 2006 which was attached to the application.

From the said judgment, the applicants were not party to the proceedings therein. However, the 2nd and 3rd respondents in this application had sued a one ERIA KIRUMIRA NAKALANGO as an administrator of the estate of the late ELISAN KASULE NAKALANGO for specific performance to transfer title of the suit land claiming that he had given powers of attorney from a one William



Kiibirigye from whom they bought land from. Court found as such and caused transfer of title to be transferred to the 2nd and 3rd respondents.

Defendant in Civil Suit No. HCCS 34 of 2006 was sued in a capacity of an administrator of the estate of the late ELISAN KASULE NAKALANGO. This would ideally mean that the suit land originally belonged to the estate of the late ELISAN KASULE NAKALANGO.

The applicants in this application brought this application as beneficiaries of the estate of the late ELISAN KASULE NAKALANGO who were condemned unheard in civil suit No. HCCS 34 of 2006. I have also noted that a similar application had been filed to this court by the Nakalango Mutumba foundation trust where both applicants belong. However, the same was dismissed for want of prosecution.

Ideally, beneficiaries in an estate of the deceased are aggrieved parties in case any order is made against the estate of the deceased. However, once the estate has a legal administrator with letters of administration, unless challenged and revoked by court, he suffices as a legal representative in all suits arising out of the estate and once he participates in a suit the resultant orders affect all the beneficiaries and they cannot claim to have been aggrieved for reasons that they were not personally heard by court, he (Administrator) suffices as a legal representative in all suits arising out of the estate and once he

participates in a suit the resultant orders affect all the beneficiaries and they cannot claim to have been aggrieved for reasons that they were not personally heard by court. The Administrator has a right to call them as witnesses to raise their claim. I therefore don't find the applicants aggrieved person in that regard as beneficiaries who were well represented by the administrator of the estate of the late ELISAN KASULE NAKALANGO.

I resolve this issue in the negative.

Issue 2:

Whether the application meets the criteria for review under section 82 of the Civil Procedure Act.

Counsel for the Applicants argued this issue on the basis that the applicants have discovered some new and important matter of evidence. He stated that the defendant in civil suit No. HCCS 34 of 2006 had no authority to sell since he had obtained letters of administration fraudulently and in a court without jurisdiction a fact that was not in the knowledge of court.

Ideally, issues of validity of letters of administration cannot be ruled out in an application for review. Further unless the said letters of administration are revoked by court, they still stand valid.



In my view, challenging actions of an administrator or his letters of administration is a whole different suit which can still be filed subject to limitation.

I therefore do not find any justifiable reasons and the laws new evidence that was not in the knowledge of court without a court order invalidating the letters of administration held by the defendant in civil suit No. HCCS 34 of 2006.

This issue is equally answered in the negative.

In my view, the above issues determine the entire application and I find no need to delve in the other issues.

I therefore find no merit in this application and the same is hereby dismissed with costs.

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TADEO ASIIMWE

JUDGE

27/10/2022.

