

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
LAND CIVIL SUIT NO. 189 OF 2017

(FORMERLY CIVIL SUIT NO. 152 OF 2013 OF THE HIGH COURT OF UGANDA  
AT NAKAWA HIGH COURT CIRCUIT)

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1. KISITU JOHN BOSCO  
2. NAKKU NOELINAH } .....PLAINTIFFS

VERSUS

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1. NTEGE STEVEN  
2. JOHN MUKASA  
3. BETTY NALUMANSI } .....DEFENDANTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Judgment

The plaintiff brought the instant suit seeking revocation of the grant of Letters of Administration to the Estate of the late Matiya Kityo to the defendants, an order for the grant of dealings in the estate of the late Matiya Kityo, general damages, grant of Letters of Administration to the estate of the late Matiya Kityo to the plaintiffs, permanent injunction, costs of the suit and interest.

**Background:**

15 The plaintiffs and defendants are children and beneficiaries of the estate of the late Matiya Kityo. Upon the death of the late Matiya Kityo, the defendants secretly applied and obtained letters of administration from the High Court of Uganda at Nakawa on the 12<sup>th</sup> August 2012.

20 The plaintiffs then informed the office of the Administrator general about the death of the late Matiya Kisitu Kityo which issued them with a certificate of No objection. The plaintiffs proceeded to apply for Letters of Administration

however, this was objected to with a claim that letters of administration had already been obtained by the defendants.

That the defendants are now in the process of disposing of the deceased's estate using the letters of administration improperly and or illegally acquired, to the detriment of the rest of the beneficiaries.

**Issues:**

1. Whether the suit is premature?
2. Whether the plaintiffs have a cause of action against the defendant?
3. Whether the defendants properly obtained the grant of letters of administration for the estate of the late Matiya Kisitu Kityo and therefore impeachable devoid of fraud?
4. What remedies are available to the parties?

**Representation:**

M/s Lukwago & Co. Advocates represented the plaintiffs while M/s Eric-Kiingi & Co. Advocates represented the Defendants. Both sides filed written submissions.

**Resolution of issues:**

**The law:**

Section 101 of the Evidence Act provides that whoever, desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he or she asserts must prove that those facts exist.

In the case of *Kizza Besigye v. Museveni Yoweri & Another* 2001-2005] H.C.B Vol. 3 page 13, it was held *inter alia* that;

*"The onus is not merely a question of weighing feathers on one side or the other... but the person on whom the onus lies must prove his case sufficiently to justify a judgment in his/her favor if there is no other evidence to contradict it."*

It is therefore the duty of the plaintiffs in this case to prove their case against the defendants on a balance of probabilities.

Issues 1 and 2 are discussed jointly and issues 3 and 4 are discussed separately.

Issues 1 and 2:

1. Whether the suit is premature?

2. Whether the plaintiffs have a cause of action against the defendant?

5 Counsel for the plaintiffs submitted that the plaintiffs are at liberty to sue because they have a cause of action against the defendants as beneficiaries of the estate of the late Matiya Kityo. (See: **Tororo Cement Co. Ltd v. Frokina International Co. Ltd, SCCA No. 2 of 2001**). That the plaintiffs have a right to sue and protect the said estate from wastage by the defendants.

10 Secondly, that upon being granted the certificate of no objection, the plaintiffs had a right to apply for letters of administration and that the plaintiffs had a right to be informed about the defendants' application for the letters of administration which piece of information was never disclosed while meetings were on going with the administrator general for the Certificate of no objection. Thus, the letters  
15 of Administration were fraudulently granted to the defendants and the defendants have never filed an inventory of the properties of the said estate as is required by law.

Counsel for the plaintiffs added that the defendants applied for the letters of administration in contravention of the Administrator General's Act which  
20 requires that one notifies the Administrator General before applying for Letters of Administration. That the defendants had failed to comply with the time lines provided in the grant and thus this suit was instituted at the right time.

Counsel for the defendants on the other hand submitted that the defendants without any legal representation applied for Letters of Administration and there  
25 was no caveat lodged by the plaintiffs ever even after the advert had been placed in the Newspapers. That the instant suit is premature due to the fact that the plaintiffs filed Miscellaneous Application No. 289 of 2013 (Arising from Original H.C.S No. 52 of 2013): **Kisitu John Bosco & Another v. Ntege Steven & 2others** for a temporary injunction order which was granted on 29/4/2014 freezing all  
30 dealings in respect of the estate of the late Matiya Kityo. Thus, the plaintiffs are estopped from approbating and reprobating their own actions. (See: **Stanbic Bank (U) Ltd v. Uganda Crocs Limited, Civil Appeal No. 4 of 2004**).



Counsel noted that in the circumstances the plaintiffs brought the suit prematurely having frozen all the dealings in the estate. That in the petition for Letters of Administration the plaintiffs were also indicated as the children of the late Matiya Kityo as Numbers 10 and 21 respectively.

- 5 Further, that the 1<sup>st</sup> plaintiff should let the defendants distribute the estate among the surviving 26 children and thereafter an inventory will be filed. And that there is no law that the defendants have contravened. Thus, the suit should be dismissed for being filed prematurely with costs. (See: *Anglo-Cyprian Trade Agencies Ltd v. Paphas Wire Industries Ltd* (1951) 1 ALLER 873 and *Future Stars Investment (U) Ltd v. Nasuru Yusuf*, H.C.C.S 12 of 2017).
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Counsel for the plaintiffs in rejoinder submitted that the temporary injunction was granted in 2017 and this was no reason to advance by the defendants as an explanation for failure to file an inventory in the 5 years.

- 15 I have carefully considered the submissions of both sides in regard to this issue and I want to clarify that the temporary injunction being referred to in the instant case was granted in 2014 and not 2017 as alleged by counsel for the plaintiffs. Be that as it may the defendants had a duty to notify the office of the Administrator upon the death of the late Matiya Kityo as provided for in Section 4 of the Administrator General's Act.

- 20 Section 4 (1) of the Administrator General's Act provides as follows;

25 *"When a person dies in Uganda, the agent of the area in which the death occurs shall, upon receiving notice of the death or upon the death coming to his or her knowledge, forthwith institute inquiries to ascertain whether the deceased left any, and if so what, property in Uganda and shall report the death with full particulars as to property, as far as ascertainable, to the Administrator General."*

- 30 The defendants in the instant case had a duty to notify the Administrator General's office about the death of their father before starting the process of applying for Letters of Administration which was not done. The defendants also went ahead and concealed the fact that they had already applied for the Letters of Administration for the late Matiya's estate for which the plaintiffs sought to apply for Letters of Administration while meetings were being held by the office of the Administrator General.

The plaintiffs in the instant case are also beneficiaries of the estate of the late Matiya Kityo and thus, have an interest in the estate. This was also confirmed by the defendants who stated that the plaintiffs were included as children of the late Matiya Kityo while the defendants applied for Letters of Administration.

- 5 It is my finding that the plaintiffs as beneficiaries of the estate of the late Matiya Kityo do have a cause of action against the defendants. This suit was not prematurely filed because the defendants did not follow the provisions of the law while applying for Letters of Administration and even after the grant of the Letters of Administration did not file an inventory within the 6 months as ordered  
10 by court or an account of the properties and credits within one year. (See: **Mukisa Patrick and another v. Nabukalu Rebecca**, Civil Suit No. 29 of 2016).

This issue is therefore resolved in favor of the plaintiffs.

- Issue 3: Whether the defendants properly obtained the grant of letters of administration for the estate of the late Matiya Kisitu Kityo and therefore  
15 impeachable devoid of fraud?

Counsel for the plaintiffs submitted that the Letters of Administration were illegally obtained and should therefore be revoked. That section 5(1) of the Administrator General's Act provides that;

- 20 *"No grant shall be made to any person, except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorized in writing, authorizing that person to administer the estate of a deceased person, until the applicant has produced to the court proof that the Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear  
25 days' definite notice in writing of his or her intention to apply for the grant."*

Counsel for the plaintiffs went on to submit that the Administrator General has the first priority to apply for Letters of Administration where one dies intestate. And is supposed to authorize and superintend over the approval process by the family of any person chosen by family to be granted Letters of Administration.

- 30 Further, that the provisions of Section 5(1) of the Administrator General's Act are made in mandatory terms with persons who fall under the exceptions of who should get a certificate of no objection when applying for Letters of Administration. That the defendants in the instant case do not fall under the exceptions under this section and they never indulged the office of the



Administrator General upon the death of Matiya Kityo. And no evidence was adduced to that effect.

5 Counsel for the plaintiffs added that the plaintiffs on the other hand adduced evidence showing that they reported the death of Matiya Kityo to the office of the Administrator General and meetings were held and a certificate of no objection was eventually granted to them. Thus, any contravention of Section 5 of the Administrator of General's Act means that the Letters of Administration were obtained fraudulently and should be revoked as per Section 234 of the Succession Act. And in the instant case the Letters of Administration were illegally obtained and an illegality should not be condoned. (See: **Makula International Ltd v. His Eminence Cardinal Wamala Nsubuga and Another**, [1982] HCB 11).

15 Counsel for the defendants on the other hand submitted that the defendant's acquiring the Letters of Administration without a Certificate of no Objection is a mere technicality curable under Article 126 (2)(e) of the Constitution of the Republic of Uganda, 1995. No caveat was lodged by the plaintiffs objecting to the grant and all the children of the deceased were included among whom are the plaintiffs. And that the defendants had never distributed the estate of the deceased from the time they acquired the Letters of Administration because of the temporary injunction.

20 Counsel for the plaintiffs in rejoinder submitted that the acts of the defendants were deliberate and cannot be cured by the provisions of Article 126 (2) (e) of the Constitution of the Republic of Uganda, 1995 as the law was contravened. (See: **Mulindwa George William v. Kisubika Joseph**, S.C.C.A No. 12 of 2014 and **Kasirye Byaruhanga & Co. Advocates v. Uganda Development Bank**, S.C.C.A No. 2 of 1997).

25 It is my considered view that failure to follow the law as is the case in the instant matter is not a mere technicality and cannot be cured under Article 126 (2) (e) of the Constitution of the Republic of Uganda, 1995. Article 126 (2) (e) of the Constitution requires court to administer substantive justice without undue regard to technicalities.

30 The proper procedure for application of Letters of Administration is as follows;

- Upon the death of a person, a post-mortem report, death certificate, and or an LC letter confirming the death of such person should be obtained as proof of death.

- Hold a family meeting to appoint an administrator (s).
- Death of the person should be reported to the administrator general who will open up a file regarding the property of the deceased. According to Section 4 of the Administrator General's Act.
- 5 ▪ The administrator general will call a family meeting to confirm that the family agrees with the administrators chosen.
- The administrator general will then grant a certificate of no objection to those chosen to administer the estate.
- 10 ▪ Application for letters of administration then proceeds by petition accompanied by the certificate of no objection from the office of the Administrator General.
- Application for letters of administration is advertised to the public in a local newspaper of wide circulation for a minimum of 14 days or in the Gazette.
- 15 ▪ Any person who wants to object to the grant of letters of administration notifies the court advertising the application for the letters of administration within 14 days from the time the application was made.
- Upon receiving the objection, the court shall not grant letters of administration until it has heard the person objecting and determined whether or not they have good cause for the objection but if there is no reasonable ground, the court will go ahead and grant the letters of administration to the applicant.
- 20 ▪ Where no objection is filed, at the expiry of 14 days court may grant the letters of administration to the applicant.
- 25 Having found that the defendants failed to follow the law, it is my holding that the defendants did not properly obtain the Letters of Administration. The defendants even decided to withhold information concerning their grant of the Letters of Administration while the plaintiffs were pursuing the same.
- I also resolve this issue in favour of the plaintiffs.
- 30 **Issue 4: What remedies are available to the parties?**
- Counsel for the Plaintiffs submitted that the defendants having failed to file an inventory and applied for Letters of Administration without a certificate of no objection, the Letters of Administration ought to be revoked for just cause and Letters of Administration be granted to the plaintiffs.

5 The plaintiffs prayed for general damages because their father's estate is allegedly being wasted by the defendants and the fact that they had to go through the process of applying even when the defendants knew they had already applied for Letters of Administration for the same estate. That due to the acts of the defendants, the plaintiffs have been denied their beneficial interests in the estate of Matiya Kityo. That they have also suffered both emotional and psychological torture hence claiming for an award of general damages to a tune of UGX 20,000,000/=.

10 The plaintiffs also prayed for costs under Section 27 (2) of the Civil Procedure Act and the case of Jennifer Behinge, Rwanyindo Aurdia, Paulo Bagenzi v. School out fitters (U) Ltd, C.A.C.A No. 53 of 1999(UR).

15 Counsel for the defendants on the other hand submitted that the suit having been filed prematurely be dismissed with costs to the defendants. That the suit is untenable, misconceived, irregular, premature, frivolous and an abuse of court process.

It is this court's holding and having found that the suit was not prematurely filed and that the defendants did not properly obtain the Letters of Administration that the same are being revoked under Section 234 of the Succession Act which provides;

20 *"(1) The grant of probate or letters of administration may be revoked or annulled for just cause.*

*(2) In this section, "just cause" means—*

*(a) that the proceedings to obtain the grant were defective in substance;*

25 *(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;*

*(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;*

30 *(d) that the grant has become useless and inoperative through circumstances; or (e) that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or*



*account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect."*

5 The objective of revocation of grants is to ensure that there is due and proper administration of an estate and protection of the interests of the beneficiaries. (See: *In the goods of William Loveday* [1900] P 154).

The plaintiffs prayed for an award of UGX 20,000,000/= as general damages for the acts of the defendants which have allegedly caused them mental distress and failure to benefit from the estate of the late Matiya Kityo. That the defendants are wasting the said estate however, no evidence was adduced to that effect.

10 General damages are awarded at court's discretion in light of the evidence adduced as to the suffering and pain that cannot be computed in monetary terms and pleaded specifically. The plaintiffs in this case have not adduced any evidence to the satisfaction of this court to warrant the award of general damages. I therefore decline to award the same.

15 Judgment is hereby entered in favor of the plaintiffs in the following terms;

1. Letters of Administration vide Administration Cause No. 454 of 2012 of the property and credits of the late Matiya Kityo granted to Ntege Stephene, Ssalongo John Mukasa and Betty Nalumansi on the 21<sup>st</sup> August 2012 are hereby revoked;
- 20 2. Let the Letters of Administration be granted to the plaintiffs who must abide by the provisions of the law.
3. I make no orders as to general damages.
4. Costs awarded to the plaintiffs.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

7/2/2022