

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA, AT KAMPALA
CIVIL APPEAL NO. 56 OF 2008

5 **CORAM: HON. JUSTICE A. TWINOMUJUNI, JA**
HON. JUSTICE A. S. NSHIMYE, JA
HON. LADY JUSTICE M. S. ARACH AMOKO, JA

FLORENCE SALI NURDIN:.....APPELLANT

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VERSUS

CHARMAS CHARANIA & OTHERS:.....RESPONDENTS

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Succession Act – grant of letters of administration – whether the High court has jurisdiction to grant letters of administration to the estate where the deceased was domiciled in Belgium at the time of his death- whether the appellant had a right to the grant of letters of administration to the estate of the late Walji.

Will – variation of a will – whether the will could be varied to cater for the interests of the appellant – will – whether the deceased died intestate.

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The appellant sought to apply for letters of administration to the estate of the late Walji as his daughter. Upon grant of a certificate of No Objection by the Administrator General, the respondents lodged a caveat objecting to the said proposed grant. Subsequently, the appellant sued the respondents in High court. The high court ruled that; The Plaintiff is the child of the deceased Nurdin Walji Charania, the Plaintiff is not entitled to obtain Letters of Administration or Probate of the will, the deceased Walji died testate, the will shall not be varied as the Plaintiff had not proved to be a minor or dependant of the deceased, the Court has jurisdiction only over the deceased’s immovable property situated in Uganda, No order for costs of the suit. The appellant appealed against part of this judgment and the respondents also cross appealed. The appeal was dismissed with costs to the respondents.

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JUDGMENT OF THE COURT

This appeal is against the Judgment and orders of the High Court (Vincent Kagaba J.) given on the 26th July 2007 in High Court Civil Suit No. 239 of 2002.

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The background to the appeal is briefly as follows:

The Appellant had applied to the Administrator General for the grant of Letters of Administration to the estate of the Late Nurdin Mohammed Walji (hereafter referred to as Walji) in the capacity of his daughter. After obtaining the letter of No Objection before the grant could be made to her, the Respondents lodged a caveat objecting to her application on the ground that she was not the daughter of late Walji and that he had left a Will. Consequently, the Appellant filed HCCS No. 239 of 2002 pursuant to section 265 of the Succession Act (Cap 162) Laws of Uganda where she insisted that she was indeed the biological daughter of late Walji and sought a declaration that the caveat be removed and Letters of Administration be issued to her.

The Respondents in their defence maintained their objection and contended that the Appellant had obtained the Certificate of objection through misrepresentation. The late Walji had left a will and she was not one of his dependants. The High Court of Uganda had no jurisdiction over the said estate since Late Walji was domiciled in Belgium at the time of death. She was therefore not the proper person to administer the said estate.

At the scheduling conference it was agreed that the deceased died in Belgium on 28/01/2001 and left property in Uganda and elsewhere in the world.

The issues agreed upon for determination before the trial Judge were:

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- a) Whether the Plaintiff is the daughter of the deceased?
- b) If so, whether she is entitled to apply for letters of administration.
- c) Whether the deceased died testate.

- d) Whether the will can be varied to cater for the Plaintiff as a dependant.
- e) Whether this Court has the jurisdiction to issue the grant for the estate of a deceased who died outside this jurisdiction.

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- f) Remedies

The trial Judge took evidence from both sides and at the end of the trial ruled that:

- 10 1. The Plaintiff is the child of the deceased Nurdin Walji Charania.
- 2. The Plaintiff is not entitled to obtain Letters of Administration or Probate of the will.
- 3. The deceased Walji died testate.
- 15 4. The will shall not be varied as the Plaintiff had not proved to be a minor or dependant of the deceased.
- 5. The Court has jurisdiction only over the deceased's immovable property situated in
20 Uganda.
- 6. No order for costs of the suit.

25 The Appellant was aggrieved and has appealed against part of this decision on the grounds that:

- 1. **The Learned Trial Judge erred in law and fact when he held that the Appellant's father had died intestate.**
- 30 2. **The Learned Trial Judge erred in law and fact when he held that the Appellant was not entitled to Letters of Administration of her Late Father's estate.**

3. **The Learned Trial Judge erred in law and fact in holding that the “Will” could not be varied as the appellant did not prove that she was a minor or a dependant relative of the deceased.**

5 4. **The learned Trial Judge erred in law and fact when he held that Court had jurisdiction only over the deceased’s immovable property in Uganda.**

The Respondents cross-appealed on the grounds that:

10 1. **The Learned Trial Judge erred in law and fact when he held that the Appellant was a child of Walji the deceased.**

2. **The Learned Trial Judge erred in law and fact when he failed to properly evaluate the evidence on record regarding paternity of the appellant.**

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3. **The Learned Trial Judge erred in law and fact when he declined to order the Appellant to pay costs of the suit to the Respondents.**

The parties filed a joint scheduling memorandum in this Court on the 27th July 2010 where;

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The agreed facts were:

1. The Appellant applied for Letters of Administration for the purpose of administering the deceased’s estate in Uganda.

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2. The Respondents objected and Civil Suit No. 239 of 2002 was filed to determine the rights of the Appellant.

3. Judgment was given in favour of the Appellant in part and the appellant being dissatisfied with the decision of the Trial Judge now brings this appeal.

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The disagreed facts were:

1. The Appellant is the child of the deceased.

2. The deceased died intestate.

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3. The Appellant received financial and material support from the deceased during his life-time.

The agreed issues from the appeal and cross appeal are:

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1. Whether the Appellant was the daughter of the Late Walji.

2. Whether the late Walji died intestate.

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3. Whether the Appellant is entitled to Letters of Administration of the Late Walji's estate.

4. Whether the will can be varied and whether the appellant is a dependant relative of the deceased.

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5. Whether the Court has jurisdiction only over the immovable property of the deceased in Uganda.

25 **Issue No. 1:**

Mr. Peter Nsibambi, learned Counsel for the Appellant contended that the finding of the Lower Court was correct; and this Court should so find.

Mr. Kato Sekabanja, learned Counsel for the Respondents disagreed with the trial Judge's findings on this issue for a number of reasons:

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Firstly, he submitted that the birth Certificate (Exh P1) which showed her name, her mother and her father's names was issued on the 5th September 2003, fifteen months after filing the

suit. The short birth Certificate was admitted only for identification (ID1) and the Appellant's Counsel failed to bring the witness from Nsambya Hospital who was to tender it.

5 The evidence of Rebecca Nakato (DW1) also shows that this document was not in the Hospital records. This means the birth certificate was not genuine and therefore not helpful to the Appellant's case.

10 What was left was her oral evidence which was to the effect that the deceased used to send her money through one Bossa and Hon. Mwesigwa Rukutana and that they would meet at Speke or Fairway Hotel for fear of his legal wife. But Hon. Rukutana did not testify. Her mother also told her that she was the deceased's daughter. The case of **Jones Mbwambo Vs Wandoa Petro Aaron (1966) E.A 41** relied on by the trial Judge was also quoted out of context, and is not applicable since it related to affiliation proceedings which have long ceased to have effect in Uganda.

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The issue here was whether the Appellant was the daughter of the deceased. The Appellant had averred in the plaint that she is a biological daughter of the deceased, hence her interest in the said estate. The burden lay squarely upon her shoulders to prove her case on the balance of probabilities. Has she discharged this burden?

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As proof of her paternity, the Appellant submitted in evidence two documents; a Birth Certificate (Exhibit P1) issued by the Registrar of Births and Deaths on the 5th September 2003 indicating that she was born at Nsambya Hospital to Alice Norah Nalugwa and Nurdin Walji Mohammed on the 12th November 1952 both of Mengo.

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30 The Appellant also produced a short Birth Certificate (Exh. P.2). In addition, she submitted a copy of the Register book of Births of Nsambya Hospital, which Court admitted for identification only subject to the Nsambya Hospital authorities' production of the register from which the information was obtained. The Appellant however failed to do so. On their part, the Respondents called Ms Rebecca Nakate, a Records Officer with Nsambya Hospital who tendered the page of the Register containing the entry of 12th November 1952 where the Appellant was born as (Exhibit D1). This document only indicated that on that day, a lady called Alice Norah Nalugwa delivered a baby girl. The reference in the Delivery Book was No. 561/52. The name of the baby was not given. The name of the baby's father was also

not recorded. Ms Nakate testified that she used this information to prepare the short Birth Certificate (ID1) she had no information about the father. It was the Appellant who gave her the name of her father which she put on the said document. These two documents are in our view inconclusive evidence. They were based on evidence from the Appellant and prepared
5 after the suit was filed which indicates that they were prepared for the purposes of the suit.

They required corroboration from an independent witness which could have been found if Hon. Rukutana had testified and produced the files the Appellant said he kept in his office as record of the money the late Walji used to give her. Hon. Rukutana was not called or ever
10 listed among the Appellant's witnesses for some unexplained reason. Instead, it was only Mr. Bossa (PW2) the Appellant's maternal uncle who testified. The fact that the late Walji gave her assistance is not conclusive evidence of paternity.

This ground fails.

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Issue No. 2:

Mr. Nsibambi's submission was that the deceased died intestate. Mr. Sekabanja contended that the deceased left a Will. A copy of a document said to be the Will was tendered as (Exh. P4 by DW2) written in Flemish and translated into English. It was accompanied by a letter
20 explaining its contents and background. (Ex D5).

The learned Judge referred to the provisions regarding the drawing of Wills as set out in Section 50 of the Succession Act and found that the deceased left a Will which is valid in Belgium where he (deceased) was domiciled at the time of his death. As far as the Laws of
25 Uganda are concerned, he found that Exh D4 contained the testator's intentions and wishes which must be given effect as far as possible and accepted them as genuine.

We agree with the learned trial Judge's findings on this issue.

30 **Issue No. 2 and 4:**

In view of our findings on the first issue, these issues do not arise.

Issue No. 5:

The law is clear. This Court would have jurisdiction over the immovable property in Uganda only. Section 207 of the Succession Act provides that:

5 **“Where the deceased has left property in Uganda, Letters of Administration shall be granted according to the foregoing provisions, although he or she may have been a domiciled inhabitant of a Country in which the Law relating to testate and intestate succession differs from the Law of Uganda.”**

10 However, this issue is irrelevant after our findings on issue No. 1.

In the result, the appeal is dismissed with costs to the Respondents.

Dated at Kampala this....17th...day of ...February...2011

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HON. JUSTICE A. TWINOMUJUNI
JUSTICE OF APPEAL.

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HON. JUSTICE A. S. NSHIMYE
JUSTICE OF APPEAL.

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HON. LADY JUSTICE M. S. ARACH AMOKO
JUSTICE OF APPEAL.

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