THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO.27/1994

ADMINISTRATOR GENERAL::APPLICANT

VERSUS

I.H. SEMANDA::RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

RULING:—

This is an application by notice of motion filed by the Administrator General under S. 185 of the Registration of Titles Act Cap 205 and order 48 rule 1 of the Civil Procedure Rules seeking for an order for cancellation of the Registration of one Isreal Henry Semanda on the title and registration on Block 367 Plot 1 and 2 and 489 plot 30 forming part of the Estate of one Simon Kironde.

There is an affidavit in support of the application deponed to by one Elisabeth Nalunga a state attorney from the Administrator General's Department. There is also an affidavit in reply sworn by one Isreal Henry Semanda the respondent and also of one Francis Ssembijja a one of the sons of the said Simon Kironde swore an affidavit, on behalf of the beneficiaries in reply to that of the respondent.

The background of this application was simply that one Simon Kironde of Sanda village Busiro County made a will on 26th January 1972 appointing one Nekemiya Kiwotoka also dead as an executor to this estate. The latter obtained probate of the will in Administration cause No.ME3 of 1973 of the Magistrate's court of Entebbe who proceeded to allocate part of the Estate the land in dispute to the Respondent. The latter consequently registered the land in his names. That aroused

complaints by the beneficiaries that the land meant for burial grounds owned jointly by the beneficiaries.

The Administrator General intervened. He applied for letters of Administration Cause No.537 of 1993.

The applicant was represented by one Nalungu whereas Mr. Makasa appeared for the respondent the learned counsel made submissions rehearsing almost what was reflected in the affidavits on record. **Section 185 of the Registration of the Titles Act** under which this application was made states:—

> *"Upon the recovery of any land, estate or interest by any proceedings from the persons registered as proprietor there of it shall be lawful for the High Court in any case in which such proceeding is not here in expressly barred to direct the registrar of titles to cancel any of instrument, or any entry or memorial in the register book relating to such land, estate or interest and to substitute such certificate of title or entry as the circumstances of the case requires and the Registrar shall give effect to such order."*

This section does describe the procedure or limit the form of the proceedings in which the certificate of title is to be cancelled and substituted as sought by the Applicant see: **Uganda Blanket Manufacturers Ltd. vs. Chief Registrar of Titles reported 1992 IV KALR Page 31.** See: also in the **Rehabit Lubwama 1991 HCB 74 holding 9 page**. There are indeed some authorities on the said section.

In **G.W. Rwamuratiri .Vs. Kamono Rep 1978 HCB at page 300 under holding 1** It was held that section 18 of the Registration of Titles Act is intended to apply to a situation whereby a person recovers land from a registered proprietor in any proceeding at the time of the proceedings a person against whom the land is recovered must be the registrator.

In the case of Lwanga .Vs. Registrar of Titles Reported (1980) HCB page 24. In holding 3 it was held that before a person who has obtained judgment for the recovery of land against a registered proprietor could be registered, he first had to apply to the court to make an order under **S. 185** of

the R.T.A. Such order was referred to as consequential order since it was made consequent upon recovery of land. That was the only method prescribed by the R.T.A. for executing orders or decrees relating to registered land.

In the same case it was held that the Registrar was justified in refusing to transfer the land into the names of Yusufu Galirwango before the applicant had obtained a consequential order.

In the instant case the Administrator general is applying for the cancellation of the certificate of the said land registered under the names of Isreal Henry Semanda the said registered proprietor of the said suit land and would like to have the same registered in his names. In essence according to the authorities referred to above the Administrator General has to satisfy this court that he recovered land from the registered proprietor after court proceedings. There was nothing to show that there was any court proceedings regarding the land in issue neither has the Administrator recovered land from Henry Ssemanda the registered proprietor. In the premises therefore the court could not order for cancellation of the Registration certificate in the names of Isreal Henry Seemanda and have the same registered in the names of the Applicant. And on this issue I am agreeable with the submissions of the learned counsel appearing for the respondent.

Be that as it may according to the affidavit of Nakungu in support of the Application the Administrator General applied and was granted letters of Administration to the Estate of Simon Musoke by the High Court as indicated above. It was averred that the executor of the said Estate Nakemiya Kitoke erroneously and fraudulently distributed the suit property to the respondent to the detriment of the beneficiaries and it was on the complaints of the latter that the Administrator General intervened and was granted letters of administration. The will of the said Simon Kironde still subsist so is the grant of probate to the said Nakemeya Kiwatoke. In essence the Adminstrator General was granted letters of Administration to part of the Estate of which kiwotoka was granted probate. I am of the view that the Deputy Chief Registrar at the instance of the Applicant should have issued a citation to the said Kiwotoka or his legal representative calling upon him to surrender probate to court so that the applicant could proceed in due course of law for revocation of the same for just cause on the grounds of failure to render a true account and dissipation of the estate under section 233(1) and 2 (e) of the Succession Act Cap 139. The procedure therefore adopted by the letters of Administration on the estate of the late Simon

Musoke when there is a grant of probate of the same estate to one Kiwotoka or his legal representative still subsisting was to say the least improper see **Nakire and another .Vs. Mpanga Kagwa 1991 HCB p.102**. The grant of probate whether in common form or in Solemn form is conclusive as to the appointment of the executor and the validity and contents of the will see: **Parry on the Law of Succession fifth Edition P.197** likewise a grant of Administration constitutes the grantee the personal representative of the deceased and establishes his right to administer the estate subject to any limitation contained in the grant see: **In the estate of San Pietro 1941 P.16, Re Miesagoes 1950 WN P.232.**

The effect of all this is that the grant of probate to the executor of the estate of Simon Kironde was conclusive and depicted the validity of the will of Simon Kironde the Administrator General should not have brushed it aside when applying for letters of administration.

From what has transpired above this application fails and the same is dismissed with costs.

I. MUKANZA

JUDGE

05.07.1994