

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
CIVIL SUIT NO. 20 OF 1997**

EVALYNE ACIRO

ALFRED BONGOMIN

suing through next friend :::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

Y.E. OBINA :::::::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. MR. JUSTICE I.O. MALINGA

JUDGMENT

The first plaintiff is the widow of the late Lt. Joseph Paito of Patiko Ajulu who died intestate on July 18, 1995.

The second plaintiff is the son of the deceased. The plaintiffs brought this suit for the revocation of the letters of administration granted to the defendant on July 7, 1997 in High Court at Gulu Administration Cause No. 33 of 1997. the basis of this action is that the deceased died intestate, and the defendant, father of the deceased without the knowledge or consent of the plaintiffs applied for and obtained letters of administration when he was not the most suitable person to be granted letters of administration and that the defendant has since obtained the letters of administration mismanaged the estate to the detriment of the plaintiffs.

The defendant was served with summons to enter appearance, but he did not enter appearance or file a defence.

The hearing therefore proceeded ex-parte.

At the hearing Mr. Olaa, counsel for the plaintiffs framed four issues for deterioration by the court. These are:

1. whether the letters of administration granted to the defendant should be revoked.
2. whether in the circumstances of this case letters of administration should be granted to the first plaintiff.
3. who is to take custody of the children of the deceased.
4. remedies, if any, available to the plaintiffs or either of them.

In an attempt to prove their case the plaintiffs called 3 witnesses. The first was ACIRO EVALYNE (PW1), 30 years old, vendor in Owino market, Gulu Central Market, a resident of Acholi Road, Pece in Gulu Municipality.

She testified that she got married to the deceased in 1992 at Pece. The marriage was according to Acholi customary marriage. The deceased paid shs. 100,000/= as dowry, leaving a balance of shs 200,000/=. The deceased also paid shs 50,000/= as compensation for the children they had had before marriage. The marriage was witnessed by a document written by Benayo Ocaya (PW3) uncle of the deceased. They lived thereafter as husband and wife till the death of the deceased on July 7, 1995. PW1 nursed the deceased in the hospital till his death. The deceased left her residing in Government Quarters at Senior Quarters Gulu Municipality. However after 8 months the army requested her to leave those quarters. She went to the defendant to be allowed to occupy the deceased's home at Limu, but the defendant refused and instead offered her to occupy the deceased's home at Ariaga village which had been damaged by the rebels. The defendant therefore moved to rented accommodation in Gulu Municipality. The defendant thereafter applied for letters of administration to the estate of the deceased without the knowledge or consent of the plaintiffs. According to PW1 the defendant has ignored them, mismanaged the estate for his own benefit. The deceased left a completed building with 10 rooms at Tegwana, an in completed house at Limu and a house at Ariaga village. The deceased left several children only two of whom were by the first plaintiff. Some of these children were left out in the application made by the defendant for letters of administration. PW1 also tendered in evidence exhibit P.2 being a pass book for account in the Co-operative Bank Gulu, A/C No. 6871 with a balance of shs 820, 748/= not mentioned by the defendant in his application.

The second witness was Bongomin Alfred (PW2), son of the deceased aged 22 years. He told court that he is in S.4 in Sir Samuel Baker School, Gulu. He told court that his late father during his life told him that, the first plaintiff was his (deceased's) wife. PW2 told court that the defendant is his paternal grandfather. He said two of his half-brothers, Isaiah Ogola and Jimmy Okwera were left out in the defendant's application. Also the deceased account No. 6871 in Co-operative Bank Gulu was not mentioned. He also testified that the defendant is denying rental income from the properties of his late father but is not applying that income to the upkeep of the deceased's children, but rather on the orphans of their late uncle and aunt.

The third and last witness was Binayo Ocaya (PW3) maternal uncle of the deceased. He told court that the deceased married the first plaintiff on 17/01/1992 at a ceremony attended by him. He wrote the marriage agreement, exhibit P.9 on that day. He said he was 65 years old and a retired police officer. According to PW3, notwithstanding the non-payment of the balance of the dowry, the marriage was valid under the customary law of Acholi.

The first issue to determine is whether the first plaintiff was married to the deceased under the Acholi custom and the law of Uganda. The evidence of PW1 and PW3 is that deceased married the first plaintiff under Acholi custom on 17/01/1992. The deceased paid shs 100,000/= as part-payment of dowry and shs 50,000/= as compensation for the two children the couple had before payment of dowry. All the plaintiff's witness testified that the deceased and the first plaintiff lived as husband and wife. PW3 further testified the non-payment of the balance of the dowry did not invalidate the marriage. On that evidence I find that first plaintiff was married to the deceased according to the Acholi custom and the common law applicable in Uganda.

The second issue to determine is whether the grant of letters of administration to the defendant should be revoked. Section 233 of the Succession Act (Cap. 139) provides that:

**“233 (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).....

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

(c)

(d)

(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 the promised part xxxiv of this Act, or has exhibited under that part an inventory or account which is untrue in a material respect”

The plaintiff must prove one of these things emanated in Section 233 (2) in order to succeed. In his application for letters of administration dated April 16, 1997 the defendant omitted to mention that the deceased was survived by a widow, the first plaintiff and two other children namely Isaiah Ogola and Jimmy Okwera.

Furthermore the defendant failed to mention that the deceased had a bank account No. SI/C/6871 at the Co-operative Bank Gulu. Failure to mention the widow had serious consequences. Under S. 201 and 202 of the Succession Act, Cap. 139 as amended by the Succession (Amendment) Decree, 1972(Decree 22 of 1972:

“ 201. Subject to the provision of section 5 of the Administrator General’s Act, administration shall be granted to the person entitled to the greatest proportion of the estate under section 28 of this Act.

“202/Administration shall not be granted to any relative if there is some other relative or an appointed customary heir entitled to a greater proportion of the estate until citation has been issued and published in the manner hereinafter provided calling on such other relative or heir to account or refuse letters of administration”

The rules of distribution under S. 28 (1) (a) of the Act as amended by Decree 22 of 1972 the wife or widow of the deceased is entitled 15% of the estate and the defendant relative shall receive

9%. In other wards the first plaintiff is entitled to a greater proportion of the estate of the deceased than the defendant, a father and defendant relative of the deceased.

Since no citation was issued to the first plaintiff, the grant must be annulled or revoked.

Mr. Olaa also invited the court to grant the custody and maintenance of the deceased's minor children to the plaintiff's. No basis was shown for the court to make such an order in the present action and that request is refused.

As regards remedies, the plaintiffs are entitled to revocation of the letter of administration granted to the defendant. Accordingly the grant of letters of administration to the defendant to administer the estate of the deceased is revoked, and the defendant ordered under S. 235 of the Succession Act to forthwith deliver up to the court the letters previously granted to him.

The first plaintiff is entitled to a grant of letters of administration.

In view of my finding, the following orders are made:

- (1) An order revoking the letters of administration granted to the defendant;
- (2) An order calling upon the defendant to surrender forthwith the letters of administration granted to him on July 7, 1997;
- (3) An order calling upon the defendant to file up to date account in respect of the estate of the deceased;
- (4) An order granting letters of administration of the estate of the late Lt. Joseph Paito Ajulo to the first plaintiff, Evalyne Achiro.
- (5) Costs of this suit are granted to the plaintiffs.

The plaintiffs' claims succeed and judgment is entered for them in the above terms. It is so ordered.

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I.O MALINGA
JUDGE
8/06/1999

10-06-1999

Mr. Olaa for the plaintiff

Defendant absent

First plaintiff in court

Mr. Oyaró Court Clerk

Court: Judgment read.

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Malinga I. O

Judge

10 – 6 - 1999