THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT MBARARA

ADMINISTRATION CAUSE NO.23 OF 1996

HAJJATI SAIDATI SSENTAMU…… PLAINTIFF

Vs.

KYAGULANYI YASIN……. DEFENDANT

BEFORE: THE HON. JUSTICE V. F. MUSOKE-KIBUUKA

JUDGMENT

Isaac Kajwala, who is referred to in this judgment as "the deceased" died on 21st March, 1995. He died at the relatively young age of 29. He died intestate and was survived by neither a widow nor any direct descendant.

The father of the deceased was one Hajji Jaffari Ssentamu. He preceded his son, the deceased, along the irreversible journey into the world of the dead. He died as far back as 1980. The plaintiff, Hajjati Saidati Ssentamu, is the widow of the late Hajji Ssentamu. She is the biological mother of the deceased.

On 18th January, 1996, the plaintiff filed an application for the grant of letters of administration of the estate of the deceased. On the 12th February, 1996, the defendant lodged a caveat against the application. The plaintiff then filed this suit under section 56 of the Succession Act seeking the following orders

a) an order vacating the caveat lodged by the defendant against the application by the plaintiff;
b) an order granting letters of administration to the plaintiff, and

c) an order awarding costs of this suit to the plaintiff against the defendant.

This case has had a long history. It was filed in this court on 23'' January, 1997. It was first called for hearing on 13th December, 1999. The plaintiff and his advocate were in court. The defendant was not. It was unclear whether or not the defendant had been served with the hearing notice. The hearing was, therefore, adjourned to 221 February, 2000. The parties were urged to utilize the time of adjournment to look once more into the possibility of settling the case.

On 22nd February, 2000, again the plaintiff and his advocate were the only ones who turned up in court. Again the hearing was adjourned to 19th April, 2000. On that date the trial judge was away and the case was adjourned without date. A new hearing date was later fixed for 22' February,2001. Although there was satisfactory evidence that the defendant had been properly served with a hearing notice for that day, neither himself nor his advocate appeared in court. An affidavit of service dated February, 2001 and deponed by one Charles Ssenyimba s/o Ssengooba & Co. Advocates, P. 0. Box *3055,* Kampala, stated that the defendant had been served with the hearing notice at the place of his work on Luwum Street. He accepted service but declined to acknowledge service by appending his signature of the original hearing notice.

With that evidence, I ordered the hearing of the case to proceed ex-parte in accordance with Order 9 rule 17(a) of the Civil Procedure Rules.

At the beginning of the hearing of this case, the following issues were set for determination:
a) whether or not the defendant was justified to lodge a caveat;
b) whether the plaintiff is entitled to the grant of the letters of administration of the estate of the deceased; and
c) Remedies available.

I will dispose of the three issues in the same order in which they are listed.
On the first issue, in his affidavit, in support of the caveat, deponed on 8th February, 1996, the defendant gave two grounds for lodging the caveat. The two grounds are contained in paragraphs 3 and 4 of the affidavit. They read as follows:

"3. That I claim as one who was granted with letters of administration to our father (copy attached marked A)
4. That one time, the deceased assigned me with Un ASSIENMENT INTEREST to his shares in our late father's properly. (Attached as 'B')"

Now, it is not in dispute that the defendant was the administrator of the estate of the estate of late Jaffari Ssentamu. It is also not in dispute that the estate of the late Jaffari Ssentamu had been distributed to the various beneficiaries by the time the defendant purported to lodge the caveat in question. The mere fact that the defendant had been or was the administrator of the estate of the late Jaffari Ssentamu does not appear to me to give rise to any interest by the defendant in the estate of the deceased in the instant case. The deceased had received some 40 acres of land at Rwakiruli and one-third shares in plot 36/3 8, High Street Mbarara, from the estate of his late father. Those legacies together with other personal properties constituted the deceased's estate at the time of his death. As the administrator to the estate of the late Jaffari Ssentamu, the defendant had no interest whatever in those properties or the estate of the deceased merely by virtue of being the administrator of the late Jaffari Ssentamu's estate. Thus the first ground advanced by the defendant for lodging the caveat has no substance whatever. It must be rejected, as it provides no legal justification for lodging the caveat.

The second reason which was given by the defendant for lodging the caveat was that the deceased had assigned to the defendant, the deceased's interest in their later father's estate, that is to say, the bakery at plot 36/38, High Street, Mbarara and the land comprising volume 1211 Folio 25, plot. 12, Block 2, Mbarara.

The plaintiff contends that the so called assignment deed (Exhibit P3) is a forgery for reasons which I shall be examining shortly. But let me state, at this point, that the mere fact of being an assignee of the interest of the deceased in some of the properties constituting the estate of the deceased would not entitle the defendant to letters of administration of the estate of the

deceased so as to justify the lodging of a caveat by him against the grant of letters of administration, in respect of that estate, to the plaintiff. For being an assignee of some interest in the estate would not confer any right to the defendant to apply for letters of administration in his own right. Accordingly, the averment of the defendant, contained in paragraph 3 of his affidavit supporting the caveat, does not provide any tenable reason for the lodging of the caveat.

As I stated above, the plaintiff's evidence is that the assignment deed (Exhibit P3) is a forgery. The plaintiff states that the assignment deed was forged by the defendant in order to justify a transaction which was not known to anybody else in the family.
To support that contention, the plaintiff produced exhibit P3, the assignment deed. She also produced exhibit P4, which is a copy of a death certificate of the late Jonathan Sengooba. Jonathan Sengooba, now deceased, was purportedly the advocate who drew up and witnessed the execution of the assignment deed (exhibit P3). According to PW1, the plaintiff, she obtained the certificate of death for the late Sengooba from one Frida Kakooza, the widow of the late Sengooba. She registered the death of the late Sengooba with the Registrar General, on l8' August, 1994. The certificate of death (exhibit P4) is No. 51480. It is signed by one Joel Cox Ojuko, Assistant Registrar General. It shows that the late Sengooba died at Mariandina Clinic in Kampala on 25th May, 1993. The cause of death is state to have been "I.S.S. and severe dehydration." The late Sengooba is said to have been lying at the Mariandin Clinic for days before his eventual demise and for the last four days, prior to his death, on 25th May, 1993, he is said to have been in a comma.

In the instant case, it so happens that the assignment deed presented by the defendant and which is said to have been drawn up and witnessed by the late Sengooba shows that it was drawn up, executed and witnessed by the late Sengooba on 25th May, 1993. That is the day on which he died according to exhibit P4.

The plaintiff argues, and I duly agree, that the late Sengooba could not have drawn up that deed on25th May, 1993 when he was lying in a comma and the very day on which he died. The signature on the deed purporting to be that of Mr. Sengooba and the stamp reading "Jonathan Sengooba Commissioner for Oaths" which is affixed against the purported signature of the late Jonathan Sengooba must definitely have been fixed upon the so called assignment deed by some person other than the late Sengooba. The affidavit supporting the caveat, to which the assignment deed is attached, by reason of that lie, becomes suspect and

must be struck out upon the well know authority *of Bitaitana vs. Kananura (1977) HCB, 34.* That leaves the caveat unsupported by any affidavit and, therefore, the caveat remains bare without any ground as to why it was lodged. The caveat must, therefore, be vacated.

I also find that the plaintiff in this case is the nearest person left to whom letters of administration of the deceased's estate should be granted. According to section 201 of the Succession Act, administration of an estate of a deceased should be granted to the person entitled to the greatest proportion of the estate under section 28 of the same Act. The deceased, in the instant case, left no widow and no lineal descendants. His father preceded him in demise. The only person with the biggest interest in his estate is his own mother who would qualify as a dependant relative. She certainly takes precedent over a step-brother who is not even a dependent relative. She is, therefore, the proper person to whom to grant letters of administration of the estate left behind by the deceased.

In the final result, I enter judgment in favour of the plaintiff against the defendant. I make the following orders;

a) an order vacating the caveat lodged by the defendant on l2 February, 1996, against the application of the plaintiff;

b) an order granting letters of administration of the estate of the late Isaac Kajwala to the plaintiff;

c) an order requiring the defendant to met the costs of this suit personally.

V. F. Musoke-Kibuuka

Judge

1/03/2001