

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.142 OF 2004

JACINTA ANYAIT :::::::::::::::::::: PLAINTIFF

VERSUS

BARCLAYS BANK (U) LTD :::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE ELDAD MWANGUSYA:

RULING:

The Plaintiff, **JACINTA ANYAIT** is a holder of a grant of Letters of Administration for the Estate of the late **RUTH ACANIT APUNGIRE** who died on the 17th day of February 2001. Prior to her death the deceased operated an Account with Barclays Bank

Uganda Limited (hereinafter referred to as the defendant). Following her death all the balance on the account was paid to the Administrator General

(hereinafter referred to as the Third Party) so that by the time the plaintiff got the grant of Letters of Administration she had no access to the account as it had been closed. She sued the defendant Bank for recovery of the balance that had been on the deceased's account, interest at 49% per annum, compound interest at Bank rate from the date of cause of action till payment in full, general damages for negligence, loss of earnings to the estate, damages for illegal action and costs of the suit.

The allegation was that the Bank had negligently paid out the money to the Administrator General who did not have Letters of Administration to the estate of the deceased instead of the plaintiff. In her written statement of defence the defendant bank denied any negligence in paying out the money to the

Administrator General who according to them was authorized to receive the money on behalf of the estate of the deceased. When the case was first called for hearing the Administrator General was joined as defendant and in

her defence she denied any liability for negligence and instead made a counter claim against the plaintiff for revocation of the letters of Administration granted to her by the Chief Magistrate who did not have jurisdiction to make the grant.

The case was called for hearing on 1/11/2005 following scheduling conferences that were conducted on 28/09/2004 and 21/09/2005. When the case was called for hearing both Mr. Francis Atoke for the Administrator General and Mr. Masembe Kanyerezi for the defendant Bank raised two preliminary objections the first of which was that the grant held by the plaintiff was made by a court which did not have jurisdiction and the second was that the grant was obtained fraudulently. It would

follow that if the plaintiff's grant was impeached on any of the two grounds, she would have no cause of action against the defendant and the third party because according to the pleadings her right is derived from the grant of Letters of Administration for the estate of the

deceased. The authority of *Auto Garage v Motokor* (1971) E.A. 51 lays down three tests for determining as to whether or not a plaint discloses a cause of action and these are that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable. The argument here is that the plaintiff cannot have enjoyed a right derived from a grant made by a court without jurisdiction to make the grant.

On the issue of the pecuniary jurisdiction of the Chief Magistrate that made the grant it is now well established that a grant of Letters of Administration issued without jurisdiction is null and void and hence illegal. The authorities of *Sanyu Lwanga Musoke v*

Sam Galiwango (Supreme Court Civil Appeal No. 48 of 1995) (unreported) and David Sekajja Nalima v Rebecca Musoke (Supreme Court Civil Appeal No. 12/85) cited by Mr. Atoke and supported by Mr. Msembe Kanyerezi are instructive on this matter and if court was to find that the grant was illegal then it would have power to revoke that grant.

The pecuniary jurisdiction of a Chief Magistrate under S. 2 (1) (C) of the Administration of Estates (Small Estates) Special Provisions Act is Shs.100,000/= and from the pleadings this estate was well over the pecuniary jurisdiction of the Chief Magistrate. Mr. Omongole for the plaintiff submitted that the plaintiff knew of the value of the estate after she had got the grant but even if this was true then the plaintiff should not have authoritatively stated as she did that the estate of the deceased did not exceed Shs.100,000/=. Where did she get this information? Secondly the deceased left a will and from the will the estate of the deceased would be estimated to be well over

Shs.100,000/=. Therefore the grant issued by the Chief Magistrate, Mengo is illegal and cannot be a basis for this cause of action.

The case of Sanyu Lwanga Musoke (Supra) cited with approval the case of Makula International Co. Ltd. V His Eminence Cardinal Nsubuga Civil Appeal No. 4 of 1981 reported in 1982 HCB for the proposition that once court

discovers an illegality it cannot allow that illegality to stand. It, therefore, follows that the grant of Letters obtained illegally cannot be allowed to stand. I therefore make the following orders:-

- (1) The grant of Letters of Administration to the plaintiff issued by the Chief Magistrate Mengo, is hereby revoked.

- (2) Following the revocation the plaintiff's pleadings do not disclose any cause of action against the defendant and third party and her action against them shall be dismissed.
- (3) The plaintiff shall pay the costs of this dismissal.

Eldad Mwangusya

JUDGE

14/11/2005

14/11/2005 at 2.15 p.m.

Mr. Omongole for the plaintiff absent.

Mr. Mulumba holding a brief for Mr. Kanyerezi for the defendant,
Barclays Bank.

Mr. Atoke for the third party absent.

Ms Mariam Nakibuka Court Clerk .

Court:

Ruling signed and delivered in open court.

Eldad Mwangusya

JUDGE

14/11/2005