

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

Civil suit no. 177 of 2002

REBECCA HARRIET NAJJITA ::: PLAINTIFF

Versus

1. SSEMALULU WASSWA]

2. NANKANJA MARGARET]::: DEFENDANTS

3. SENDAGIRE JAMES]

BEFORE: HON. JUSTICE V. A. R. RWAMISAZI-KAGABA

JUDGMENT

The plaintiff in this case sued the defendants seeking the revocation of letters of administration granted the defendants under Administration Cause No. 742 of 2000 and the same be granted to the plaintiff. Mike Musisi represented the plaintiff while Arthur Katongole appeared for the defendants.

In her plaint, the plaintiff contends that she is the biological child/daughter of late Tito Kasirye and as such, she is the first person entitled to administer her father's estate. She also states that her father bequeathed her property at Nansana. A copy of her father's Will was attached to the plaint as annexure "A".

The plaintiff states that the defendants fraudulently and by concealing Tito's Will, the plaintiff as his daughter and their remote relationship to Tito, went to court and obtained the letters of administration referred to above. The particular of the defendants' fraud is listed in paragraph 4(1) of the plaint.

The defendants have tried to evict the plaintiff from the property her father left her. She now prays that the letters of administration granted to her be revoked and the defendants be restrained from interfering with her quiet enjoyment of her land.

In their defence, the defendants contend that the plaintiff is not Tito's daughter and that they are the only available "**close**" relatives of the deceased. (Tito) entitled to administer his estate.

The plaintiff gave evidence in which she said she is of *Enuma Clan* like her father and the only child that his father produced with her mother. She is the only surviving child of her father.

She produced a Baptism Certificate - Exh. P.1 on which Tito Kasirye appears as her father. She said the defendants have their own father. She denied being the daughter of Salongo Kaddu. She now has property at Nansana, which includes houses, Pw2 - Norah Nalunga, the sister of late Tito Kasirye confirmed the plaintiff was Kasirye's surviving child and daughter. She explained that the defendants are the children of Daniel Kikonyogo, and the said, Kikonyogo is the son of late Tito Kasirye. The plaintiff is therefore a paternal aunt to the defendants. But the plaintiff added that her father Tito gave the defendants pieces of land other than at Nansana.

Pw3 - Difasi Kiwanuka, the nephew to Tito Kasirye, supported the plaintiff and Pw2 to prove and confirm that Najjita was the only Tito Kasirye's surviving daughter and child. This witness wrote the Will of Tito Kasirye in which he bequeathed the land at Nansana. (See exhibits P3 and P4 (translation)).

The case for the defence was a denial that Najjita is the child of Tito Kasirye. Wasswa Semalulu stated Najjita was fathered by Kaddu Salongo.

Dw2 Nankya agreed that she is the daughter of Daniel Kikonyogo, the son of Tito Kasirye. She, however, denied Najjita being Tito's daughter. She did not say who Najjita's father was.

Dw3 - Kaddu Salongo asserted the plaintiff was his daughter. He produced her with Bena Nabunya who was his wife between 1975 and 1979. That Najjita was born in 1976. But at the end of his evidence in Chief, Kaddu said he decided to forget about the plaintiff and almost ceased to count her as his child.

This witness never returned to court to be cross-examined. The case was closed and counsel promised to file their written submissions, which they never did.

At the Scheduling Conference, four issues were framed:

1. Whether the plaintiff is entitled in priority to obtain letters of administration in respect of late Tito Kasirye.
2. Whether the defendants obtained letters of administration through fraud.
3. the remedies available

The whole case depends on whether Najjita is the biological child of Tito Kasirye. I have listened to the evidence for and against Najjita being the child of Tito Kasirye. I saw the witnesses in court and observed their demeanour I must say that the plaintiff and her witnesses impressed me as being truthful and knowledgeable about the paternity of the plaintiff. I accept the contents of the Will - Exh. P3 and 4 as well as the Baptism Certificate Exh. P1.

In contrast, the defence witnesses were outright liars in the substance of their testimony and representation Dw1 was doggy and evasive when questions were put to him. Dw2 and Dw3 manifested themselves as couched witnesses who were brought to tell lies and tarnish the name of the plaintiff.

As the purported father, Kaddu, was not cross-examined despite the several adjournments the court granted to enable him to come for that purpose, I will expunge his evidence. Even if he had completed his testimony, I would have rejected his testimony because he had already painted himself a hired liar couched to come and lie to the court. It is no wonder that, in the end, he decided to vanish from the court basing on different excuses that Dw1 was always putting across, but which excuses were deliberate lies and or did not hold water. I therefore reject the defence evidence as being nothing but a heap of lies.

The Succession Act lays out the degree of consanguinity. In the **1st schedule** to the said Act, the plaintiff, as the child of the deceased, takes precedence over the grandchildren. Consequently the plaintiff, who I accept as Tito Kasirye's daughter takes precedence over the defendants who are

only grandchildren to Tito Kasiry. Their claim should relate to the estate of Daniel Kikonyogo, their father unless Tito had mentioned them expressly as executors of his Will, which is not the case here.

Since the plaintiff is the surviving child of her father, she is entitled to administer her father's estate and occupy the property that her father bequeathed her in Exhibits P3 and P4 (translation). From what I have said above, the defendants were not legally entitled to apply and obtain letters of administration in respect of Tito Kasiry when there was the plaintiff who took precedence over them.

Section 234 of the Succession Act lists the grounds when the court may revoke letters of administration or probate of the Will. The "just cause is described in paragraph 2 and (b) and (c). The grant in this case was obtained fraudulently by making false suggestion or by concealing from the Court something material to the case. Similarly, the grant was obtained by means of untrue allegation of a fact essential in a point of law to justify the grant, though the allegation was made in ignorance or inadvertently. (c)

See: (i) B.E.M. Pettit vs. Y.G. Tonnel (1961) EA 4448.

(ii) Re: Estate of Fatuma Binti Saleh (1961) EA 219.

(iii) Arusha Assa vs. Charles Katarak (1998) VI KALR 148

The defendants, (i) by concealing the identity of the plaintiff to the Administrator - General where they obtained the Certificate of No Objection and (2) to the Court in their Petition for letters of Administration, they were acting fraudulently. It is this fraud that led the Administrator - General to grant them the Certificate of No Objection. It was this fraud that led the court into granting them letters of administration.

In the exercise of the powers vested in the court under the above quoted provisions of the law, I find the defendants wrongly and fraudulently obtained the letters of administration for Tito Kasiry's estate. The grant that they (defendants) obtained under Administration Cause No. 742/2000 is revoked.

Having found in favour of the plaintiff on issue (1) and (2) above judgment is entered for the plaintiff in the following terms:-

1. The letters of administration that were granted to the defendants under Administration Cause No. 742/2000 are revoked.
2. The plaintiff is granted the letters of Administration to administer her father's (Tito Kasirye) estate.
3. The defendants are restrained from laying further any claim to the plaintiff's property that was bequeathed to her by her father in Exh. P3 (the "Will")
4. The defendants are directed not to interfere with the plaintiff in her quiet enjoyment of her property at Nansana or any property bequeathed to her by her late father.
5. The defendants shall pay the plaintiff the costs of this suit since they were not justified to obtain a grant that they were not legally entitled to obtain.

V. A. R. Rwamisazi-Kagaba

Judge

25/7/2007.