

**THE REPUBLIC OF UGANDA**

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

**FAMILY DIVISION**

**ORIGINATING SUMMONS NO. 011 OF 2009**

**ARISING OUT OF ADMINISTRATION CAUSE NO. 430 OF 1995**

- 1. LUBULWA FRANCIS**
- 2. BABIRYE GRACE**
- 3. GRACE KAGIMU:.....PLAINTIFF/  
APPLICANTS**

**VERSUS**

**HARRIET LUBWAMA:.....DEFENDANT**

**BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO  
RULING**

The applicant/plaintiff brings this Originating Summons for the determination of the following questions;

1. Whether the respondent committed acts of fraud in the process of applying for letters of Administration.
2. Whether the respondent has properly administered the estate.
3. Whether a perfect and true inventory has been exhibited of the assets and estate of the late Kassalina Zawedde by the respondent.
4. Whether the grant to the respondent can be recalled and cancelled.
5. Whether the applicants can be appointed the Administrator of the estate.
6. Whether the costs of the application ought to be derived from the estate.

The application is supported by the affidavit of the applicants –Lubwama Francis, dated the 20<sup>th</sup> May, 2009.

At the hearing of the originating summons, the applicant was represented by Mr. Patrick Mugisha.

The High court has original unlimited jurisdiction in all matters.

See **Article 139(1)** of the constitution and **section 14** of the Judicature Act.

In the exercise of those powers, the High court can make orders absolutely or on such terms as it thinks fit.

See: **Section 33** of the Judicature Act.

In the case of *Humphrey Opio vs Jasper Okot, HCMC 05/02*, the applicants sought by originating summons to invoke a grant of letters of administration granted to the respondent on the grounds inter alia, that, the respondent was wasting the estate.

Justice Rwamisaza Kagaba, as he then was, held that, **order 34 r 1 now O37 r 1**, that is originating summons, deals with matters which are not contentious matter requiring evidence and an application by originating summons is wrong.

He further held that the procedure under order 34 of the civil Procedure rules is intended to deal with simple and non contentious matters.

The Learned Justice held that where the matter is contentious, or would require evidence to prove or disprove the allegation, originating summons is not applicable.

Similarly, in the case of *Fred Gabula Nadiope Kajumbula & Anor. CM 533/99* – J. Okello J held that, where proceedings for revocation of a grant of Letters of administration or Probate is sought on the ground of mismanagement or fraud, it requires that evidence be adduced orally where cross – examination becomes necessary.

Therefore a Chamber summons where evidence is produced by an affidavit is not a suitable procedure of seeking to revoke a grant. Therefore the application was untenable for being an improper procedure.

In the case of *Kagwa & 10 others vs Kiwnuka and 2 others HCCS No. 175 of 1992*, arising from *Miscellaneous cause No. 27/85, Ntabgoba* PJ as he then was held that, since the case was based on allegations, it was not enough to rely on mere affidavits and **O34 r 1** allows court to ask the parties to the originating summons to proceed by ordinary suit to prove allegations of fraud.

In view of the above, where there is an allegation of fraud and wasting of estate as in this case, the proper procedure is not an Originating summons for revoking the letters but the parties are advised to proceed by ordinary suit in which the applicants become the plaintiff and the respondent/Administrator, the defendant.

See *Kaggwa and 16 others (supra)* the applicants are therefore advised to file an ordinary suit.

The parties are to bear their own costs of the application.

**Margaret c. Oguli Oumo**

**Judge**

**19/10/2010**

N.B: the applicants can file a suit if not caught by the statutory of limitation.

Present;

1. Mr. Partrick Mugisha for the applicants.
2. Betty Lunkuse, court clerk
3. Elizabeth Nyakwebara, Research Assistant.