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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 926 OF 1998**

JOSEPH M. NVIRI ::: PLAINTIFF

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VERSUS

PALMA JOAN OLWOC & 2 OTHERS ::::::::::::::::::::::: DEFENDANT S

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

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When the case came up for further hearing of the plaintiff’s case, Mr. Kinobe, learned Counsel for the defendants, raised a preliminary objection premised on Section 132 of the Succession Act. He submitted that the law makes it illegal for a person to intermeddle in the estate of the deceased person without proper authorization in terms of the administration of the estate property. That from the evidence led by the plaintiff, and in light of paragraphs 9 and 10 of the

20 plaintiff and the copy of the contract attached, that it is clear that the persons the plaintiff alleges sold to him the suit land were simply intermeddling in the estate of the deceased contrary to the law. Counsel argued that the two Olwoc and plaintiff not only had no authority to deal with the estate but were knowingly committing an illegality.

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Counsel for the defendants further submitted that the plaintiff testified that he purchased the suit land on 12/4/1995 well aware that the person who was selling it to him did not have the authority to do so as she did not have letters of administration at the time, which she only obtained on 29/6/1995. That on that basis alone the contract which the plaintiff seeks court to enforce is not only an illegality but *void abinitio*. That as such the plaint discloses no cause of action as against the 2nd and 3rd defendants. Mr. Kinobe supported his arguments with the case of *Makula*

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International vs. His Eminence Cardinal Nsubuga & Another [1989] HCB 11; and Neptune

Noratan Bhatia vs. Crane Bank Ltd CACA No. 75 of 2006 to the effect that once an illegality is brought to the attention of the court it cannot be ignored. Counsel prayed that the suit ought to be struck out with costs as it relates to the 2nd and 3rd defendants.

In reply Mr. Othieno Brain learned Counsel for the plaintiffs submitted that the objection lacks
35 merit. That Section 132 of Succession Act (supra) has nothing to do with the objection raised as it deals bequest of money where payment is postponed in certain way.

Mr. Othieno argued that without prejudice to the above latter, the objection that there was a sale agreement by a vendor who had no letters of administration has no basis. That Section 192 of the Succession Act (supra) provides that Letters of Administration relate back to the time of death of
40 the deceased. Further that Section 193 (supra) specifies acts that are not validated by the grant of Letters of Administration, which are specifically those acts that tend to damage the estate of the deceased. In this regard Mr. Othieno referred to paragraph 9 and 10 of the plaint, in particular to the averments that the purchase price was used to apply for Letters of Administration which was in the best interest of the estate. Counsel opined that therefore the contract was faultless under
45 provision of Section 192 and 193 (supra).

Further, Mr. Othieno argued that the contract for the sale of land was one in which installments were effected. Counsel noted that the first installment was paid on 12/4/1995 for Shs.500,000/= which, according to the particular pleadings referred to, was used to apply for Letters of Administration. That the 2nd installment of Shs.250,000/= was on 13/9/1995 by which time
50 Letters of Administration had already been obtained. The 3rd installment of Shs. 500,000/= was made thereafter on 3/11/1995. Mr. Othieno argued that the conduct of the holder of Letters of Administration accepting these installments ratified the sale agreement made earlier on 12/4/1995.

Opinion:

55 This objection was raised long after the hearing had commenced. It seeks to dispose of the entire case. I wish to observe that much as a party is entitled to raise objection on a point of law at any stage of the proceedings, the timing is quite important. In the case of *Yashwant Sidpra & Another vs. Sam Ngude Odaka & 4 others HCCS No. 365 of 2007*, it was underscored that the timing of such objection ought to be by way of preliminary objections on a point of law which if
60 argued, on the assumption that all the facts pleaded by the other side are correct, would dispose of the case and court does not have to try the merits of case if it is not going to resolve the case or determine the rights of the parties. On the authority of that case, lawyers and their clients would do better to appropriately time when to raise their objections.

The above aside, my understanding of the objection raised by Mr. Kinobe is that the vendor
65 entered into a sale agreement of land which is part of the estate of the deceased person when he had no Letters of Administration. Mr. Kinobe's argument is that at the time of the execution of the sale transaction on 12/4/1995, the vendor had not obtained Letters of Administration, and hence his action amounted in law to intermeddling in the estate of the deceased which is an illegality. Mr. Kinobe advanced the view that the plaintiff should therefore not seek to enforce an
70 illegal contract through the court of law. Mr. Othieno Counsel for the plaintiff made his response whose content I have briefly reproduced above.

The general position under the law as per Section 191 of Succession Act (supra) is that;

***“Except as hereafter provided, but subject to section 4 of the Administrator General’s Act, no right to any part of the property of a person who has died intestate shall be
75 established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.”***

Clearly, this provision would render any acts of a person or persons in relation to the estate of the deceased person illegal, null and void if that person has not obtained Letters of Administration.

This is because it only by the grant that a person or persons are clothed with the legal authority to
80 deal with the estate or any part of the estate of the deceased.

Section 192 (supra) however provides a “safety value” for acts of a person who though acting in relation to the estate without Letters of Administration subsequently obtains the Letters of Administration. It stipulates as follows;

85 *“Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.”*

This provision invariably makes the grant of Letters of Administration in respect of actions of the administration to relate back to the time of death of the deceased. The effect is that the grant
90 validates the actions of the administrator taken prior to the grant of the Letters of Administration in respect of the estate of the intestate. In other words, actions which would ordinarily amount to intermeddling under the law are validated and hence ratified as having been legally done. There are however exceptions to acts so validated and ratified under Section 193 (supra) which provides that;

95 *“Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate’s estate.”*

As this relates to facts of the instant case, the sale agreement in respect of land clearly shows that it was executed between the vendor and the purchaser for payment in installments. The first installment was made on 12/4/1995 prior to the vendor f obtaining Letters of Administration. In
100 his pleadings, at paragraph 10 of the amended plaint, the plaintiff avers that he used part of the

purchase price to apply for Letters of Administration which she obtained on 29/06/1995. This averment, which never envisaged the instant preliminary objection, if proved to be true would tend to show that the money was applied in the interest of, and for the benefit of the estate. Therefore, it would not fall within the acts that tend to the diminution or damage of the estate contemplated under Section 193(supra). I consider the objection is ill –timed, brought in bad faith, and also lacking in merit. It is dismissed with costs.

110 **BASHAIJA K. ANDREW**
JUDGE
19/12/2016

Mr. Brian Othieno Counsel for plaintiff in court

Mr. Amany Joseph, holding brief for Mr. Kinobe for defendants present.

115 Plaintiffs in court

Defendants absent

Mr. G. Tumwikirize Court Clerk in Court

Court: Ruling read in open court.

120 **BASHAIJA K. ANDREW**
JUDGE
19/12/2016