THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: MANYINDO, D.C.J., ODOKI, J.S.C., TSEKOOKO, J.S.C.)

CIVIL APPEAL NO. 15 OF 1993

BETWEEN

ADMINISTRATOR GENERAL……APPELLANT

AND

1. AKELLO JOYCE OTTI)
2. . DONATO OTTI)…… RESPONDENT

(Appeal from the decision of the H/C of Uganda at Kampala delivered on the 9th March, 1992 by Hon. Ag. Justice H.E. Okalebo J., Administration Cause No. 128 of 1990).

JUDGEMNET OF MANYINDO D.C.J.

This appeal arises from a dispute as to who should administer the estate of the late Charles None Otti. He died on 7/1/l990. He did not leave a Will. Upon his death his widow Joyce Akello (first respondent) and father Donato Otti (second respondent) instructed their lawyers, Ms. Katende, Ssempebwa and Company, Advocates, to petition the High Court for Letters of Administration on their behalf. The said advocates then wrote to the appellant asking for a letter of no objection, to be included in the petition. The appellant declined to issue the letter and instead he applied to the High Court for the Letters of Administration. The respondents then lodged caveat against the grant of Letters of Administration to the appellant. It was then that the appellant filed a suit

against the respondents for the “unlawful” objection by them to his petition for the grant of Letters of Administration. In that suit (No. 128 of 1990) he appellant sought:-

(a) an order vacating the caveat
(b) an order granting Letters of Administration to him
(c) an order distributing the estate to the persons entitled
(d) any other relief the Court might deem fit
(e) Costs of the suit.

The appellant’s intervention was prompted by one Sarah Linda Apio (PWI), a woman friend of the deceased and mother of one of the seventeen children of the deceased, She had complained to the appellant that her child was not being assisted financially by the second respondent who had taken over the management of the Estate of the deceased. She at one time claimed to be a legal wife of the deceased and was apparently in possession of forged documents to that effect. But at the trial she conceded the fact that she was not legally married to the deceased and acknowledged the first respondent as the legal wife. She also admitted that she had no claim to his estate,

The second reason for the appellant’s interest in the matter was that he thought that the respondents were not well qualified to manage the huge Estate left behind by the deceased who owned several houses, a cattle farm, and several companies in Uganda and Kenya. He also had assets in Sudan, Germany and France.

The respondent’s case was that they were experienced in business administration and management; that they were managing the estate well; that thy had regularly paid money to Sarah Linda Apio for the up keep of her child and that since there was no serious dispute in the family of the deceased regarding the management of his estate, there was no need for the appellant’s involvement in the matter.

The appellant’s answer to this last point was that the Administrator-General in law takes priority in the Administration a an intestate s estate over the next of kin of the deceased except for good

cause shown and otherwise ordered by Court. At the trial seven issues fell for determination namely:-

1. Whether the caveat was lawfully lodged,
2. Whether the withholding of the certificate of no objection was justified.
3. Whether Sarah (PWI) was widow of the deceased and therefore had an interest in the estate.
4. Whether the document uttered by PW1 Sarah was a valid Will of the deceased.
5. Whether that document was a forgery,
6. Who was entitled to the Letters of Administration.
7. What remedies if any were the parties entitled to under the plaint and the counter-claim.

The respondents counter-claim was stated as follows:-

"(a) <u>as against the Plaintiff (now appellant)</u>

(i) That the claimants are entitled to the Letters of Administration as against the plaintiffs.

(ii) That Letters of Administration be granted to the claimants.

(b) <u>as against the second respondent to the counter-claim</u>

(i) Declaration that the 2nd respondent to the counterclaim i.e. (Sarah (PWI) is not a widow of the deceased.

(ii) That the 2nd respondent to the counter-claim be restrained from holding out to be a widow of the deceased.

(iii) That the 2nd respondent to the counter-claim be restrained from further attempts to inter-meddle in the deceased's estate.

(c) as against both respondents to the counter-claim

(i) Any other or further relief this Honourable Court deems fit

(ii) Both respondents pay the costs of this and the counter-claim.

On the evidence for him the trial Judge held (a) that Sarah (PW1) was not a widow of the deceased and was not a dependant of the deceased and therefore not a beneficiary (b) that Sarah had uttered a forged will in her attempt to become a beneficiary of the estate of the dec6ased, (c) that appellant had wrongly believed that Sarah was a widow of the deceased which had led him to refuse to grant a certificate of no objection to the respondents, (d) that the respondent's caveat was therefore unlawful, (e) that in law the appellant does not have absolute or exclusive rights over the next of kin in matters of management of Estates of people who die intestate and (f) that it had not been shown that the respondent were mismanaging the Estate of the deceased nor was there any dispute among the true beneficiaries of the Estate to warrant the intervention of the appellant.

Accordingly the Judge declined to make the grant in favour of the appellant. He dismissed the suit with costs. He also allowed the counter-claim and granted an order restraining Sarah from "interfering, inter-meddling in the affairs of the Estate whatsoever either by herself directly or through any other person or party acting on her behalf".

In his Memorandum of appeal the appellant does not challenge the Judge's holding in (a) (b) (c) (d) and (f) above. The appeal is against the holding in (e) only. It is contended that the Judge erred in law in holding that the relatives of an intestate take priority over the Administrator-

General. According to the appellant, the Administrator-General has “unfettered” discretion in the choice of Estates to administer where there is no Will.

He argues that Section 6 of the Administrator-General’s Act which exempts a widow or widower from obtaining the consent of the Administrator-General before petitioning Court for Letters of Administration should be regarded as having been amended (by implication) by Section 201 of the Succession Act as amended by the Succession Amendment Decree 1972, which subjects entitled persons to the right of the Administrator-General to apply for Letters of Administration under Section 5(3) of the Administrator-General’s Act, as the Succession Act is a later Act to the Administrator- General’s Act.

For the respondents it is argued that the combined effect of Section 201 of the Succession Act and Sections 5(3) and 6 of the Administrator-General’s Act when read together, is that when a widow or widower as a person entitled to the greatest proportion of the estate of the deceased, applies for Letters of Administration, she or he does not nave to obtain the consent of the Administrator-General before court can grant her or him the Letters of Administration,

Now under Section 5(3) of the Administrator Act the Administrator-General may, where a person dies intestate, apply for Letters of Administration of his or her Estate and the Court shall, except for good cause shown, grant the Letters of Administration to her or him. Under that same provision, the Administrator-General shall be deemed to have a right to Letters of Administration, other than letters pendente lite (while litigation is pending), in preference to :-

(a) a creditor or
(b) a legatee, other than a univeral legatee; or
(c) a friend of the deceased.

But the proviso to that Section allows the Court in its wide discretion, to grant the Letters of Administration to a person other than the Administrator-General.

Section 6 of the same Act provides that no grant shall be made to any person, except an Executor appointed by the Will of the deceased or the widower or widow of the deceased or his or her Attorney duly authorised in writing, without notice of the application having been served on the administrator-General. The Notice must be in writing and it must be given to him 14 days before the application is made. The Administrator-General may then oppose or consent to the grant being made.

It is clear from the above provision that a widow or widower can apply for and obtain Letters of Administration of her or his deceased espouses Estate without reference to the Administrator-General. An authorised Attorney and an Executor of the Will is in the same position. All other persons must serve the Administrator-General with notice of their intention to apply for Letters of Administration within the prescribed time. As the trial Judge pointed out, the widow (Joyce) did not have to seek the consent of the Administrator-General. The consent sought was in respect of Donato, the second respondent. The appellant's claim that he has unfettered discretion to veto widows and widowers is therefore untenable in law. The holding by the trial Judge that the Administrator-General has no absolute rights under the Administrator General's Act to obtain Letters of Administration to every deceased's Estate is correct. Section 6 above has not bean amended, not even by implication, by the Succession Act in my view.

The Administrator-General can always apply for letters of Administration under circumstances listed in Section 5(3) of the Administrator-General's Act, but even then the court may refuse to make the grant to him. Again under S.5 (3)(d) the Administrator General may administer a deceased persons estate by applying for Letters of Administration if probate or Letters of Administration have not been earlier on obtained within 2 months from the death of the testator.

And so the only question is whether the appellant was right to withhold consent to the second respondent. I would answer the question in the negative since all the evidence showed that the second respondent was managing the estate well and that he had been responsible for managing some of the deceased's affairs even during the lifetime to the deceased. Everybody except Sarah were happy with the respondents performance.

Sarah was an outsider whose intention was motivated purely by greed. The appellant Should never nave intervened On her behalf or at all.

I am satisfied that he decision of the trial Judge was correct both on the appellant s claim and on the respondent s counter claim. I would therefore dismiss the appeal with costs to the respondents. As Odoki, J,S.C,, and Tsekooko, J.S.C., agree, it is so ordered.

Dated at Mengo this 4th day of March 1996.

S.T. MANYINDO,
DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W.MASALU-MUSENE
REGISTAR, SUPREME COURT

JUDGMENT OF ODOKI, J.S.C.

I have had the benefit of reading in draft the judgment Manyindo, D.C.J. , and I agree with it and the orders he has proposed.

Delivered at Mengo this 4th day of March 1996.

B.J. ODOKI,
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W. MASALU-MUSENE
REGISTRAR, SUPREME COURT.

JUDGEMENT OF TSEKOOKO. J.S.C.

I have had the advantage of reading in draft the judgment prepared by Manyindo, Deputy Chief Justice , and I agree that this appeal ought to be dismissed. I have some observations to make about the Memorandum of appeal.

The facts of the case are fully set out by the learned Deputy Chief Justice, It is clear to me that without the intervention of Sarah Linda Apio P.W.1 in all probability these proceedings would never have become contentious.

The seven issues for decision of the trial Judge were:-

1. Whether the caveat was lawfully lodged.
2. Whether the withholding of the Certificate of no objection was justified.
3. Whether Sarah Linda Apio is a widow and has any interest in the Estate.
4. Whether the document uttered by Sarah Linda Apio is a valid Will.
5. Whether that document is a forgery.
6. Who is entitled to Letters of Administration?
7. The remedies the parties are entitled under the plaint and the counter-claim,

The appellant refused to grant Certificate of no objection to the respondents who had requested for it to enable them to apply for Letters of Administration to the Estate of the deceased Charles Otti, The appellant thereafter lodged an application for the Letters of Administration to the same Estate. The respondents lodged a caveat objecting to appellant's application, In the result the proceedings were converted into a Civil Suit as provided by law so that the contentions of both parties could be investigate on evidence. The appellant called one Witness in the name of Sarah Linda Apio though the learned trial judge at first contradicted himself by stating, at p.6 of his

judgment, that appellant called no evidence and yet later (p.14) he acknowledged that he appellant did call evidence. Both respondents testified and called other witnesses.

The learned trial Judge answered all the issues in favour of the respondents and dismissed the appellant's contentions. He directed that Letters of Administration be granted to the respondents. Hence the appeal.

Five grounds of appeal form the objections against the judgment of the Court below. But the prayer in the Memorandum of appeal seeks for orders whose nature is interesting. The appellant by the Memorandum prays for a declaratory judgment that:-

"(a) The Administrator-General takes priority in the Administration of an intestate Estate over the next of kin of the deceased's Estate except for good cause shown and otherwise ordered by Court.

(b) The Succession (Amendment) Decree 22 of 1972 Section 201 thereof implied by amended part of Section 6 of the Administrator-General's Act Cap. 140 Laws of Uganda. Therefore all have to seek the consent of the Administrator-General except executors named in the valid Will of a testator.

(c) Since the promulgation of the Succession Amendment Decree 22 of 1972 the decision in RE: KIBIEGO (1972) E.A. p. 179 about priority of a spouse to Letters of Administration is no longer good law in Uganda except in particular cases where such spouse of an intestate takes priority under S. 201 of the Decree by Virtue of her percentage in the distribution of an intestate's estate.

(d) Section 28 of the Succession Amendment Decree does not determine the entitlement to Letters of Administration of the Administrator-General are governed by the Administrator-General's Act Cap. 140 Laws of Uganda".

Consistent with the above prayers, learned Counsel for the appellant in his written submissions concluded:-

> "I therefore pray as in the Memorandum of appeal namely ....." Re then set out paragraphs.
>
> (a) to (f) which with the exception of para
>
> (b) must represent the prayers in the Memorandum of appeal".

That the drawing of the Memorandum of appeal and the formulation of the written submissions for the appellant are a result of inexperience on the para of appellant's Counsel I need not stress. But certainly we have not been asked in either of the two documents to set aside the judgment of the trial Court. At any rate that is what the two documents convey to me.

Rule 84(1) of the Rules of the Court requires that:-

> "84(i) A Memorandum of appeal shall set forth……. the grounds of objection co the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make".

Thus although the Memorandum raised some objections to the judgment of the trial Judge it has not asked us to set aside that judgment and decree. The Court has been asked both by the prayers in Memorandum and by the submissions to interpret certain provisions of the Succession Act as amended by the Succession Amendment) decree 1972 and the Administrator-General's Act.

I would dismiss this appeal for the above reason apart from those given by the learned Deputy Chief Justice.

In my opinion this appeal has got no merit whatsoever and I agree that it ought to be dismissed with costs to the respondents.

Delivered at Mengo this 4th day of March 1996.

J.W. N. TSEKOOKO,
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W. MASALU-MUSENE
REGISTRAR, SUPREME COURT.

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