

UGANDA / JUDGMENT

Balikuddembe & Ors v Kiwalabye & Ors
(Miscellaneous Cause No 11 of 2015)
[2015] UGHCFD 36 (27 October 2015)
[2015] UGHCFD 36

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Miscellaneous Cause No 11 of 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

MISCELLANEOUS CAUSE NO 11 OF 2015

ARISING FROM LAND CLAIM NO 210 OF 2009

1. BALIKUDDEMBE JUMBA PETER
2. NAKIGUDDE SPECIOZA
3. ANTHONY KYOTALYA KIGUNDU.....APPLICANTS

AND

1. JAGGWE MBUGA
2. GERTRUDE NAMBOOZE.....DEFENDANTS

VERSUS

1. KIWALABYE EXPEDITO
2. NKIZI RONA
3. NAKIBINGE KENNETH..... RESPONDENTS

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application by Notice of Motion brought under section 222 of the Succession Act Cap 162, section 98 of the Civil Procedure Act Cap 71; and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) SI 71 – 1. It seeks orders that the respondent be granted letters of administration to the estate of the late Gertrude Namboozie limited for the purpose of proceeding with a suit against the estate of Gertrude Namboozie deceased; that the respondents thereafter be made parties to the suit as legal representatives of the estate of Gertrude Namboozie deceased; and that costs of the application be in the cause.

The application was amended at the hearing by removing the named defendants as parties. It is supported by the affidavit of the 1st applicant, Balikuddembe Jumba Peter. It sets out a long list of grounds on which it is based, which grounds are also reflected in the 1st applicant's supporting affidavit. For the sake of brevity and to avoid repetition, the said grounds will be addressed when analyzing the 1st applicant's affidavit evidence.

The background is that there is a pending suit filed by the applicants against Jjagwe Mbuga and Gertrude Namboozie in the Land Division of the High Court. Gertrude Namboozie died on 24/05/2010 and the claim survived her. The applicants would like to proceed with the suit against the 1st defendant and the estate of the late Gertrude Namboozie. They pray this court to appoint the respondents administrators of the deceased Namboozie's estate, limited to the suit, and also to be made parties to the suit for purposes of representing the deceased in the main suit.

Section 222 of the Succession Act provides that where it is necessary that the representative of a deceased person is made party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in a suit, limited for the purpose of representing the deceased in that suit or in any other such cause until a final decree is made.

The 1st applicant's supporting affidavit is that the applicants filed Land Claim No 10 of 2009 against Jjagwe Mbuga and Gertrude Namboozie on 10/08/2009, pending in the Land Division. Gertrude Namboozie died on 24/05/2010 before the suit could be fixed for hearing. The respondents were nominated in a family meeting of 05/08/2011 to take out letters of administration to the estate of the late Gertrude Namboozie. The respondents consequently applied for letters of administration to the late Namboozie's estate vide Mengo Administration General Cause No.2709/2010. The Administrator General then wrote to the LC III Lubaga Division requesting them to convene a meeting to appoint persons who would take out letters of administration, which was done. The respondents have since never got the certificate of no objection from the Administrator General. The applicants' counsel M/S Mbogo & Co Advocates then wrote to the Administrator General requesting her to take over the estate but the request was declined.

The foregoing averments are supported by annextures to the 1st applicant's supporting affidavit, that is, a copy of letters of administration in AC 855/2009 annexure A; a declaration of death of the late Namboozie Gertrude to the Births and Deaths Registration Bureau annexure B; minutes

of the family meeting annexure C; a report of the death to the Administrator General annexure D; the letter from the Administrator General to the Chairman LC III Lubaga Division annexure E ;a copy of the will and its English translation annexure F; and a copy of a letter from M/S Mbogo & Co Advocates indicating that the Administrator General was requested to take over the estate but he declined annexure G.

Sections 222 of the Succession Act empowers this court to grant letters of administration to a nominated party limited to the purpose of representing a deceased party to a pending suit so that the suit can proceed.

The applicants also based their application on section 98 of the Civil Procedure Act, which empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In the exercise of this discretion, court must act judiciously and according to settled principles, bearing in mind that the decision must be based on common sense and justice. See **Standard Chartered Bank (U) Ltd V Ben Kavuya & Barclays Bank (U) Ltd** [2006] HCB Vol 1 p.134.

In the premises and on basis of the foregoing authorities, I find that this is an appropriate case where letters of administration can be granted to the respondents as nominated parties to seek such grant, limited to the purpose of representing Gertrude Nambooze, a deceased party to a pending suit, so that the suit can proceed.

All in all this application is allowed. Costs of the application will be in the cause.

Dated at Kampala this 27th day of October 2015.

Percy Night Tuhaise

Judge.

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