

UGANDA / JUDGMENT

Bamanya v Kimpwitu (Civil Suit 121 of 2022) [2024] UGHCFD 37 (23 July 2024)

[2024] UGHCFD 37**COURT**

HC: Family Division (Uganda)

BEFORE

Nagawa, J

CASE / FILE NUMBER

Civil Suit 121 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA [FAMILY DIVISION] CIVIL SUIT NO. 121 OF 2022****BAMANYA JAMES MACUMU ::::::::::::::: PLAINTIFF****VERSUS****KIMPWITU JOYCE HELLEN KATE ::::::::::::::: DEFENDANT****JUDGEMENT BEFORE: HON. JUSTICE CELIA NAGAWA****1.0 Introduction.**

- 1.1 The Plaintiff Bamanya James Macumu brought this suit against the defendant Kimpwitu Joyce seeking orders for;
- 1. A declaration that the Plaintiff as a widower of the late Dwaya Margaret is entitled by law to apply for Letters of Administration.
- 2. A declaration that the caveat lodged by the defendant against the Letters of Administration by the Plaintiff has no justification.
- 3. An order for the removal of the Caveat lodged by the defendant forbidding the grant of Letters of Administration to the plaintiff.
- 4. An order that the plaintiff be granted Letters of Administration to the estate of the late Dwaya Margaret Bamanya.

- 5. A permanent injunction forbidding the Defendant from further interfering with the estate of the late Dwaya Margaret Bamanya, general damage damages and costs of the suit.

- 1.2 The defendant was served and she filed a Written Statement of Defence on 5th April, 2022.
- 1.3 The Plaintiff was represented by Counsel Daniel Byaruhanga of DAB Advocates, Plot 484A Sir Apollo Kagga Road, Kampala.
- 1.4 The Defendant was represented by Counsel Kato Wilson of M/S Baraka Legal Associated Advocates Plot 923, Makerere Hill Road, Ham Towers, Kampala.

2.0 Background of the suit.

- 2.1 The Plaintiff is the widower of the late Dwaya Margaret Bamanya who died on 13th November, 2020 leaving behind three issues to wit Agaba Arnold age 12 years, Niwagaba Bridget aged 9 years and Ninsiima Annet aged 2 years.
- 2.2 The Plaintiff petitioned this court for the grant of letters of administration to administer his late wife's estate. The defendant is the great-grandmother to the issues of the deceased's estate. She lodged a Caveat forbidding the grant of Letters of Administration to the Plaintiff.
- 2.3 The defendant contends that at the time of the deceased's death, she was not married to the plaintiff. She asserted that the deceased had struggled to maintain, feed and educate her children on her own without support from the plaintiff. The defendant also contended that the plaintiff had been hostile towards the deceased which forced her to move out of their house and rent a house at Namasuba with a one Kagumire Simon and the two sired a child, Annet Nimusiima.

3.0 Issues as Agreed by the Parties.

- 3.1 The court is empowered under **Order 15 Rule 5 of the Civil Procedure Rules SI 71-1**, to amend or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties. The court therefore amends the issues as follows;
- **1. Whether the Caveat lodged against the Plaintiff's Application for Letters of Administration by the defendant dated 8th November, 2022 should be vacated?**
- **2. Whether the Plaintiff is a fit and proper person to be granted Letters of Administration for the estate of the late Dwaya Margaret Bamanya alone?**
- **3. Whether the defendant is a beneficiary of the estate of the late Dwaya Margaret Bamanya?**

- 4. What remedies are available to the parties?

4.0 Locus Proceedings.

- 4.1 This court conducted a locus hearing of the defence's case. Order 18 of the Civil Procedure Rules SI 71-1, lays down the procedure for conducting and hearing Civil Suits and examination of witnesses. See **Nagidde Rebecca Versus Mwasa Charles Steven (Civil Appeal No. 160 of 2018) [2020]** as decided by Hon. Justice Egonda Ntende.
- 4.2 The hearing at the locus was conducted on 30th April, 2024 at Rubaga, Lule Zone, Kampala District, starting at 9:00 am. The Court deemed it necessary following an application by the defence counsel to conduct the hearing at the locus due to the health condition of the defendant at that time.

5.0 Submissions by Counsel.

- 5.1 Counsel for the Plaintiff filed written submissions on the 22nd May, 2024 and the Defendant filed her submissions in defence on the 5th June, 2024. I appreciate Counsel's effort to have the matter resolved in the favor of their respective clients. This court has considered the submissions, evidence and authorities submitted by the parties as required by law in determination of this case.
- 6.0 Determination by Court.

Whether the Caveat lodged against the Plaintiff's Application for Letters of Administration by the defendant dated 8th November, 2022 should be vacated?

- 6.1 The Defendant lodged a Caveat against the Plaintiff's application for the grant of Letters of Administration contending that at the time of the deceased's death, they had separated and she was cohabiting with another man with whom they sired a child. Under paragraph 2 of her affidavit in support of the Caveat the defendant averred that the deceased had three biological children, one of whom was not the Plaintiff's. She further stated that before she passed away, the deceased had been abandoned by the Plaintiff to raise their two children on her own.
- 6.2 The law allows the lodgment of a caveat to protect the estate of a deceased person. **Section 249 of the Succession Act, Cap. 268** provides that Caveats against the grant of probate or administration may be lodged with the High Court or Chief Magistrate or Magistrate Court; and immediately on any Caveat being lodged with any Chief Magistrate Court or Magistrates Court or the Magistrate shall send a copy of the caveat to the High Court.

- 6.3 **Section 251 (2) of the Succession Act Cap 268** provides that (2) Where a caveat is lodged under Section 249, the court shall suspend the proceedings in the matter until the caveat has been withdrawn or lapsed or a suit for the removal of the caveat has been filed and determined by the court."
- 6.4 **Section 252 subsection 2** stipulates that; " Notwithstanding subsection (1) a person who lodges a caveat in respect of a petition for probate or letters of administration shall, within six months from the date the caveat was lodged, commence proceedings to prove the objections contained in the caveat".
- 6.5 **Subsection 3** of the same section provides that; "where a person who lodges a caveat of a petitioner for probate of letters of administration does not comply with the provisions of subsection (1) or (2), the caveat shall lapse.
- 6.6 As per the provisions of Section 252 (1) the Plaintiff filed this suit to have the caveat vacated. The suit was filed within the stipulated period by the Plaintiff and this court will determine the suit on its merit since the caveat has not lapsed or been withdrawn, vacation will only be granted on sufficient grounds.
- 7.0 **Whether the Plaintiff is a fit and proper person to be granted letters of administration for the estate of the late Dwaya Margaret Bamanya alone?**
- 7.1 PW2, the deceased's biological mother testified to this court on oath stating that the plaintiff is the person most suited to obtain letters of administration.
- 7.2 While the defendant submitted that the plaintiff and the deceased were separated at the time of her death, the Plaintiff did not deny this allegation of separation.

- 7.3 I have noted that during the Petition for Letters of Administration the Plaintiff stated that the deceased Dwaya Margaret Bamanya had a fixed place of abode at Kikaaya "B" Village, Kikaya Parish, Kawempe Division, Kampala District. During the testimony of PW2 the mother of the deceased stated that the deceased resided in Ntinda, Kisaasi, Bahai (these are almost 3 different places), whereas the defendant testified that the deceased resided with Simon Kagumire the father of the 3rd Child in Namasuba. If indeed, the 3rd child (last born) was not born of the Plaintiff then it is true that the deceased did not reside with the Plaintiff at the time of her death. It means that they were living in different households and therefore separately. The 3rd child was aged 1 year 3 months at the time of filing the petition.
- 7.4 Section 26 of the Succession Act, Cap. 268 on separation of spouses states that; (1) "A surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household".

- 7.5 From the testimonies of the witnesses, on where the deceased resided at the time of her death, it is clear that the deceased and the Plaintiff were not residing in the same household. The Plaintiff is not protected by subsection (2) and (3) of the Section 26 of the Succession Act, either.
- 7.6 However, I take cognizes that their minors who are beneficiaries of the estate of the deceased. Other than the parties in this suit no one has come up to state that they can have the responsibility to take care of them (guardian) or manage the estate even when their grandmother is within means.

- 7.7 It was the testimony of the Plaintiff that he did not go through the office of the Administrator General as the due process requires, he just petitioned this court for Letters of Administration as a widower. He therefore did not obtain a Certificate of No Objection from the Administrator General which is a requirement.
- **7.8 Section 187 of Succession Act provides that;** *"Except as provided in this section, 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 established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction".**
- **7.9 Section 199 on surviving spouse to have priority to administer estate of deceased spouse.**
 - (1) The surviving spouse shall have preference over any other person in the administration of the estate of the deceased intestate.
 - (2) The preference of the surviving spouse under subsection (1) may be disregarded by the Administrator General under Section 4 of the Administrator General's Act where-
 - a) the Administrator General determines that the surviving spouse is not a fit and proper person to administer the estate of the deceased spouse;
 - b) the Administrator General finds it necessary, in the circumstances of the estate, that court grants the administration of the estate to another person.

7.10 For the Administrator General to determine who is a fit and proper person to administer the estate of the deceased spouse, the applicant/petition must have presented

themselves before his office and after due process, once he finds one fit and proper then he grants a certificate of no objection (CONO), this as testified by the Plaintiff was a step missed as no appearance was made before his office. Meaning that no one was found fit and proper before the Administrator General before filing a Petition for the grant by this court.

- 7.11 In the circumstances, there are minors whose interests need to be protected. Therefore, since the best interests of the children shall be the primary consideration in all decisions taken by courts of law, the Plaintiff being the natural guardian of the two (2) children and the defendant (who has interest of the child not born of the Plaintiff) shall proceed to the Administrator General to obtain a Certificate of No Objection.
- 7.12 I therefore find that this issue is answered in the negative.
- **8.0 Whether the defendant is a beneficiary of the estate of the late Dwaya Margaret Bamanya?**
- 8.1 Upon obtaining Letters of Administration following the grant of Certificate of No Objection and a petition to this court, the administrator shall distribute the estate to the beneficiaries.
- 8.2 Section 176 of the Succession Act, Cap. 268 provides that; "the executor or executrix or administrator or administratrix, as the case may be, or a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such".
- 8.3 Upon the grant of Letters of Administration, the administrator(s) shall determine who the beneficiaries of the deceased estate are as per the provisions of Section 23 of the Succession Act, Cap. 268.
- **9.0 What Remedies are available to the parties?**

9.1 General Damages

General damages are losses that flow naturally from the defendant's act. Therefore, general damages are damages that the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct, and proximate result or the necessary result of the wrong complained of. The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant. **See Lydia Mugambe Versus Kayita James & Another HCCS No. 339 of 2020.**

9.2 The court finds that the Plaintiff did not sufficiently prove to this court that the defendant's actions are those warranting the award of damages. The prayer for an award of general damages is hereby denied.

9.3 Costs

It is trite law that costs follow the event, and the successful party is entitled to costs. Section 27 of the Civil Procedure Act states; "provided that the costs of any action, cause or other matter shall follow the event unless the court or the judge shall for good reason otherwise order". Considering that this is a family matter where the parties relatives and interested in the administration of the estate on behalf of the minors. I will not order any costs to promote reconciliation under Article 126 (2) (d) between the parties.

10.0 Conclusion.

10.1 In the final result, the court determines as follows;

- 1. The Plaintiff and the Defendant shall proceed to the Administrator General's Office to obtain a Certificate of No Objection for the Estate of the Late Dwaya Margaret Bamanya.
- 2. The caveat lodged against the petition shall be vacated upon the grant of a Certificate of No Objection and following a fresh petition for Letters of Administration for the Estate of the Late Dwaya Margaret Bamanya presented before Court.
- 3. No award to General Damages
- 4. Each party bears its costs.

Dated, signed and delivered via Email this 23rd day of July, 2024.

..... CELIA NAGAWA JUDGE

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