

UGANDA / JUDGMENT

Bwogi v Bisase (Civil Suit 647 of 2001) [2010] UGHCFD 2 (20 December 2010)

[2010] UGHCFD 2

COURT

HC: Family Division (Uganda)

BEFORE

Okello, J

CASE / FILE NUMBER

Civil Suit 647 of 2001

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION) HCCS NO. 647 OF 2001 PAUL HANNINGTON BALINTUMA
BWOGI:::::::::::::::::PLAINTIFF**

VERSUS**JOANITA BISASE ::::::::::: :DEFENDANT****BEFORE: HON. LADY JUSTICE C. A. OKELLO****JUDGMENT:**

This suit arose from a contentious Administration Cause No. 652 of 2000. It was filed by Paul Hannington Balintuma Bwogi (hereinafter referred to as the plaintiff or Bwogi) when he petitioned for Letters of Administration to the estate of one Tanze Bekalaze Balintuma Bwogi (Tanze) whereupon Gweralsi, the original defendant lodged a caveat against the issuance of ^a grant to him. The plaintiff prayed for an order declaring him related to the late Tanze by consanguinity, and therefore entitled to Letters of Administration to his estate. In her caveat, Gweralsi claimed that she was Tanze's sister and therefore entitled to administer his estate in place of the plaintiff. She filed a written statement of defence, but died before the suit was heard. The present defendant, Joanita Bisase, successfully applied to be substituted as defendant in the suit.

i

In the amended plaint filed after Ms. Bisase became a defendant, the plaintiff repeated his claim to be entitled to Letters of Administration as grand-nephew of Tanze and as heir to his late grandfather Dr. Ernest Kajjibbala Balintuma who was the brother, and customary heir to Tanze. The

plaintiff pleaded further that as a stranger to the estate, the defendant is not entitled to Letters of Administration. In her written statement of defence, the defendant claimed that Tanze was her grand-father having been father of her late mother Joyce Kyega. She pleaded further that her mother received substantial assets from Tanze's estate when it was being administered by the Administrator General before her death. Finally, she pleaded that it is the plaintiff who is not entitled to administer the estate as a stranger thereto.

The scheduling conference came up with some agreed facts which are recorded hereunder:-

- (1) The plaintiff is a blood relative of Tanze Bekalaze Balintuma Bwogi.'
- (2) Tanze passed away in 1979 and left an estate that needs to be administered.
- (3) The plaintiff applied for grant of Letters of Administration to the suit estate. One Gweralusi lodged a caveat against the issue of the grant.
- (4) Gweralusi has since passed away.
- (5) The late Tanze Bekalaze was married to Deborah Nanziri. The two never had a child.
- (6) The defendant is a daughter of the late Joyce Kyega.

Three issues were framed for determination:-

- (1) Whether the late Joyce Kyega Nakayima was daughter of the late . Tanze.
- (2) Who is entitled to a grant of Letters of Administration of the suit estate.
- (3) Remedies available to the parties.

Two witnesses testified for the plaintiff. They were Mrs. Mary Bwogi (PW1) and the plaintiff (PW2). The defendant called four witnesses: Mrs. Blandina Nalumaga (DW1), Mr. Moses Sambwa Luutu (DW2), Mrs. Joanita Bisase (DW3), and Mr. Octavius Ndawula (DW4).

In summary, Mrs. Mary Bwogi testified that she came to know the family of the late Tanze when she married his nephew James Bwogi (now deceased) in 1963. James was the son of Tanze's younger brother Dr. Ernest Kalibala Balintuma (also deceased). Two years after her wedding her husband introduced her to his uncle and his wife Deborah Nanziri as well as to Joyce Kyega Deborah's niece; otherwise Tanze Bekalaze and his wife were not blessed with any children. Nor did Tanze have children with any other woman. PW1 added that she and her husband James spent their honey moon at the home of Joyce Kyega in Masaka. She claimed further that she and Dr. E. Kalibala reported Tanze's death to the Administrator General's office when he and his wife were killed in a bomb blast in 1979. The

plaintiff (PW2) did not add much to his mother's evidence. He merely confirmed that he is a grand-son of the Dr. Ernest Kalibala Balintuma and grand nephew of the late Tanze Balintuma at whose home he spent much of his school holidays. PW2 also confirmed that Tanze and Deborah never had any children. Concerning the defendant's interests in Tanze's estate, Mr. Bwogi testified that she is a total stranger with no claim to the estate.

For the defendant, Mrs Blandina Kasasiira Nalumaga (DW1) gave a rumbling history from which I gathered that she became distantly acquainted with Tanze in or about the year 1923 when he was a student at Budo. She later learnt from her older sisters who were studying at Ndejje that he made a girl by the name Loy Rose Semakula pregnant. Later still the child grew up in her neighbourhood and she discovered the child to be Joyce Loy Rose's child. Blandina's brother ended up marrying the girl. According to her, Tanze gave Joyce a piece of land in Mengo Inter vivos. (Exh D2 (e)).

The second witness for the defendant was Mr. Moses Sambwa Luutu who introduced himself as the son of Abisagi Wanyana Nabitosi Luutu, a sister of Tanze. Mr. Luutu confirmed that Joyce was a daughter of the late Tanze, his means of knowing the relationship was Tanze being his maternal uncle. He testified that his mother made a will in 1961 in which she named Joyce Kyega as her customary heir by virtue of her being a niece [exh. D2 (g)]. In the course of his testimony Mr. Luutu identified

Tanze, James Bwogi, Joyce Kyega and Joanita from the group photograph (exh. D2 (f)).

The defendant was the third witness. She testified that her late mother Joyce Kyega was daughter of Tanze. She added that her late grandfather visited her home in Masaka Buddu several times and further that -he donated to her mother land comprised in Block 326 Plot 139 Buddu Masaka inter vivos. She tendered a photocopy of a certificate of title in evidence. [exh. D2 (e)]. She identified almost all the people in exh D2 (f) as her mother, her grand-father, the late James Bwogi and five of her siblings born of Joyce. She also tendered in evidence a report of the death of Tanze that she claimed her mother made to the Administrator General in June 1979 [exh. D3]. DW3 also testified that her late mother used to receive shares of Tanze's estate from the office of the Administrator General as evidenced by documents tendered as exh. D2 (b), (c), (d).

The last witness for the defendant was Mr. Octavius M. Ndawula (DW4) who testified that he handled the files related to the estate of Tanze and thus became well informed of the state affairs on it when he was Administrator General from 1995 up to 2001. According to Mr. Ndawula, the first Report of Tanze's death was made to the office of the Administrator General by Joyce Mulibala Kyega as daughter in June 1979. The estate was administered and administration completed in 1986 although two other files were later opened in ignorance of completion of

I

administration. One file was opened by Gweralusi in the 1990s and a third one by the plaintiff; each claimed to be the rightful beneficiary entitled to administration. Otherwise records of the estate showed that Tanze had only one child Joyce Kyega on whose instructions the Administrator General distributed Tanze's estate in 1986 mostly to Joyce's children and grand children.

Mr. Ndawula explained that when the other two files were opened, the estate became contentious because Mary Bwogi (PW1) complained to State House that the office of the Administrator General was frustrating the beneficiaries from getting their beneficial interests therein. A meeting was convened at State House Nakasero to discuss speedy end to administration of the estate. In attendance were the Minister of Justice, the Solicitor General, the then Inspector General of Government, the witness and his team, and the Presidential Assistant. At the conclusion, DW4 was directed to explain the delay in completion of administration by the Administrator General's office as well as completion of this case by the court. He explained in exh. D2. Mr. Ndawula testified that the plaintiff's application for a grant came about because a company that had leased the deceased's land in Bajo Mukono wanted to renew the lease when the term expired. Mrs. Mary Bwogi requested the Administrator General's office to receive the ground rent but that office declined because there were wrangles about the identity of beneficiaries. The office issued a Certificate of No Objection to the plaintiff instead.

This is briefly the evidence in this suit. Counsels for the parties were granted leave to file written submissions. According to court records, only counsel for the plaintiff filed his submissions. I turn to the issues starting with the first one whether the late Joyce Kyega Nakayima was the daughter of the late Tanze.

With regards to this issues, the learned counsel for the plaintiff submitted that in the absence of the defendant's a birth certificate or a DNA report, there is no proof that the Joyce Kyega was a daughter of the late Tanze.

Certainly there is no DNA Report, and there is no Birth Certificate proving paternity of Joyce. Be that as it may, it is common evidence of the parties that Joyce Kyega had a close connection with the family of the late Tanze Bekalaze. Mary Bwogi's evidence shows that she met Joyce at the home of Tanze during her early visits to Tanze's home. In fact, Tanze showed her his wife Deborah and Joyce. Mary however, did not tell court whether Joyce was introduced as Debora's niece or not; nevertheless, Mary spent her honey-moon at the home of Joyce. If it is true that Joyce was ^a stranger to Tanze's family, I find it even more strange in the absence of any explanation that Mary's honey-moon was at the stranger's home rather than at the home closer relatives e. g the aunts of the late Bwogi.

Secondly, the group photograph exh. D2 (g) is proof of Joyce's closeness to Tanze. Apart from James Bwogi, the other people in the photo are

Tanze, Joyce and no less than 7 of Joyce's children whom DW3 identified by name as her siblings. It is unlikely that Joyce would have had an occasion to take a photo with her children and Tanze if she had just been ^a niece of his wife, the latter does not in fact feature in the photograph. Her absence would tend to corroborate the evidence of Blandina that Deborah resented Joyce as a child of her husband making his visits to the daughter secret. Thirdly the photocopy of the certificate of title to land comprised in Block 326 Plot 139 Mumyuka, Mutuba 111 in Buddu county Masaka District shows that the registered owner was Joyce Mulibala Kyega the daughter pf T. B. Bakalanze. The entry of her name on the certificate was made in July 1961 and her description appears uncontested in the fifty years old record.

There is also the Report of Tanze's death dated 12.6.1979 that Joyce Kyega made to the office of the Administrator General (exh. D3) wherein she described herself as the only child of Tanze (para 16). I have not seen the one that PW1 claimed to have made with Dr. Kalibala. The authenticity of the Report has not been assailed or controverted by the plaintiff's evidence. Then there are several documents/correspondences either emanating from the office of the Administrator General or that were addressed to that office which prove that the Administrator General administered Tanze's estate and that during that administration Joyce Kyega was the major beneficiary to the estate. The documents are in tandem with the testimony of Mr. Ndawula who was not even Administrator General by the time they came into existence that Joyce was treated as Tanze's only child. I find the documents to be independent and credible evidence of what they state.

Lastly, from available evidence, it appears that no one complained against Joyce having received the substantial shares of the estate. Certainly available evidence does not show any suit filed by any relative of Tanze to recover the benefits she received or any criminal prosecution, let alone investigations made into those shares. I therefore accept evidence that Joyce was daughter of Tanze; his relatives were aware of relationship which became an issue only with the discovery of the property at Bajjo. Given the overwhelming evidence of Joyce paternity, the answer to the first issue is that Joyce was the daughter of Tanze.

The second issue is who is entitled to Letters of Administration. I need not belabour this issue. As between the plaintiff and the defendant, it is the defendant, whose descent is traceable through a lineal descendant of Tanze, who is entitled to Letters of Administration to his estate. It is ordered that Letters of Administration be issued to her.

The last issue is remedies available to the parties. The plaintiff failed to prove his entitlement to Letters of administration to the suit estate. His suit is dismissed with costs to the defendant. Letters of administration for the unadministered assets of Tanze's estate shall issue to the defendant.

C. A. Okello

Judge

4

20.12.2010

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