

UGANDA / JUDGMENT

In an application for extension of time within which to file an inventory by Donald Mugimba and Ruth Mugimba both administrators of the estate of the late Frida Mugimba (Miscellaneous Application 42 of 2023) [2024] UGHC 106 (26 March 2024)

[2024] UGHC 106

COURT

High Court of Uganda

BEFORE

Joyce Kavuma, J

CASE / FILE NUMBER

Miscellaneous Application 42 of 2023

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MC-0042-2023**

(Arising from HCT-05-CV-AC-0069-2019)

**FORMERLY MUGIMBA FRIDA RE THE ESTATE \$OF\$ CELL. MBARARA HIGH
SCHOOL \$\mathbf{OF}\$ RESIDENT PARISH, KAMUKUZI DIVISION, MBARARA
RUHAORO DISTRICT.**

(Being an application for extension of time within which to file an inventory by Donald Mugimba and Ruth Mugimba both Administrators of the estate of the late Frida Mugimba)

BEFORE: HON LADY JUSTICE JOYCE KAVUMA**RULING****Introduction.**

- [1] By a notice of motion dated 28th December 2023, the Applicants, Donald Mugimba and Ruth Mugimba sought from this court an order for extension of time within which to file a true and accurate inventory and account of the estate of the late Frida Mugimba.

Background.

[2] The factual background of this application, from the motion and supporting affidavit is as follows;

The Applicants herein were granted Letters of Administration for the Estate of the late Frida Mugimba by this court on 23rd September 2019. Soon thereafter, the country was placed under lockdown due to the outbreak of Covid-19 which constrained the Applicants' plans to

distribute the deceased's estate. Because of this they inadvertently omitted to file an inventory in respect of the deceased's estate within the legally stipulated time. That the Applicants have since prepared the distribution of properties forming the deceased's estate to the intended estate beneficiaries who are the Applicants themselves and in so doing wish to fulfil their duties to court and the deceased's estate by filling the true and accurate inventory and account of the deceased's estate.

That as intended beneficiaries, they shall not be prejudiced by this application.

Representation.

The Applicants were represented by M/s Beatrice Sewava. [31 Counsel proceeded by written submissions which I have given due consideration.

Analysis and decision of court.

The law that governs filing of inventories for estates of deceased [4] persons by administrators is the Succession Act, Cap. 162. Section 278 of the Succession Act provides as follows:

"278. Inventory and account.

- (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of." [Emphasis mine]

[5] Failure to file an inventory is a just cause for revocation of a grant of letters of administration under Section 234 of the Succession Act. The time period within which to file an inventory under the grant is mandatory under Section 278(1) of the Succession Act and must be adhered to strictly.

In the case of Hadijah Ndagire and anor vs Mohammad Kasozi and ors Civil Suit No. 40 of 2014 this court observed that:

"The prescribed period for filing an inventory is six months. If the administrator finds herself unable to file the inventory within the prescribed time, she is duty bound to apply to the court which issued the grant for extension of time, stating the reasons for her inability to perform the required task within the 6 - $\star$ month period. The court, if persuaded by the administrator's grounds for extension of time, may grant the application. This in my opinion ought to be the correct procedure under section 278(1) of the Succession Act." [Emphasis mine]

The filing of an inventory is a court order premised on the wording of the grant awarded to the Applicant which expressly binds the

Applicant for letters of administration or probate to an undertaking to make a full and true inventory of the properties and credits of the deceased's estate to court the breach of which is punishable. (See Mukisa Patrick and anor vs Nabukalu Rebecca (Civil Suit 29 of 2016).)

$\$[6]\$$ I take judicial notice of the fact that indeed Uganda experienced a series of lockdown responses to the Covid 19 pandemic.

The first Covid 19 lockdown was imposed on 18th March 2020 (See <https://covid19.gou.go.ug/timelines.html> last accessed on 25th March 2024\$).

From 23rd September 2019 when Letters of Administration were granted to the Applicants to 18th March 2020 when the lockdown was imposed, there was a space of 5 months, 3 weeks, 3 days. The Applicants had **seven days** left on the statutory clock set by **Section 278(1)** of the Succession Act (supra) within which to file an inventory with this court.

By 26th May, 2020, the restrictions on movement and lockdown had been eased. (See <https://covid19.gou.go.ug/timelines.html> (supra)). Still the Applicants had not filed an inventory for the estate of the late Frida Mugimba.

3 years, 6 months, 3 weeks, 3 days after 26th May 2020 on 20th December 2023 the Applicants filed this application for extension of time within which to file an inventory for the estate of the late Frida Mugimba.

The law is now settled, "Vigilantibus non dormientibus aequitas $\boldsymbol{\$}$ subvenit" equity aids the vigilant and not the indolent. (See James

Semusambwa vs Rebecca Mulira (Court of Appeal Civil Appeal no. 1 of \$1999\$).

In applications for extension of time within which a party may exercise or do a legally imposed duty, the court exercises its discretion. The discretion of the court is guided by how long a party took to approach court for such an extension. Short and excusable delays are looked at with favour by the court than inordinate, inexcusable, intentional and contumelious delays. (See for example in Lucas Marisa

vs UBL (1988-90) HCB 131).

When the delay is prolonged and inexcusable, and is such as to do grave injustice, the court may in its discretion dismiss the action straightaway. Delays that are so long turn justice sour. (See Allen vs

Sir Alfred McAlpine & Sons [1968] 2 QB 229).

It should however be noted that inexcusable delays will not automatically lead to dismissal of a suit or application. The court must be ready to decide whether or not on a balance of doing substantial justice an action delayed ought to be dismissed. (See Allen vs Sir Alfred

McAlpine & Sons Ltd (supra).

As it stands in the instant matter, the Applicants delayed in filing the instant application and filing an inventory. This court, on the evidence before me has not found any excusable reason why there was such a delay of close to **five years** why the Applicants failed to file an inventory with this court for the estate of the late Frida Mugimba.

The time limits set by legislations are matters of substance which ought to be considered in the circumstances of the case. (See **Uganda Revenue Authority vs Uganda Consolidated Properties Ltd** Court of Appeal Civil Appeal no. 31 of 2000).

In the case of **Re Application by Mustapha Ramathan for Orders of certiorari, Prohibition and Injunction** Court of Appeal Civil Appeal No. 25 of 1996, Berko, JA as he then was opined that; Statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is **interest reipublicae ut sit finis litum**, meaning that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of a particular case.

The framers of Succession Act, Cap 162 set a strict time limit on $\mathbf{[9]}$ the time within which an Administrator ought to file an inventory upon the mischief that administration of estates is not a life-long duty of the Administrators. It must come to an end.

The above notwithstanding, courts have been empowered under Article 126(2)(e) of the Constitution to administer substantive justice over undue regard to technicalities. Similarly, Section 98 of the Civil Procedure Act gives this court inherent powers to ensure that justice is rendered in instances where the law may be silent on a particular point. The Succession Act, Cap 162 is silent on within which time a defaulting Applicant like the Applicants herein may make such an application to court.

This Court however has powers under **Section 33** of the Judicature Act to grant such remedies as may be just in the circumstances of the cases.

[10] In the upshot, upon reading all the above provisions of the law together, it is the finding of this Court that whereas there was an inordinate and inexcusable delay on the part of the Applicants to file an inventory for the estate of the late Frida Mugimba and ultimately bringing the instant application, it would be in the interest of substantive justice for this application to be allowed.

This application therefore succeeds in the following terms;

- 1. The Applicants/Administrators are ordered to file a final and complete inventory of the distribution of the estate of the late Frida Mugimba within Sixty days from the date of this ruling.
- 2. Upon failure to comply with the above order, the Letters of Administration granted to the Applicants shall be deemed revoked in accordance with the provisions of Section 234 of the Succession Act.
- 3. I make no orders as to the costs of the application.

I so order.

Dated, delivered and signed at Mbarara this 26th day of March 2024.

Joyce Kavuma

Judge

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