

UGANDA / JUDGMENT

Kalema v Kayondo & Another (Civil Suit 92 of 2014) [2023] UGHC 330 (11 March 2023)

[2023] UGHC 330

COURT

High Court of Uganda

BEFORE

Katamba Nkwanga, J

CASE / FILE NUMBER

Civil Suit 92 of 2014

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THE REPUBLIC OF UGANDA**IN THE HIGHCOURT OF UGANDA AT MASAKA****CIVIL SUIT NO. 92 OF 2014****KALEMA HENRY ::: PLAINTIFF****VERSUS****1. KAYONDO EXPEDITO SALONGO****2. NAMAZZI BRIDGET ::: DEFENDANT*****Before; Hon Justice Victoria Nakintu Nkwanga Katamba*****JUDGEMENT.****BACKGROUND**

The Plaintiff instituted this suit against the defendants for revocation of the grant of Letters of Administration asserting that his grandfather the Late Nyansio Kyagulanyi died testate and that his father had earlier successfully obtained probate of the deceased's estate. The Plaintiff case is that the defendants concealed the Late Nyansi Kyagulanyi's Will in their petition for Letters of Administration to his detriment. The Defendants denied the Plaintiff's claims and stated that the plaintiff had no locus to bring the case as he was neither a beneficiary of the estate of the late

Nyansio Kyagulanyi nor an executor, nor devisee of the said deceased as the latter died intestate. Whereas Ldovic Kiyimba was granted Letters of Administration of the late nyansio Kyaguulanyi, he passed on before distributing the estate to the beneficiaries which he ought to have distributed under the laws of intestacy. That upon the demise of Kiyimba Ludovic, the estate of Nyansio Kyagulanyi became **bona vacantia** which entitled them to apply for letters of administration. They disputed the grant of probate to Ludovic Kiyimba and the distribution thereunder and that they had even filed HCCS No. 35 of 2008 against Ludovic Kiyimba unfortunately he died before the suit could be determined. The Defendants countersued the Plaintiff for a declaration that he is intermeddling in the Late Nyasio Kyagulanyi's estate by occupying and using most of the deceased's estate property and preventing other beneficiaries from assuming their beneficial shares that were distributed to them by the defendants/counterclaimants and Administrators of Nyasio

Kyagulanyi. When the parties closed their respective cases, they were given directives to file written submissions but only the Plaintiff's counsel filed the submissions. This court commends Plaintiff's counsel's effort to file submissions.

ISSUES FOR TRIAL.

At scheduling the parties agreed to the issues below for trial

- 1. Whether the late Nyasio Kyagulanyi died testate?
- 2. Whether the Letters of Administration vide Administration cause no. 67 of 2013 granted to the defendants can be revoked?
- 3. What remedies are available to the parties?

PLAINTIFF'S SUBMISSIONS:

Issue 1: Whether the late Nyasio Kyagulanyi died testate?

Regarding this issue, the plaintiff submitted that under Paragraph 6 of the plaint, he pleaded that the Late Nyansio Kyagulanyi died testate. A copy of Nyansio's will dated 21st July 2002 was admitted on Court record as an exhibit (PEX 6) through PW2 Mr. Zibu Zzimula who was a witness to it and after Court inspected the original.

When Nyansio Kyagulanyi passed on, Kiyimba Ludovic his son and the heir named in the said will, applied to this Honourable Court and obtained Letters of Probate Vide Administration Cause No. 03 of 2008. A copy of the grant of Probate was accepted on Court record as an exhibit and it was marked PEX1.

Section 189 of the Succession Act, provides that probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

The plaintiff also submitted that whereas defendants contend that when the Late Kiyimba Ludovic obtained Letters of probate, they sued him, there was no final judgement which revoked the said grant of Probate nor was there a pronouncement by Court that the Will of the Late Nyansio Kyagulanyi was invalid.

It is a known principle of the law, that an order of Court remains valid until it is annulled or set aside.

The Plaintiff thus invited this court to find that the late Nyansio Kyagulanyi died testate.

1. ISSUE 2: Whether the Letters of Administration vide Administration cause no. 67 of 2013 granted to the defendants can be revoked?

The Plaintiff submitted that **Section 234 of the Succession Act** provides that the grant of probate or Letters of Administration may be revoked or annulled for just cause.

"Just cause", is defined under this section to include;

- (a) Where the proceedings to obtain the grant were defective in substance.
- (b) That the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case.
- (c) That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently.
- (d) That the grant has become useless and inoperative through circumstances or
- (e) That the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act or has exhibited under that part an inventory or account which is untrue in a material respect.

In Paragraphs 10 and 11 of the plaint, it is contended that;

"The defendants when applying for Letters of Administration of the estate of the Late Nyansio Kyagulanyi fraudulently failed to disclose to Court that the said deceased died testate. Their inventory was contrary to the Will of the deceased and deprived the estate of the Late Ludovic Kiyimba and the plaintiff their bequests."

The defendants did not disclose to court that the late Nyansio Kyagulanyi left a Will and that is why they obtained Letters of Administration.

The Plaintiff further submitted that even in instances where the executor or holder of Letters of probate dies after proving a Will just like in this case, it is not letters of Administration that are granted but rather Letters of Administration with a Will annexed. The Plaintiff cited **Section 197(c) of the Succession Act** for this proposition.

The Plaintiff buttressed his case with the authority of **SANYU LWANGA MUSOKE Vs SAM GALIWANGO SCCA NO. 48 OF 1995** in which the respondent's mother made a will in 1984 that included dispositions to certain people including the appellant. After the death of the respondent's mother there was a meeting which the respondent attended. In the said meeting, a document which was said to be the will of the respondent's mother was read. The respondent when he applied for letters of Administration at the Chief Magistrate Court of Mengo at Mengo did not disclose that the mother left a will. The appellant sought the revocation of the said letters of Administration on the ground that there was a will.

KAROKORA J. S. C held thus;

The evidence that emerged alludes to the fact that there was no doubt that the respondent got letters of administration by means of an untrue allegation of a fact essential in point of law to justify the grant because accordingly he knew that his mother had left a will. This dishonesty on his part is intended to deprive the appellant of her benefit under the will.

The Plaintiff submitted that in the above case, the Letters of Administration granted to the Respondent by the Chief Magistrates Court of Mengo were revoked by Court.

In conclusion, the Plaintiff prayed that this court answers this issue in the affirmative.

ISSUE 3

The plaintiff reiterated his prayers in the plaint as listed below;

- (a) Revocation of Letters of Administration granted to the 1st and 2nd defendants over the estate of the Late Nyansio Kyagulanyi
- (b) A declaration that the estate of the late Kiyimba Ludovic is a beneficiary in the estate of the Late Nyansio Kyagulanyi

- (c) A declaration that the plaintiff is a beneficiary of the estate of the Late Nyansio Kyagulanyi.
- (d) An order that the estate of the Late Nyansio Kyagulanyi be distributed in accordance with his will.
- (e) General damages for breach of trust.
- (f) Costs of the suit.

Particularly, the Plaintiff prayed for general damages of Uganda shillings Fifty million and costs of the suit.

DETERMINATION OF THE SUIT:

I have carefully considered the pleadings, the evidence and the submissions of counsel and below are the findings of this on the three issues.

ISSUE 1: Whether the late Nyansio Kyagulanyi died testate?

Letters of probate in respect to the estate of the Late Nyasio Kyagulanyi that were granted to the Late Kiyimba Ludovic were exhibited before this court as PEX1.

S. 56(1) (e) of the Evidence Act Cap.6 provides that court shall take judicial notice of the seals of all the courts of Uganda duly established. This court takes judicial notice of the Grant of Probate under Probate and Administration Cause No. 3 of 2008 that were granted to the Late Ludovic Kiyimba in respect of the estate of the Late Nyansio Kyagulanyi as its document.

I agree with the Plaintiffs that Letters of Probate are an Order of court and are valid until revoked or set aside. The Late Ludovic Kiyimba, having proved the Will of the Late Nyansio Kyagulanyi before this court, meant that on his demise, the defendants/counterclaimant had to apply to join the Administrator General or Kiyimba Ludovic's willing beneficiary to prove their cause of action against him for revocation of the probate which was not done. (see **In the matter of an application for revocation of letters of Administration and grant instead to Piwa Clare Miscellaneous Civil application No.53 of 2016**)

The Defendants/counterclaimants were presented with yet another opportunity to state their grounds of objection to the grant of probate of the estate of the Late Nyansio Kyagulanyi to the now late Ludovic Kiyimba by way of counterclaim when they were served with the instant suit.

I have critically considered the defendants/ counterclaimants counterclaim against the Plaintiff and found that they still did not take advantage of the opportunity that was presented to them in this suit to state their cause of action for revocation of probate that was granted to Ludovic Kiyimba against the Plaintiff who is his son and proponent of the will. Instead, in their counter claim they made their case for the application for and subsequent grant of letters of administration of the estate of the late Nyansio Kyagulanyi and the distribution thereof. They made no mention of the existing grant of Probate. Since the grant of probate has never been revoked, has still not been challenged nor revoked through the instant proceedings, this court finds that the Late Nyansio Kyagulanyi died testate.

In conclusion, this issue is answered in the affirmative.

ISSUE 2: Whether the Letters of Administration vide Administration cause no. 67 of 2013 granted to the defendants can be revoked?

The petition for Letters of Administration under which the defendants were granted authority to administer the estate of the Late Nyansio Kyagulanyi omitted to disclose the contested will. The defendants had a duty to disclose all facts including the disputed will and their reasons as to why they honestly believed that they were not under a duty to petition court for Letters of Administration with a will annexed.

The defendants clearly concealed from the court, the impugned will contrary to S.234(b) of the Succession Act Cap. 162 that requires them to disclose all material facts. They have even admitted to having had knowledge of the contested will in both their pleadings and evidence. They sued the Late Ludovic Kiyimba over the said will. They were well aware of it and should have anticipated that beneficiaries under it would most likely institute proceedings for its enforcement as indeed the Plaintiff has done through the instant suit.

In the premises, this court is enjoined to revoke the grant of Letters of Administration that were granted to the defendants/counterclaimants through concealment of a material fact of existence of a will that has even ever been proved in probate.

In conclusion, this issue too is answered in the affirmative.

Issue 3: What remedies are available to the parties?

Judgment is hereby entered in favor of the Plaintiff and against the Defendants. The Defendants counterclaim is dismissed because it was hinged on their right to distribute the late Nyansio Kyagulanyi's estate under intestate succession yet it had already been brought under probate administration under Probate and Administration Cause No. 3 of 2008 by the Late Hon. Mr. Justice V. F Musoke Kibuuka, as he then was.

The court further makes the declarations below;

- i) The Letters of Administration granted to the 1st and 2nd defendants over the estate of the Late NYANSIO KYAGULANYI are hereby revoked.
- ii) The estate of the late KIYIMBA LUDOVIC is a beneficiary in the estate of the Late NYANSIO KYAGULANYI.
- iii) The plaintiff is a beneficiary of the estate of the LATE NYANSIO KYAGULANYI.
- iv) The estate of the LATE NYANSIO KYAGULANYI shall be distributed in accordance with his will.

