

UGANDA / JUDGMENT

Khan v Fatuma and Another (C.A. 25/1931.) [1931] EACA 8 (1 January 1931)

[1931] EACA 8

COURT

East African Court of Appeal

BEFORE

Barth, C.J (Kenya), Griffin C.J. (Uganda),, Lucie-Smith, J. (Kenya)

CASE / FILE NUMBER

C.A. 25/1931.

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

COURT OF APPEAL FOR EASTERN AFRICA.

Before Sir JACOB BARTH, C. J. (Kenya), Sir CHARLES GRIFFIN, C. J. (Uganda) and LUCIE-SMITH, J. (Kenya).

SARDAR KHAN (Appellant)

GULAM FATUMA and THE PUBLIC TRUSTEE

(Respondents).

C. A. \$25/1931\$.

Probate and Administration Act, 1881, section 50-revocation of grant of Probate for just cause.

\$Held\$ (21-12-31): That the absence from the Colony of the executor. that there has been delay in the administration of the estate, that proper accounts have not been kept, that there has been
maladministration, and that the interests of the minor children are in jeopardy, constitute " just cause " in the sense of section 50
of the Probate and Administration Act, 1881.

Moderata for Appellant.

Respondents unrepresented.

Modera submitted (1) that mismanagement is not just cause, and (2) that the fact that the executor, who is a railway servant, has been stationed in Uganda does not justify his being held to be out of the jurisdiction, as he is subject to the General Manager of the Kenya and Uganda Railways. In support of his submission he relied on the following authorities: 31 Cal. 1904, p. 628 at p. 636; 24 Cal. 1897, p. 95 at p. 96; 26 Bombay, 1902, p. 792; 15 Probate Div., page 8.

The judgment of the Court was delivered by Sir Jacob Barth, C. J., in the following terms:-

JUDGMENT.-In March, 1930, the Court pronounced in favour of a nuncupative will propounded by one Sardar Khan in respect of the estate of one Faiz Khan deceased, and administration of the said estate was granted to Sardar Khan.

In August, 1931, application was made by way of motion to the learned Judge who had granted administration for the removal of Sardar Khan from his executorship on the alleged grounds of delay in administration, mismanagement and absence from the Colony.

An affidavit in support of the motion was filed by Gulam Fatuma, the widow of Faiz Khan and mother of his two infant children.

Sardar Khan filed an affidavit in reply. The matter was argued before the learned Judge who made an order removing Sardar Khan from the executorship and appointing the Public Trustee in his place. From this order Sardar Khan appeals.

The law applicable in this case is the Indian Probate and Administration Act, 1881, and 50 is the relevant section which reads: "The grant of probate or letters of administration may be revoked or annulled for just cause." There then follows an "Explanation" as to what is "just cause." That explanation is divided into five clauses. The material clause in this case is clause 4 which reads: "That the grant has become useless and inoperative through circumstances." The learned Judge has found from the affidavits and a report submitted by the Registrar that (1) Sardar Khan is absent from the Colony and therefore out of the jurisdiction, (2) there has been delay in the administration of the estate, (3) proper accounts have not been kept, (4) maladministration, and (to our minds most important of all) that the Court is satisfied that the interests of the minor children are in jeopardy...

Do these findings constitute "just cause" as explained in section 50 of the Act? It has been argued that the five explanations given are not merely illustrative but exhaustive. Kinney in his book on the Probate and Administration Act says that they are not exhaustive and sets out sixteen other grounds on which he says a revocation order can be made. In a case reported at 24 Cal. p. 95. it was held that mismanagement by an executor was not sufficient just cause for revocation and that the explanation was not merely illustrative but exhaustive. A careful reading of the report makes it appear that the latter finding is only obiter. In the Goods of John Patterson, 2 C. W. N., it was held that when an administrator had been convicted of a criminal offence and sentenced to a term of imprisonment that was sufficient just cause for revocation. We have been unable to obtain this report but it would appear probable that the just cause in that case was under clause 4.

the imprisonment making the grant useless and inoperative.

In another case reported at 16 C. W. N., 880, it was held that maladministration was not under clause 4 a just cause for revocation, and that the words "become useless, etc," imply the discovery of something which if known at the time of the grant would have been a ground for refusal. This report is not available so it is impossible to get at the reasoning which lead to this decision, though it appears to have been followed in a case reported at 26 Bombay, 792.

So much for the Indian cases the majority of which appear to decide that the explanation is exhaustive and that maladministration is not a just cause. There can, however, be no doubt that the modern tendency is for the Court always to keep in.

view the real object of the law, which is the due and proper administration of the estate and the interest of the parties beneficially entitled thereto.

In the Goods of William Loveday (1900) P. 154, Sir Francis Jeune said at p. 156: "After all, the real object which the Court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto; and I can see no good reason why the Court should not take fresh action in regard to an estate where it is made clear that its previous grant has turned out abortive or inefficient. If the Court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and if it turns out that the person so appointed will not or cannot administer, I do not see why the Court should not revoke an inoperative grant and make a fresh grant."

As regards the absence of the executor from the Colony the case of In the Estate of William Thomas (1912), P. 177, is an authority for holding that absence of an executor is a ground for revocation.

In all the circumstances of this case and more especially in view of the fact of there being minor beneficiaries we hold that the findings of the learned Judge constitute "just cause" under clause 4 and we dismiss the appeal with costs.

$$\mathcal{L}^{\mathcal{L}}$$

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/aa/judgment/eaca/1931/8/eng@1931-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/khan-v-fatuma-and-another-ca-251931-1931-eaca-8-1-january-1931-unknown-topic-unknown-court-1931>

Prepared on 14 October 2026 · Esheria