

UGANDA / JUDGMENT

Kiyengo and 2 Others v Byangire Asimwe (Miscellaneous Application 33 of 2033) [2024] UGHC 1136 (18 October 2024)

[2024] UGHC 1136

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application 33 of 2033

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA MISC. APPLICATION NO. 033 OF 2023

(Arising Out of Probate and Administration Cause No.141 of 1996)

1. PROSSY KIYENGO

2. DAPHINE KWIKIRIZA

3. JOSHUA BUSWA BYANGIRE ::::::::::::::::::::::::::::::

VERSUS

MOSES ASIIMWE BYANGIRE ::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- The Applicant brought this Application brought under S. 98 CPA, S.234 (2) [1] (d) (c) & (f) of the Succession Act Cap 162 (as amended) and 0.52 rr.1,2 & 3 CPR for orders;
- a) That letters of administration granted to the Respondent vide Probate and Administration Cause No.141/1996 in respect of the estate of the late Tito R. Byangire be revoked.

- b) That fresh letters of administration for the estate of the late Tito R. Byangire be issued/ granted to the 1st Applicant, Prossy Kiyengo Kamahe (Daughter), the 2nd Applicant, Daphine Kwikiriza (Daughter) and the 3rd Applicant, Joshua Buswa Byangire (son), all of the late Tito R. Byangire.
- c) That the name of the Respondent, Moses Asimwe Byangire be removed and deleted from the Certificate of Title comprised in LRV 2694 Folio 22 plot 23 at Hoima and the same be registered in the names of the Applicants as the Administrators of the estate of the late Tito R. Byangire.
- d) That the Respondent pays the costs of the Application.
- The grounds in support of the application are contained in the affidavit of the \$[2]\$ 3rd Applicant **Joshua Buswa Byangire** who deposed briefly as follows:
 - a) That the Applicants are biological children of the late **Tito R. Byangire** who died on the 29/8/1995 at Mulago hospital and the Respondent was granted letters of Administration vide probate and administration Cause No.141 of 1996.
 - b) That after obtaining the grant, the Respondent mismanaged the estate by inter alia:
 - i) Selling off property belonging to the estate without the consent and agreement of the other beneficiaries and put all proceeds to his personal use.
 - ii) Collecting rent from various tenants without accounting for the money received but only puts the same to his personal benefit and not for the benefit of the estate.
 - iii) That the Respondent has since failed to perform his duties because of his busy schedule and continued movements out of Uganda which caused the Respondent to donate a power of attorney to the 3rd Applicant.
 - iv) That the Respondent has never filed an inventory as required by law ever since the letters of Administration were granted to the Respondent.
- In his reply, the Respondent deposed that the Application is caught by Res \$[3]\$ judicata vide Kampala High Court C. S No.36 of 2020 [Family Division] and is an abuse of court process. 2ndly, that the estate of the late **Tito Byangire** was distributed and there is nothing for the Applicants to administer.
- The Respondent also filed supplementary affidavits of Mary Byangire Sendi \$[4]\$ (daughter of the deceased) dated \$24/11/2023\$ and **Byangire Alfred** (son to the deceased) dated \$1/12/2023\$. Both affidavits were filed on record on \$28/11/2023\$ and \$4/12/2023\$ respectively.

Preliminary objection

Whether the 2 supplementary affidavits in reply were filed out of time.

The Applicant objected to the 2 supplementary affidavits of **Mary Byangire** and **Sendi and Byangire Alfred** on the grounds that they were filed out of time from the time the Respondent was served with the application on the 20/9/2023.

- On perusal of the affidavit of service of the application on record deposited by the process server, Kaahwa Solomon dated 6/11/2023, I find that it is not true that the Respondent was served the application on 20/9/2023. The affidavit of service clearly shows that the Respondent was served the Application on the 3/10/2023.
- Nevertheless, in *Stop and See (U) Ltd Vs Tropical Africa Bank*, HCMA No.333 of 2010, it was held that the timelines that apply to a Plaintiff and Written Statement of Defence also apply to applications and affidavits in reply and rejoinder. A reply to an application must be filed within 15 days from the date of service of the application. Failure to file that affidavit in reply within 15 days puts the reply out of time, the Applicant must seek leave of court to file the affidavits in reply outside the prescribed time, see also *Patrick Sendyowa & Ors Vs Lucy Nakitto*, HCMA No.1103/2018 [2019] UG HCLD 11.
- In the instant case, the Respondent having been served with the Application [8] on the 3/10/2023 and the supplementary affidavits having been filed on 28/11/2023 and 4/12/2023 respectively, it follows that the 2 supplementary affidavits were served outside the 15 days prescribed under O.8 r.1(2) CPR. As a result, I find the 2 affidavits improperly filed before this court. In absence of any application by the Respondent seeking leave to file them out of time, I accordingly strike out the 2 supplementary affidavits in reply.

Merits of the Application.

- In the instant case, whereas the Applicants are seeking revocation of letters of Administration from the Respondent on allegations of mismanagement of the estate, the Respondent contends that the estate was distributed and there is nothing to administer.
- [10] Indeed, I have looked at Annexure "A" to both the affidavit in support and reply, a CONSENT JUDGMENT vide Kampala HCCS No.36 of 2020. Though the consent judgment in C. S No.36 of 2020 does not render the present Application res judicata as counsel for the Applicant wants this court to believe since parties and the cause of action are different, I find that the

consent judgment in C. S No. 36 of 2020 was in regard to the properties forming part of the estate of the late Tito Byangire under the administration of the Respondent. The deceased Tito Byangire's estate was accordingly distributed to the beneficiaries including the commercial house at Lusaka on a plot measuring 50ft x 120ft which the Respondent had sold and was indeed taken into account during the distribution.

[11] As a result, in agreement with the Respondent, I find that the estate of the late Tito Byangire was accordingly distributed to the beneficiaries as per the consent judgment on record vide Kampala HCCS No. 36 of 2020 dated \$17/2/2022\$. There is therefore no basis for either revoking or making any grant for the estate of Tito Byangire to anybody. Any issues that may arise from the consent judgment e.g in its execution or accountability of the properties sold under the consent, cannot be redressed by this application. The application is in the premises dismissed but with no order as to costs.

Dated at Hoima this 18th day of October, 2024.

Byaruhanga Jesse Rugyema JUDGE

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