

UGANDA / JUDGMENT

Lubulwa Francis & 2 oers v Harriet Lubwama (O.S No.11 Of 2009) (O.S No.11 of 2009) [2010] UGHC 84 (19 October 2010) [2010] UGHC 84

COURT
High Court of Uganda

CASE / FILE NUMBER
O.S No.11 of 2009

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originating summons, the applicant was represented by Mr. Patrick Mugisha.
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 \hich\af0\dbch\af37\loch\f0 summons to}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid10447205\charrsid16584014 \hich\af0\dbch\af37\loch\f0

invoke a grant of letters of administration grante}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid14249737\charrsid16584014 \hich\af0\dbch\af37\loch\f0 d to the respondent on the
 ground}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10447205\charrsid16584014 \hich\af0\dbch\af37\loch\f0 s inter alia, that, the
 respondent was wasting the est\hich\af0\dbch\af37\loch\f0 ate.}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid3805907\charrsid16584014

\par }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10447205\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 Justice Rwamisaza Kagaba, as he then was, held that, }\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \b\f0\fs24\insrsid10447205\charrsid16584014

\hich\af0\dbch\af37\loch\f0 order 34 r 1 now O37 r 1,}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid10447205\charrsid16584014 \hich\af0\dbch\af37\loch\f0

that is originating summons, deals with matters which are not contentious matter requiring
 evidence and an application by originating summons is wrong.

\par }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid14249737\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 He further held t}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid10447205\charrsid16584014 \hich\af0\dbch\af37\loch\f0 hat

\hich\af0\dbch\af37\loch\f0 the procedure under order 34 of the civil Procedure rules is intended
 to deal with simp}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid7041420\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 le and non contentious matters}{

\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10447205\charrsid16584014 .

\par }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid14249737\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 The Learned Justice held t}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\f0

hat where the matter}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid14249737\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 is contentiou}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\f0

s, or would require evidence to prove or disprove the allegation,
 originatin\hich\af0\dbch\af37\loch\f0 g summons is not applicable.

\par \hich\af0\dbch\af37\loch\f0 Similarly}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid14249737\charrsid16584014 ,}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\f0 in the case of }\rtlch\fcs1

\af0\afs24 \ltrch\fcs0 \b\i\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0
Fred Gabula Nadiope Ka}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\b\i\fs24\insrsid1730824\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 jumbu}{\rtlch\fcs1

\af0\afs24 \ltrch\fcs0 \b\i\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 la &
Anor. CM 533/99}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid7041420\charrsid16584014
\hich\af0\dbch\af37\loch\fs0 \hich\fs0 \endash \loch\fs0

J. Okello J held that,}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1730824\charrsid16584014
\hich\af0\dbch\af37\loch\fs0 where proceedings}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0

for revocation of a grant}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid1730824\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 of Letters of administration
or Probate is sought on the grou}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 nd}{\rtlch\fcs1 \af0\afs24
\ltrch\fcs0 \f0\fs24\insrsid1730824\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 of mis}
{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 management or
\hich\af0\dbch\af37\loch\fs0 fraud}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid1730824\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 , it}{\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 requires that
evidence be }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1730824\charrsid16584014
\hich\af0\dbch\af37\loch\fs0 adduced }{\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid7041420\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 orally where
cross \hich\fs0 \endash \loch\fs0 examination becomes necessary.

\par \hich\af0\dbch\af37\loch\fs0 Therefore a Chamber summons}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\fs0

where evidence is produced by an affidavit is not a suitable procedure of seeking to revoke a }
{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1730824\charrsid16584014
\hich\af0\dbch\af37\loch\fs0 grant. Therefore the application}{\rtlch\fcs1

\af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\fs0 was
\hich\af0\dbch\af37\loch\fs0 untenable for being an improper procedure.}{\rtlch\fcs1 \af0\afs24
\ltrch\fcs0 \f0\fs24\insrsid7041420\charrsid16584014

\par }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014
\hich\af0\dbch\af37\loch\fs0 In the case of }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\b\i\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\fs0

Kagwa & 10 others vs Kiwnuka and 2 others HCCS No. 175 of 1992} {\rtlch\fcs1 \af0\afs24
 \ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\f0 , arising from }
 {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\b\i\f0\fs24\insrsid1730824\charrsid16584014 \hich\af0\dbch\af37\loch\f0 Miscellaneous cause}
 {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\i\f0\fs24\insrsid1592288\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 No. 27/85, Ntabgoba} {\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\f0 PJ as he then was
 held that, since the case was based on allegations} {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid5451242\charrsid16584014 ,} {\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\f0 it was not
 \hich\af0\dbch\af37\loch\f0 enough to rely on mere affidavits } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid5451242\charrsid16584014

\hich\af0\dbch\af37\loch\f0 and } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \b\i\f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\f0 O34 r 1 } {\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid1592288\charrsid16584014 \hich\af0\dbch\af37\loch\f0

allows court to ask the parties to the} {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
 \f0\fs24\insrsid7607282\charrsid16584014 \hich\af0\dbch\af37\loch\f0 originating summons }
 {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5451242\charrsid16584014

\hich\af0\dbch\af37\loch\f0 to proceed by ordinary suit to prove allegations of fraud} {\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid16544268\charrsid16584014 .

\par \hich\af0\dbch\af37\loch\f0 In view of the above, where there is an allegation of fraud and
 wasting of estate as in this\hich\af0\dbch\af37\loch\f0 case, the proper procedure is not an
 Originating summons for } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid7607282\charrsid16584014 \hich\af0\dbch\af37\loch\f0 revoking the letters but the
 parties} {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014
 \hich\af0\dbch\af37\loch\f0 are } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 advised} {\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 to
 proceed by } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 ordinary} {\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 suit }
 {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 in which} {\rtlch\fcs1
 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 the
 applicant} {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 s become}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 the } {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 plaintiff}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 and the respondent/}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 Administrator}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 , the defendant. }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

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\par }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 See }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\i\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 Kag}{\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \b\i\f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 g}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\i\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 wa and 16 }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\b\i\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 oth\hich\af0\dbch\af37\loch\f0 ers}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\i\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 (supra){\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \b\i\f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0)}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 the applicants are}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 ther}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 e}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 fo}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 r}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 e }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 advised to file an ordinary suit.

\par \hich\af0\dbch\af37\loch\f0 }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 The parties are to bear their own costs of the application.

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Margaret c. }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 O}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\f0\fs24\insrsid5985817\charrsid16584014 \hich\af0\dbch\af37\loch\f0 guli Oumo

\par \hich\af0\dbch\af37\loch\f0 Judge

\par }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \b\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 19/10/2010

\par }{\pard \ltrpar\ql \li0\ri0\sa200\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid16584014 }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10707795\charrsid16584014

\par \hich\af0\dbch\af37\loch\f0 N. B: the applica}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10031299\charrsid16584014 \hich\af0\dbch\af37\loch\f0 nts can file a suit if not caught by the statutory}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid10707795\charrsid16584014 \hich\af0\dbch\af37\loch\f0 of limita\hich\af0\dbch\af37\loch\f0 tion.

\par }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 Present;

\par {\listtext\pard\plain\ltrpar \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 1.\tab}}{\pard \ltrpar\ql \fi-360\li720\ri0\sa200\sl360\slmult1

\widctlpar\wrapdefault\aspalpha\aspnum\faauto\ls3\adjustright\rin0\lin720\itap0\pararsid16584014 }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 Mr. Partrick Mugisha for the applicants.

\par {\listtext\pard\plain\ltrpar \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 2.\tab}}{\hich\af0\dbch\af37\loch\f0 Betty Lunkuse, court clerk

\par {\listtext\pard\plain\ltrpar \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid3762918\charrsid16584014 \hich\af0\dbch\af37\loch\f0 3.\tab}}{\hich\af0\dbch\af37\loch\f0 Elizabeth Nyakwebara, Research Assistant.

\par }{*\themedata 504b030414000600080000002100828abc13fa0000001c020000130000005b436f6e74656e745f54797065735d2e786d6cac91cb6ac3301045f785fe83d0b6d8

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