

UGANDA / JUDGMENT

Mukisa v Nabukalu (Civil Suit No. 29 of 2016) [2019] UGHCFD 51 (20 December 2019)

[2019] UGHCFD 51

COURT

HC: Family Division (Uganda)

BEFORE

Kitariisibwa-Katunguka, J

CASE / FILE NUMBER

Civil Suit No. 29 of 2016

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA- MAKINDYE (FAMILY DIVISION) CIVIL SUIT NO. 29 OF 2016

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1. MUKISA PATRICK 2. SEWALU SAM PLAINTIFFS

VERSUS

NABUKALU REBECCA DEFENDANT

JUDGMENT

15 BEFORE HON. LADY JUSTICE KETRAH KITARIISIBWA KATUNGUKA

Introduction

- [1] Mukisa Patrick and Sewalu Sam (hereinafter referred to as the plaintiffs) filed this suit against Nabukalu Rebecca, **the administratrix of the estate of the Late**
- **20 Sembajjwe Eriab** (herein called the defendant) for orders; for revocation of Letters of Administration for the estate of the Late Sembajjwe Eriab granted to the Defendant vide High Court Administration Cause No.781 of 2006 and that the said Letters of Administration instead be granted to the plaintiffs; that a declaration that all sales, transfers and transactions done in the name of the estate 25 by the defendant or on behalf of the estate are null and void; that a permanent injunction issues against the defendant restraining her from depleting the estate; that any other relief and costs of this suit be granted.

Background.

[2] The plaintiffs are the grandchildren of the late Sembajjwe Eriab; the defendant is 30 a daughter of the late Sembajjwe Eriab and co-administrator of the suit estate with Mr Sewalu Jossie since 2006; that the defendant has been stealthily selling parts of the suit estate without the knowledge and consent of her co-administrator or the beneficiaries; the defendant has never filed an inventory since 2006 to date; that

the family convened a meeting some time in 2006 after a tip-off that the defendant had been dealing in the suit estate; the defendant attended the meeting and conceded to the allegations; the co-administrator relinquished his role as an administrator; the family meeting resolved to have the Letters of Administration 5 granted to the defendant revoked and for the plaintiffs to be appointed as administrators.

[3] The defendant did not file any defence or make any appearance in court in spite of having been served on four attempts first by the plaintiffs on two occasions, by way of substituted service through an advert in New Vision dated 5th January 2019 10 and then by the LC 1 of Nangabo Village, Kasangati, Wakiso. The defendant is alleged to have refused all three attempts of personal service and affidavits of service were sworn to that effect. The suit was thus set down for formal proof and proceeded ex parte.

Representation.

15 [4] The plaintiffs were not represented and they proceeded by oral testimony and witness statements and at the end filed written submissions.

Facts of the case;

[5] The facts are as detailed in the background but are briefly that; the plaintiffs are the 20 grandchildren and beneficiaries of the estate of the Late Sembajjwe Eriab and the defendant is a daughter of the deceased and administrator of the deceased's estate; the defendant together with Sewalu Jossie obtained grant of Letters of Administration to the estate vide Administration Cause No.781 of 2006; the defendant then started selling part of the suit estate without the knowledge and 25 consent of the beneficiaries and the co-administrator; the defendant has attempted to take all the deceased's property and burial grounds; the defendant has never filed an inventory; the co-administrator has relinquished his role as an administrator; the family resolved in a meeting to have the Letters of

Administration revoked and the plaintiffs appointed as administrators; the plaintiffs pray that the Letters of Administration granted to the defendant should be revoked and granted to them and all deals, sales, transfers, or anything done in the name of the estate by the defendant be declared null and void; a permanent 5 injunction issues against the defendant from accessing and / abusing the integrity of the estate and for costs of this suit and any other relief .

The plaintiffs framed the following issues;

- i. Whether the plaintiffs deserve to be granted Letters of Administration.
- ii. Whether the defendant should be evicted from the suit property.
- 10 iii. Any other remedies.
- [6] I have carefully considered the pleadings, the evidence adduced, and the submissions by the plaintiffs together with the relevant law. I shall resolve the issues as framed but I shall first resolve the issue as to whether the grant should be revoked in the first place and depending on the outcome then resolve the 15 issues as framed.

Resolution of issues. Whether the Letters of administration should be revoked.

- [7] Letters of Administration for the estate of the late Sembajjwe Eriab were granted by this honourable court, to Rebecca Nabukalu (daughter) and Jossie Sewalu Sembajwe (son) on 31st 20 July 2006. The plaintiffs claim that the defendant; has been duping her co-administrator into signing on the documents which are believed to have been used in **fraudulent transactions** detrimental to the integrity of the estate; has never filed an inventory or called a family meeting and that consequently the co administrator has relinquished his role by declaration 25 dated 6/8/2015.

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The plaintiffs seek revocation of the Letters of Administration granted to the defendant on account of abuse of the grant by fraudulently disposing of the estate property and failure to file inventory by the defendant and that on that basis the family has resolved to replace the defendant with the plaintiffs.

The Law

- [8] Under section 234 of the Succession Act cap 162 of the Laws of Uganda, a grant for Letters of Administration may be revoked for just cause under the following circumstances; if it is proved that the grant was obtained through substantially 10 defective proceedings, or obtained by fraudulently making a false suggestion, or by concealing from the court something material to the case; that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently; that the grant has become useless and inoperative through circumstances; or that 15 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.

- 20 [9] Conditions that may lead court to revoke the grant for Letters of Administration are generally; if it is found that the process leading to the grant was faulty and if after the grant, the grant has become useless and inoperative through circumstances, or that the holder failed to file an inventory. In my view this is premised respectively on the principle that whatever is done without authority or 25 done fraudulently has no base and will crumble; and that the grant provides that the appointed administrators, *. . . having undertaken to administer the same and to make a full and true inventory of the said properties and credits and exhibit the same in this court. . . '* makes filing an inventory a court order, breach of which must be punished.

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[10] The claim by the plaintiffs is not against the process before the grant so I shall consider the actions of the defendant after the grant and determine if they warrant revocation.

Paragraph 4(d) of the plaint reproduced here reads;

5 *'Ever since then she has been duping her co-administrator into signing on the documents which are believed to have been used in fraudulent transactions detrimental to the integrity of the estate'* (emphasis supplied).

[11] The Dictionary definition of the word 'dupe' is 'deceive'; 'trick'. 'Fraudulent' 10 is defined as *'an adjective meaning 'obtained, done by, or involving deception.*

Black's Law Dictionary 6th Edition at page 660 defines fraud as 'An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right' - A 15 *false representation of a matter of fact, whether by words or by conduct by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury'*

[12] In the case of **Kampala Bottlers Limited v Damanico (U) Ltd (Civil Appeal No.**

20 22 of 1992) [1993] UGSC 1, **Wambuzi C. J.** while discussing fraud on page 5 stated among others that fraud *. . . must be attributed to the transferee. . . it . . . must be attributed either directly or by necessary implication . . . '*

While fraud is not listed by the law as just cause warranting revocation of a grant I shall go ahead and address it to ensure that no illegality continues to reign even 25 when it has been brought to the attention of this court (See **Makula International Ltd V His Eminence Cardinal Nsubuga & Anor (CIVIL APPEAL NO. 4 OF 1981) [1982] UGSC 2**).

[13] The 2nd Plaintiff in his witness statement states that during the family meeting 30 they received information from intending buyers that the defendant was selling parts of the estate at Nagabo, and that the defendant attended the meeting and acknowledged that she was selling the property and concurred that the Letters of Administration be revoked but refused to sign the resolutions; the 1st Plaintiff stated that during the meeting they found out

that the burial grounds had been put up for sale. The plaintiffs relied on the following documents;

- 5 i. copy of the Letters of Administration for the estate of the late Sembajjwe Eriab vide HCT-00-CV-781-2006 ;
- ii. copy of a Document entitled 'A Sembajjwe Family Meeting Held at Nangabo on Sunday 13th September 2015';
- iii. Minutes from the Ssembajjwe family meeting held at Kasangati Buyinja Zone on Sunday 24th 10 January 2016;
- iv. a letter entitled 'Kibanja Dispute' dated 28/9/2015;
- v. a declaration of one Jossie Sewalu Sembajjwe dated 6/8/2015;
- [14] Luzinda Kenneth PW3 testified that after they found out that the defendant had sold part of the estate they called a meeting where the defendant was rude and refused to sign the minutes; that they found out that the co-administrator was not aware of what was transpiring; they held another meeting and decided to relieve the defendant of her duties; that the meeting where the decision to revoke was taken was attended by five people to wit; the plaintiffs, PW3, Sebuli Ivan, their mother Mrs Luzinda Betty; that their uncle Jossie Sembajwe and others who were abroad gave the five a go ahead; and that Josie the co-Administrator after seeing the minutes of the 1st meeting was surprised and agreed with the resolution;
- 25 [15] I have studied the pleadings and found no documents were attached or any other evidence adduced to prove the alleged fraud attributable to the defendant; no evidence was led to show that the defendant had sold or intended to sell the land; the letter entitled 'Kibanja Dispute' dated 28/9/2015 shows that the dispute was between Luzinda Elizabeth, Sembajwe Evelyn and Jossie Ssembajwe. I do not see any reference to a sale or mismanagement by the defendant and no report on

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the said fact finding is attached. The claim that the defendant had duped the codefendant to sign documents believed to have been used in fraudulent transactions detrimental to the integrity of the estate has not been proved. The co-administrator according to the minutes of the alleged family meeting held on 24th 5 January 2016 though listed on the attendance list, did not sign the minutes. PW4 Luzinda Elizabeth told court that Sewalu Josie the co-administrator is alive and though listed as a witness, he was not called first to confirm that he had renounced the co-administration or that the defendant had duped him into signing documents. Formal proof demands that the case in itself must pass 10 probity.

[16] Section 101 (1) of the Evidence Act provides;

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that" 15 *those facts exist'.

Section 102 provides;

*"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side'.

20 In the case of **R. G. Patel vs Lal Mekanji [1975] E. A.314** it was held that allegations of fraud must be strictly proved. (See also the case of **F. I. K. Zaabwe v Orient Bank and 5 Ors, SCCA No. 4 of 2006**).

The plaintiffs therefore have not proved any fraud attributable to the defendant.

I shall now resolve the issue of **whether the plaintiffs have proved that the defendant did not file inventory**.

[17] An inventory ought to be made and presented to this court and filed and recorded 30 on the file for Administration Cause No.781 of 2006 the spring of this civil suit. The plaintiffs did not present proof in form of certified copies of the record of

Administration Cause No.781 of 2006 to show that the inventory was not filed. A grant for Letters of Administration is a court order and for it to be revoked court must be satisfied that it has not been complied with. The basis of this suit is that there is no inventory. However the suit is only against one administrator 5 the other allegedly having renounced the administratorship; such would have been called to testify to the effect but he was not. In the case of **NALUBEGA GLADYS & Ors v SEBULUGUSE HENRY CIVIL SUIT NO.44 OF 2010** Justice Tuhaise referred to the court record of the Petition for letters of Administration which was the basis of CS No. 44 of 2010 on whether an 10 inventory had been filed or not and stated that the certified copies of the record showed that no inventory had been filed by the Defendant in that case. The plaintiffs in this case were not represented by counsel so pursuant to Article 126 of the Constitution of Uganda I ordered for the record of Administration Cause No.781 of 2006 and found no record that any inventory was filed;

[18] In the result I find that the defendant or the co-defendant for that matter did not file an inventory. There is therefore just cause for revocation of Letters of Administration vide HCT-00-CV- A C No.781 of 2006 regarding the Estate of the Late Sembajjwe Eriab.

20 Issue 2: Whether the plaintiffs deserve to be granted Letters of Administration.

[19] The plaintiffs claim that the family meeting appointed them to apply to be granted Letters of administration and that on that basis they should be so appointed. Luzinda Elizabeth PW4 testified that the plaintiffs are her children 25 and the defendant is her sister; that the meeting which should have been attended by 15 people was only attended by 5 - herself, the plaintiffs, PW3 and a one Victoria Nabatanzi. She prayed that the Letters of Administration be revoked and granted to them as the defendant's elder sisters (emphasis supplied). She

testified contrary to the plaintiffs' claim and the alleged family meeting minutes

which allegedly resolved that the plaintiffs be appointed administrators. A family meeting that resolves to apply for revocation of Letters of Administration and appoints people to be granted Letters of Administration must have confirmation that all the members/beneficiaries were invited and that those who 5 did not attend, embraced the decision of the meeting and in writing. In the instant case there is nothing to show that all the beneficiaries were invited and that those who did not attend by reason of being abroad supported the resolutions.

[20] Having said that, even if they had;

10 Section 5(1) of the Administrator General's Act provides;

'No grant shall be made to any person, except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorised in writing, authorising that person to administer the estate of a deceased person, **until the applicant has produced to the court proof that the 15 Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear days' definite notice in writing of his or her intention to apply for the grant** (emphasis supplied).

20 [21] The default administrator for the estate of an intestate (save for an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorised in writing, authorising that person to administer the estate of a deceased person), is the Administrator General. The Administrator General must supervise and superintend over the approval process 25 by the family, of any person chosen by the family, to be granted Letters of Administration. The Administrator General therefore must give a certificate of no objection before any grant is given. For the plaintiffs or anybody else for that matter to deserve grant of Letters of Administration, they must have been vetted by the Administrator General except in specific circumstances provided under S. 222 of the Succession Act.

Issue 2 therefore is answered in the negative.

5 Issue 3.

Whether the defendant should be evicted from the suit property.

[22] As found while resolving issue No.1, the plaintiffs have not proved anything justifying eviction of the defendant. Revocation of Letters of Administration in the instant case was premised on failure to file inventory and nothing else.

10 Remedies

The defendant did not bother to appear in court and having failed to file inventory she defied a court order. She shall meet the costs of this suit.

On the premises this suit majorly succeeds.

15 I therefore hereby make the following orders;

- 1. Letters of Administration vide HCT-00-CV- A C No.781 of 2006 of the Property and credits of Late Sembajjwe Eriab granted to Rebecca Nabukalu and Jossie Sewalu Sembajjwe are hereby revoked;
- 2. Let the beneficiaries of the estate of the Late Sembajjwe Eriab pursue the 20 legal channels for applying for Letters of Administration.
- 3. The defendant shall bear the costs of this suit.

Dated at Kampala this 20th day of December 2019

..... **KETRAH KITARIISIBWA KATUNGUKA.**
JUDGE

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