

UGANDA / JUDGMENT

Musisi v Nsubuga & Another (Civil Suit
104
of 2024) [2025] UGHC 157 (5 March 2025)
[2025] UGHC 157

COURT
High Court of Uganda

BEFORE
Karemani Jamson K, J

CASE / FILE NUMBER
Civil Suit 104 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

CIVIL SUIT NO. 104 OF 2024

(FORMERLY MUBENDE CIVIL SUIT NO. 008 OF 2023)

MUSISI FREDRICK

VERSUS

1. NSUBUGA GODFREY

2. THE COMMISSIONER LAND REGISTRATION BEFORE:
HON MR JUSTICE KAREMANI JAMSON, K

JUDGMENT

Introduction.

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Musisi Fredrick (herein after referred to as the plaintiff) brought this suit against Nsubuga Godfrey and The Commissioner Land Registration (herein after referred to as the defendants) for the following orders:

- a) Annulment and revocation/cancellation of a grant of letters of administration granted on 5th December 1995 by the Chief Magistrate's court of Mubende at Mityana without pecuniary jurisdiction vide administration cause no. 55 of 1995 for the estate of the late Tomasi Nsirikirabingi.
- b) A declaration that the land comprised in Singo Block 568 Plot 11 at Nakasengere measuring 54.500 hectares was fraudulently and unlawfully or illegally transferred to the 1st defendant by the 2nd defendant using the Chief Magistrate's Court for letters of administration which court had no jurisdiction to do.
- c) A consequential order to the Registrar of Titles for the cancellation of the 1st defendant's name on the certificate of title for the above described land and a certificate of the same be registered in the name of the plaintiff.

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- d) A consequential order to the registrar of titles for the cancellation of all transactions made fraudulently on the land comprised in Singo Block 568 Plot 11 at Nakasengere measuring 54.500 hectares and the transfer of the suit land into the 1st defendant's name under instrument number MIT 60084 dated 11th Januarv1996.
- e) An order of comprehensive accountability for all the properties that have been lost/sold and rent collected for over 27 years from lawful tenants as busulu-envujo.
- f) A declaration that the plaintiff and other beneficiaries are entitled to their respective shares in the estate of the late Tomasi Nsirikabingi.
- q) An order to remit rent collected for over 27 years from the estate properties mainly from land comprised in Singo Block 568 Plot 11 at Nakasengere measuring 54.500 hectares.
- h) Interest on rent and damages from 1996 up to the full payment at 40% per annum.
- i) A permanent injunction restraining the defendant from dealing, intermeddling and interfering with the properties of the estate of the late Tomasi Nsirikirabingi.
- i) Letters of administration of the estate of Tomasi Nsirikabingi be granted to the plaintiff as natural grandson and beneficiary of the deceased.
- k) The 1st defendant accounts for all the properties of the deceased which have been lost, sold or otherwise dealt with during the administration of the deceased's estate.

- 1) General damages for breach of trust, costs and any other reliefs the court deems fit.

Background.

The plaintiff and 1st defendant are grandchildren and beneficiaries of the estate of the late Tomasi Nsirikirabingi (herein after referred to as the deceased). The 1st defendant was granted letters of administration to the estate of the deceased by the Chief Magistrate's court of Mubende at Mityana on 5th December 1995. The estate of the deceased included land comprised in Singo Block 568 Plot 11 at Nakasengere-Mityana district. The said land was transferred into the name of the \$1^{st}\$ defendant as administrator of the deceased by the \$2^{nd}\$ defendant on \$11/1/1996\$.

That the 1st defendant has mismanaged the estate by selling pieces of land forming the estate. That he has failed to give accountability about the estate.

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It is upon that background that the plaintiff brings this suit against the defendants seeking the orders stated hereinabove.

Representation

The plaintiff was represented by Mr. Mukibi Andrew of M/S A. N. Kigozi and Co. Advocates. The learned counsel for the plaintiff filed submissions which have been considered in this judgment.

The 1st defendant was duly served with the summons and the plaint in this suit through substituted service but he failed to file the defence within the time provided. The \$2nd\$ defendant was also served and never filed a defence. As a result, the suit was set down for hearing ex parte and hence this judgment.

Burden and standard of proof.

Section \$101(1)\$ of the Evidence Act Cap 8 provides that whoever desires 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 those facts exist. The standard of proof is on a balance of probabilities.

This position was fortified in the case of Uganda Petroleum Co. Ltd -V- Kampala City Council Civil Suit No.250 of 2005, where it was held that in civil cases the burden lies on the party who alleges to prove his or her case on the balance of probabilities.

Issues.

Counsel for the plaintiff framed issues in his submissions but I find the following issues more appropriate to be resolved by this court in this case.

- 1. Whether the Chief Magistrate's Court of Mubende at Mityana had no jurisdiction to grant letters of administration to the 1st defendant vide administration cause no. 055 of 1995.
- 2. Whether the plaintiff is a beneficiary of the estate of the late Tomasi Nsirikirabingi.
- 3. Whether there is a just cause for revocation of the grant of letters of administration vide administration cause no. 055 of 1995.
- 4. What remedies are available to the parties.

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Resolution of the issues.

1. Whether the Chief Magistrate's Court of Mubende at Mityana had no jurisdiction to grant letters of administration to the 1st defendant vide administration cause no. 055 of 1995

Counsel for the plaintiff submitted that the Chief Magistrate's Court of Mubende at Mityana had no jurisdiction to grant letters of such a big estate comprising 54.500 hectares and as such the proceedings were defective and subsequent transactions arising therefrom were a nullity.

Counsel further submitted that section 207 of the Magistrate's Court Act grants a Magistrate Grade One pecuniary jurisdiction not exceeding the value of shs. \$20.000.000/\$ =. Further that whereas section 2(5) of the Administration of Estates (Small Estates) (Special Provisions) Act provides that the grant shall not be annulled or revoked for want of jurisdiction, the interests of the beneficiaries have been prejudiced by the 1st defendant in failing to distribute the estate for all these years and disappearing for over 10 years.

Analysis by court.

Jurisdiction is a creature of statute and is only granted by law. If proceedings are conducted by a court without jurisdiction, they are a nullity and the award or judgment arising from proceedings of court without jurisdiction is also a nullity. See: Desai V Warsama (1967) EA 351.

Before the amendment, Section 2(5) of the Administration of Estates (Small Estates) (Special Provisions) Act cap 156 provided as follows;

"A grant of probate or letters of administration shall not be revoked or annulled for want of jurisdiction if during the administration of the estate it is subsequently discovered that the total value of the estate is greater than the total value of the estate declared in an application for the grant unless the court is satisfied that the interests of the beneficiaries *are thereby prejudiced.*"

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The above provision of the law has since been amended according to the Administration of Estates (Small Estates) (Special Provisions) Act cap 263 to read as follows:

"A grant of probate or letters of administration shall be revoked or annulled for want of jurisdiction if during the administration of the estate it is subsequently discovered that the total value of the estate is greater than the total value of the estate declared in an application for the grant unless the court is satisfied that the interests of the beneficiaries are thereby prejudiced.

For purposes of this suit, I will adopt the provision in Administration of Estates (Small Estates) (Special Provisions) Act cap 156 since the suit was filed before the amendment and the grant was made in 1995 before the said amendment as well.

To prove want of jurisdiction, counsel for the plaintiff submitted that the Magistrate Grade One who granted the 1st defendant letters of administration had no pecuniary jurisdiction as the size of Singo block 568 Plot 11 at Nakasengere is 54.6500 hectares which exceeded a Magistrate Grade One's pecuniary jurisdiction.

The plaintiff in his evidence did not state the value of the deceased's estate at the time of the grant in 1995. He only mentions the size of the land at Nakasengere forming part of the estate contending that that it was of a value beyond the pecuniary jurisdiction of a Magistrate Grade One. Pecuniary jurisdiction is an issue of figures since it involves value. No evidence was adduced to prove the value of the estate of the deceased in this matter.

It was therefore not proved that the estate exceeded the jurisdiction of the court.

The above notwithstanding and as already stated above, Section 2(5) of the Administration of Estates (Small Estates) (Special Provisions) Act cap 156 as it was then provided that a grant of letters of administration shall not be annulled for want of jurisdiction. The only exception is when the interests of the beneficiaries have been prejudiced.

Counsel submitted that in this case that the interests of the beneficiaries have been prejudiced by the 1st defendant failing to distribute the estate for all these many years and his disappearance.

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From my interpretation of Section 2(5) Administration of Estates (Small Estates) (Special Provisions) Act cap 156, the exception means where the interests of beneficiaries are prejudiced by the grant of the letters of administration by a court without jurisdiction. For example, where an administrator of an estate acquires letters of administration from a court without jurisdiction and uses the letters to dispose the estate before distributing the same.

In the instant case no evidence was adduced by the plaintiff to prove that the interests of the beneficiaries of the estate of the deceased were prejudiced by having the grant issued by the court without jurisdiction.

This issue is answered in the negative.

2. Whether the plaintiff is a beneficiary of the estate of the late Tomasi Nsirikirabingi.

It was the undisputed evidence of the plaintiff that he is a grandson of the late Tomasi Nsirikirabingi. That his father Samuel Ssenjogera was the son of the deceased who predeceased his father. That none of the children of the deceased are still alive. Only the grandchildren who include the 1st defendant.

This implies that the plaintiff is a lineal descendant of the late Tomasi Nsirikirabingi and falls within the 2nd generation degree of kindred as per Section 19 and Schedule 2 of the Succession Act as amended.

All the children of the late Tomasi Nsirikirabingi have since passed on therefore in the absence of any other beneficiaries, the deceased's grandchildren are the next in the line of kindred and are thus entitled to a share of the estate.

Consequently, the plaintiff is a beneficiary of the estate of the late Tomasi Nsirikirabingi. This issue is answered in the affirmative.

3. Whether there is a just cause for revocation of the grant of letters of administration granted vide administration cause no. 055 of 1995.

Letters of administration entitle the administrator to manage the deceased person's assets. It follows therefore that after the grant of letters of administration, no person other than the person to whom the same has been granted has the power to act as a representative of the

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deceased until the letters of administration have been recalled or revoked. See: Katushabe Generous V Tukamuhebwa Godfrey HCCS No. 043 of 2021.

It is trite law that a grant remains valid until revoked. Even in cases where a grant has been obtained by fraud, so long as the grant remains unrevoked, the grantee represents the estate of the deceased

Section 230 (1) of the Succession Act cap 268 as amended provides for revocation of letters of administration for a just cause. Sub section 2 states;

In this section, just cause means

- a) that 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 a 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;*

- e) that the person to whom the grant was made has willfully 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; or
- *f)* that the person to whom the grant was made has mismanaged the estate.

It was the evidence of the plaintiff (PW1) that the 1st defendant obtained letters of administration through substantially defective proceedings and by fraudulently making a false representation, concealment of the entire process of applying for and obtaining the grant from other beneficiaries. Further that the 1st defendant connived with the 2nd defendant to have the 1st defendant registered on the title of land forming part of the estate.

Fraud is defined to include anything calculated to deceive whether by a single act or combination or suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture. It includes dishonest dealings in land or sharp practice to deprive a person of an interest in land. See: Fredrick Zaabwe -V- Orient Bank and 5 Others SCCA No. 04/2006; Kampala District

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Land Board and Another -V- Venancio Babweyaka and 3 Others Civil Appeal No. 02 Of 2007.

On 31/10/1995, the Chief Magistrate's Court of Mubende at Mityana upon an application for letters of administration being made, it issued a notice to the effect that an application for letters of administration of the estate of the late Tomasi Nsirikirabingi had been filed by the 1st defendant. It was brought to public notice that the 1st defendant was applying for the said grant. There was no caveat lodged in the same application. The same court went ahead to grant the letters of administration. It was based on the same letters of administration that the 1st defendant transferred the said piece of land into his name.

The plaintiff did not adduce any evidence to prove that the 2nd defendant registered the 1st defendant on the land title through fraud. He only alleged that the transfer of the land was by fraud and that the grant of letters of administration was also obtained by fraud.

The element of fraudulently obtaining the grant has not been proved.

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Secondly, the plaintiff led evidence to show that the 1st defendant did not distribute the estate upon obtaining the letters of administration and that he has since disappeared from the family for over 10 years. This evidence was further buttressed by the evidence of PW2 Kabonge Rogers Muwanga a neighbor of the plaintiff and the 1st defendant who stated that the 1st defendant had since disappeared from the beneficiaries for over 10 years now.

The 1st defendant could not be traced to effect court process on him and he was served by substituted service through the Daily Monitor Newspaper. He did not appear in court for this case after the substituted service. I also note of the fact that the 1st defendant has never filed an inventory and an account of the estate.

Absence of an administrator of an estate leaves the estate without an administrator and renders the grant inoperative and defeats the interests of the beneficiaries.

Section 230 (2) (d) of the Succession Act, permits courts to revoke letters of administration that have become useless and inoperative through circumstances. A grant may have been properly made but for a reason that has occurred as a result of subsequent events, it may become necessary for the court to revoke the grant for practical reasons. For example, where

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an administrator becomes incapable of managing his affairs by reason of mental or physical incapacity, the grant will be revoked.

In the case of *In the Goods of Galbraith* [1951] P 422, it was held that:

"The object of the power to revoke a grant is to ensure the due and proper administration of an estate and protection of the interests of those beneficially interested. The principle was enunciated in the case of *In the goods of William Loveday* [1900] P 154."

See also MA No. 006 of 2024 in the matter of an application for revocation of letters of administration and grant instead to Abunyo Naume.

In the instant case, evidence was led to show that the 1st defendant who is an administrator of the estate in issue has disappeared from his family for over 10 years, and could not be reasonably traced. He has not filed an inventory or given an account of how the estate was being administered at all contrary to Section 273(1) of the Succession Act (as amended)

According to Section 337 of the Succession Act (as amended) letters of administration issued before 31st day of May 2022 are to remain in force for a period of three years from 31st of May 2022. This applies to the letters of administration in this case. The administrator for the estate in issue having so far failed on those obligations of the administration of the estate in issue, the three years will expire when no action has been taken.

For the reasons above the 1st defendant has failed on his obligations as an administrator by failing to file an inventory and the grant has also become useless and inoperative which is a just cause for revocation of the grant.

I accordingly revoke the same letters of administration under Section 230 (2) (d) and (e) of the Succession Act (*supra*)

I also order that the 1st defendant delivers the said letters of administration to this court under Section 331(1) of the Succession Act (*supra*)

The plaintiff prayed for a new grant to him upon revocation of the letters of administration.

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Under Section 230(5) of Succession Act it is provided that court may on revocation of probate or letters of administration grant probate or letters of administration to another person where court determines that such a person is a fit and proper person to be granted probate or letters of administration under this Act.

I find the plaintiff a fit and proper person to be granted the letters of administration of this estate. I accordingly grant the same to him. This issue is answered in the affirmative.

Costs

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Since the suit has been partly successful I make no order as to costs.

4. What remedies are available to the parties?

In the circumstances, judgment is entered in favour of the plaintiff with the following orders;

- a) The letters of administration obtained vide Administration Cause No. 55 of 1995 was from a court with jurisdiction.
- b) The plaintiff is a beneficiary of the estate of the late Tomasi Nsirikirabingi.
- c) The letters of administration obtained vide Administration Cause no. 55 of 1995 were not obtained fraudulently.
- d) The registration of the land comprised in Singo Block 568 Plot 11 at Nakasengere into the \$1^{st}\$ defendant's name was not obtained by fraud.
- e) The letters of administration granted to the 1st defendant vide Administration Cause no. 55 of 1995 are hereby revoked for being inoperative and failure to file an inventory.
- f) The 1st defendant is ordered to delivered the original grant of letters of administration into this court.
- q) The letters of administration in respect of the estate of late Tomasi Nsirikirabingi are hereby granted to the plaintiff.
- h) A permanent injunction is hereby issued against the 1st defendant restraining him from undertaking any further dealings with the estate of the late Tomasi Nsirikirabingi.
- i) No orders to costs are granted.

I so order.

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