

UGANDA / JUDGMENT

Nanyonga v Omuhereza Kyakuha and 2 Others (Revision Application 7 of 2023) [2024] UGHC 1150 (8 November 2024)

[2024] UGHC 1150

COURT
High Court of Uganda

BEFORE
Byaruhanga Rugyema, J

CASE / FILE NUMBER
Revision Application 7 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA REVISION APPLICATION NO. 007 OF 2023

(Arising from Civil Suits No. 003 of 2022 & No. 37 of 2022)

NANYONGA ROSEMARY ::::::::::::::::::::::::::::::::::::::

VERSUS

1. OMUHEREZA KYAKUHA

2. KUTEESA ANDREW SSENYONGA

RESPONDENTS 3. NDYANABO PAULO ::::::::::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- The Applicant brought this Application under Ss. 83 & 98 CPA, Ss.17 & 33 of [1] the Judicature Act and 0.52 rr.1,2 & 3 CPR for orders that;
- a) The ruling and Order staying the hearing of C. S No.003 of 2022 be revised and set aside.
- b) Costs of the application.

- The Application is supported by the affidavit of the Applicant wherein the [2] grounds of the application are outlined as follows:
- a) That the Applicant filed C. S No. 003 of 2022 in the capacity of beneficiary & administrator against the Respondents for illegal dealings with the property comprised in the estate of the late Petero Kyeyune.
- b) That later, some other different persons i.e, Kabyemera Peter, Kayaga Peter & Kyeyune Patrick brought a suit vide C. S No.37 of 2020 for revocation of the Applicant's letters of administration.
- c) That the Respondents who are not parties to C. S No.37 of 2022, orally applied for stay of hearing of C. S No.03 of 2022 and the same was granted without legal basis by the Chief Magistrate.
- d) That the Chief Magistrate in exercise of jurisdiction, acted illegally with material irregularity and injustice when he stayed the hearing of C. S No.03 of 2022 without following substantive law and procedure.
- The Application is opposed by the Respondents through the affidavit [3] disposed by the 2nd Respondent and on behalf of the other respondents. The grounds briefly are as follows:
- a) That when the Applicant instituted C. S No.03 of 2022 against the Respondents, the 2nd Respondent filed a defence explaining how he had purchased property (suit land) comprised of the estate of the late Petero Kyeyune from the family members of the late Petero Kyeyune.
- b) That when C. S No.03 of 2022 came up for hearing, the 2nd Respondent's lawyers were notified of the existence of C. S No.37 of 2022 where the Applicant's letters of administration were being challenged.
- c) That the 2nd Respondent's lawyers sought for stay of C. S No.03 of 2022 until the determination of C. S. No.37 of 2022 and the same was granted by the Chief Magistrate.
- d) That C. S No.03 of 2022 is connected to C. S No.37 of 2022 since the Applicant admits that C. S No.37 of 2022 is for revocation of the letters of administration held by her and in C. S No.03 of 2022, the Applicant had sued as administrator with the letters of administration which could be revoked.

The Applicant filed a rejoinder which I have read and considered in this ruling.

Counsel legal representation

The Applicant is represented by Mr. Woswama Emmanuel of M/s P. Wettaka & Co. Advocates, Kampala and the Respondents are represented by Mr. Omara Daniel of M/s Amani Law Chambers, Hoima. Both counsel filed their written submissions for consideration in the determination of this application.

Background

On 9th May 2022, the Applicant, as a beneficiary (daughter) and administrator of the estate of the late Kyeyune Petero, sued the Respondents vide C. S No.03 of 2022 for illegal dealings and or intermeddling with the estate property. The 1st Respondent, Omuhereza Kyakuha is a widow and beneficiary of the estate of the late Petero Kyeyune who is alleged to have sold part of the estate property to 2nd & 3rd Respondents.

On 1st November 2022, C. S No.37 of 2022 was instituted by Kabyemera Peter, Kayaga Peter and Kyeyune Patrick (sons & beneficiaries of the estate of the late Petero Kyeyune) against the Applicant seeking revocation of the Applicant's letters of Administration.

During the hearing of C. S No.03 of 2022, the Respondents orally applied to court for an order to stay the hearing of C. S No.03 of 2022 pending the determination of C. S No.37 of 2022 which was granted on 30th May 2023. The applicant is now seeking to set aside the said order staying the hearing and determination of C. S No.03 of 2022.

Counsel submissions

- Counsel for the Applicant submitted, that the learned Chief Magistrate 161 exercised jurisdiction with material irregularity when he allowed the Respondents' oral application for stay of hearing of C. S No.03 of 2022. Firstly, that the Respondents are neither parties to C. S No.37 of 2022 nor do the 2 suits (C. S No.03 of 2022 and C. S No.37 of 2022) have the same cause of action and reliefs. 2ndly, that by ordering for stay in favour of a later suit i.e C. S No.37 of 2022 without relying on any legal basis, the Chief Magistrate exercised jurisdiction illegally.
- Counsel for the Respondents in support of the decision staying C. S No. 03 of 2022 submitted that the trial Chief Magistrate exercised his discretion judiciously by according both sides an opportunity to be heard and therefore, the applicant who is aggrieved by the decision ought to have appealed against the decision and not opting for revision. He further submitted that the trial Chief Magistrate gave sound reasons for ordering stay of C. S No.3 of 2022. According to counsel, there is no defect in the impugned ruling and there is no ground put forward by the Applicant for revision of the impugned ruling. He relied on the authority of Nadiope & 8 Ors Vs Mukula Development Association, M. A No. 73 of 2010 for the proposition that the style of writing a ruling cannot be a subject of impeachment through revision.

Determination of the Application

Whether this is a proper case for revision.

The Applicant is seeking for revision and setting aside of the ruling and orders [8] staying C. S No.03 of 2022 dated 30th/05/2023. The law providing for the High Court's power of revision is provided under S.83 of the CPA which provides as follows:

"The High court may call for the record of any case which has been determined under this Act by any Magistrates' Court, and if that court appears to have; (a) exercised a jurisdiction not vested in it in law; (b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, the High Court may revise the case and may make such order as it thinks fit;..."

In *Mabalanganya Vs Sanga* (2005) 2 EA 152, the Court of Appeal of Tanzania held that in cases where it exercises its revisional jurisdiction, its duty entails examination by the court of the record of any proceedings before the High Court for purposes of satisfying itself as to the correctness, legality or propriety of any proceedings before the High Court.

In the instant case, upon perusal and examination of the lower court record, [9] the trial Chief Magistrate ruled thus;

"..... I have considered the submissions of Mr. Ariku in opposition to the prayer for stay of hearing of this suit. However, I thought, with all due respect, it is only logical that the question of the plaintiff's authority and locus to bring this suit is resolved before the issue of whether or not there has been intermeddling in the estate resolved. In order for a person to complain about intermeddling that must have the authority to do so. And this authority stems from the legitimacy of a grant of letters probate or administration. Accordingly, it is my order that hearing of this suit [C. S No.03 of 2022] awaits the outcome of the hearing in civil suit No.0037 of 2022. It is even possible that the outcome of the hearing of civil suit No.0037 of 2022 might render nugatory a hearing of this suit [C. S No.03 of 2022]."

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[10] In the instant case, I find the parties in C. S No. 03 of 2022 (Nanyonga Rosemary Vs Omuhereza Kyakuha, Kuteesa Andrew, Ndyanabo Paulo) and the parties in C. S No.37 of 2022 (Kabyemera Peter, Kayaga Peter, Kyeyune Patrick Vs Nanyonga Rosemary) are beneficiaries of the estate of the late **Petero Kyeyune** save the 2nd & 3rd defendants/ Respondents to whom part of the estate property was sold by the 1st Respondent, widow of the late Petero Kyeyune. Therefore, the issues for determination in the 2 suits No.03 and No.37 i.e, Whether the defendants/Respondents intermeddled with the estate and Whether the Defendant/Applicant fraudulently obtained letters of administration in respect of the estate respectively are not substantially same though they revolve around the same estate of the Late Petero Kyeyune. The issue in the 1st suit i.e C. S No.3 of 2022 is "intermeddling with the estate" while the issue in the 2nd

suit i.e, C. S No.37 of 2022 is in regard to the legality of the letters of administration.

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- [11] According to the trial Chief Magistrate, it was logical to resolve first, C. S No.37 of 2022 on the assumption that the outcome and or findings of C. S No.37 of 2022 would render redundant the determination of C. S No.03 of 2022.
- [12] I do not agree with his position because the estate of the late Petero Kyeyune for which the Applicant and others are beneficiary, would be left under threat of intermeddlers hence an injustice to all the beneficiaries of the estate. 2ndly, in the event that C. S No.37 of 2022 is determined because of the stayed C. S No.03 of 2022 the intermeddlers would have taken advantage to further waste the estate in illegal dealings or by intermeddling which would occasion a miscarriage of justice to the parties. In this case therefore, there was neither logic nor legal basis for the trial court's decision to the stay the proceedings of C. S No.03 of 2022. Since the two suits revolve around the estate of the late Petero Kyeyune and the parties are all beneficiaries to the estate of the deceased, they ought to had been consolidated and decided on merit. In any case, if a stay of proceedings was inevitable, it would be the later suit that would preferably be stayed and not the former since its determination would preserve the estate.
- [13] Therefore in my view, staying the proceedings of C. S No.03 of 2022 and proceeding to determine C. S No.37 of 2022 was irregular and would easily

lead to conflicting decisions, if the cases proceed separately before different judicial officers. The trial Chief Magistrate ought to have consolidated and fully heard the 2 suits and resolved all the issues and or disputes arising therefrom.

- [14] From the foregoing, I find that the trial Chief Magistrate exercised jurisdiction irregularly with material injustice and failed to exercise his jurisdiction judiciously when he ordered for the stay of hearing of a former C. S No.03 of 2022 pending determination of a later C. S No.37 of 2022.
- [15] In the premises, this application for revision has merit and is accordingly allowed with the following orders:
- a) The ruling/order staying the hearing and determination of C. S No.03 of 2022 is hereby set aside.
- b) The 2 suits are to be consolidated and heard on merit or be heard separately starting with the suit that was filed first in court.
- c) No order as to costs is made since the parties are relatives and the irregularity was on the part of court.

Dated at Hoima this 8th day of November, 2024.

Byaruhanga Jesse Ruggyema **IUDGE**

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