

UGANDA / JUDGMENT

Nyakubiiha and 4 Others v Mwirumubi (HCT-01-CV-CS 43 of 2019) [2024] UGHC 266 (29 April 2024)

[2024] UGHC 266

COURT

High Court of Uganda

BEFORE

Mugabo, J

CASE / FILE NUMBER

HCT-01-CV-CS 43 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORTPORTAL
HCT-01-CV-CS-043 OF 2019 ARISING FROM HCT-01-CV-AC-007 OF 2015

5. KABAHWEZA MARIAM

VERSUS

RICHARD MWIRUMUBI ::::::::::::::::::::DEFENDANT

BEFORE: HON. JUSTICE VINCENT EMMY MUGABO

JUDGEMENT

Introduction

The plaintiffs instituted this suit against the defendant for a declaration that they are fit and proper persons to be granted letters of administration to the estate of the Late Benezere Nyakubiiha, an order vacating the defendant's Caveat on the application for letters of administration by the plaintiffs, general damages, and costs to the suit.

Brief Facts

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The brief facts as gathered from the parties' pleadings are that the parties herein are biological children of the Late Benezeri Nyakubiiha who died intestate on the 5th of October 2014. The plaintiffs claim that upon his death, the family members appointed them to be the administrators of the estate. They then proceeded to obtain a certificate of no objection from the Administrator General and thereafter applied for letters of administration in this court Vide HCT-01-CV-AC-007 of 2015. However, before the letters of administration were issued, the defendant lodged a caveat against the said application.

In his written statement of defence, the defendant denied the claims by the plaintiffs. The defendant claims that he is the customary heir to the Late Benezeri Nyakubiiha and he was appointed by the family members to be the administrator of the estate of the late. He further claims that the plaintiffs had intermeddled with the estate and therefore are not fit and proper persons to be granted letters of administration. Attempts to mediate between the parties failed hence the filing of the instant suit.

Legal representation

During the hearing, the plaintiffs were represented by *M/S Kayonga, Musinguzi & Co Advocates. M/S Rwabwogo & Co Advocates* represented the defendant. The hearing proceeded by way of witness statements. Both Counsel filed written submissions which I have considered in this judgement.

Issues for determination

At scheduling, the following issues were raised for this court's determination.

- 1. Whether or not the plaintiffs are fit and proper persons to be granted letters of administration to the estate of late Benezeri Nyakubiiha.
- 2. What Remedies are available to the parties?

Burden and Standard of Proof

In civil matters, the burden of proof rests on the plaintiff who must adduce evidence to prove his or her case on the balance of probabilities to obtain the relief sought (*See: sections 101-103 of the Evidence Act Cap 43*).* The court must be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the plaintiff contends (See: *Lancaster Vs Blackwell Colliery Co. Ltd 1982 WC Rep 345* and *Sebuliba Vs Cooperative Bank Ltd (1982) HCB130*).

Consideration by Court

Issue 1: Whether or not the plaintiffs are fit and proper persons to be granted letters of administration to the estate of late Benezeri Nyakubiiha.

To prove their case, the plaintiffs led 5 witnesses. PW1, Kato John Nyakubiha (also the 3rd plaintiff) testified that upon the death of the Benezeri Nyakubiiha, the family held a meeting on the 16th of December 2014 at their family home in Nyambya, Kyenjojo in which the plaintiffs were selected to apply for letters of administration to the estate of their late father. A copy of the family meeting minutes was led in evidence and admitted as *Pexh 1*.

It was the testimony of PW1 that following the family meeting appointing the plaintiffs as administrators, they applied for a certificate of no objection from the Administrator General who subsequently instructed the Chief Administrative Officer of Kyenjojo district to convene a family meeting. Another family meeting was again convened on the 2nd of April 2015 and the plaintiffs were yet again selected to apply for letters of administration. Minutes of the meeting convened by the Town Clerk of Kyenjojo Town Council dated 2nd April 2015 were led in evidence and admitted as *Pexh 4*.

That the defendant, being dissatisfied with the outcome of the family meeting held on the 2nd of April 2015, petitioned the Administrator General who again convened another meeting on the 29th of September 2015 with the defendant in attendance. The meeting again confirmed the plaintiffs as fit and proper persons to apply for letters of administration. A copy of the minutes of the meeting dated 29th September was led in evidence and admitted as *Pexh 5*.

That thereafter the Administrator General issued a certificate of no objection to the application of letters of administration to the plaintiffs. A copy of the certificate of no objection was led in evidence as *Pexh 7*.

That the plaintiffs applied for letters of administration in this court vide HCT-01-CV-Ac-007-2015 and subsequently made a citation in the observer newspaper. Copies of the application for letters of administration and the citation in the observer newspaper were led in evidence and admitted as *Pexh 2* and *Pexh 3*, respectively.

However, the defendant lodged a caveat to their application. It was the testimony of the PW1 that the defendant could not unify the family and most of the family members had no confidence in him. PW1 testified that the defendant lived in Wakiso district which is distant from Kyenjojo district where most of the deceased's estate is located.

PW1 also stated that the plaintiffs have never intermeddled with the estate of the deceased and that they have never sold any part of the estate of the deceased. According to PW1, most of the family members had confidence in them and all meetings held, they were selected as administrators of the estate and the defendant signed the minutes of the meetings voluntarily without being coerced.

Witness statements of PW2, PW3, PW4 and PW5 contained testimonies similar to that of PW1. However, during cross-examination of the plaintiff's witnesses, it was revealed that the late Benezeri Nyakubiiha left a will where part of the estate was distributed, the defendant appointed an heir and a 12-member committee was put in place to oversee the distribution and management of the estate. I note that none of the parties herein is contesting the will although it was alleged that it was not properly drawn.

It was also established that the deceased left about 30 children and the estate was distributed per the will save for a tea plantation, a butchery business, a store for hides and skins, a motor vehicle registration No. UAS 265F, and a bank account with Centenary Bank. All the plaintiffs testified that revenues collected from the estate were being applied to food, medicine, and other essentials for the family members. It was also revealed during the cross-examination that the plaintiffs hold accountability meetings, annually, on the 26th of December although no accountability reports were availed to this court.

To rebut the claims by the plaintiffs and prove his case, the defendant led 3 witnesses and testified DW1. DW1, the defendant, testified that the deceased left a will where he was named an heir. That in the said will the father distributed properties to his children save for shops at Nyambya along Kagadi Road, a bank account with a Centenary Bank, a motor vehicle, a butchery business, a tea estate and land at Nyambya. That all the biological children were given their property as per the will save for "Sefurah" and "Love."

The defendant further testified that he was officially installed as an heir on the 11th of October 2014 in the presence of his siblings, relatives, and friends and that on the 5th of November 2014, he convened a family meeting where he was selected to apply for letters of administration. A copy of the minutes was led in evidence and admitted as *Dexh 3*.

That he subsequently applied for a certificate of no objection from the Administrator General's office, but he later learnt that Mr. Chris Kaijuka, the chairman of the 12-member committee, had written a letter on the 14th of December 2014 calling for a meeting to distribute the estate, yet the matter had been resolved in the meeting of 5th November 2014.

That the defendant petitioned the office of the RDC Kyenjojo which stopped the meeting. A copy of the letter from the RDC stopping the meeting was led in evidence and marked *Dexh 6*. DW1 also testified that he later learnt the plaintiffs had applied for letters of administration to the estate of Late Benezeri Nyakubiiha on 5th February 2015 which prompted him to lodge a caveat. A copy of the caveat was led in evidence and marked *Dexh 7*.

The defendant also testified that the plaintiffs were not fit and proper persons to be granted letters of administration to the estate of late Benezeeri Nyakubiiha because they had kept all the documents, had connived and withdrawn money from Centenary Bank and sold part of the estate without proper authorisation. DW1 also testified that the plaintiffs had failed to account for the proceeds from the estate's business and burial contributions.

The defendant also testified that he attended the meeting chaired by the Town Clerk Kyenjojo Town Council and challenged the plaintiffs' intention to be selected as administrators of the estate because he had already been selected and applied for the same.

During cross-examination, the defendant stated that he believed that the deceased had faith in the 12-member working committee and that it was from that committee that the plaintiffs were selected. He also told the court that he attended the family meetings where he was informed that the plaintiffs had been selected to apply for letters of administration. He also stated that he attended the family meeting which was convened by the Administrator General but left the meeting prematurely because it turned chaotic.

During cross-examination DW2, Peruce Kabacunguzi, one of the daughters of the deceased told the court that at the meeting of 5th November 2015, she did not object to the selection of plaintiffs as administrators of the estate of the late Benezeri Nyakubiiha because they were part of the committee members as per her late father's wish. Although she first denied not to have been given her share, she later admitted that she was given a cow and two rooms.

During cross-examination, DW3, Margaret Kabyabu, informed the court that she had attended all the family meetings but was unaware of how the plaintiffs were chosen to apply for letters of administration. DW3 further stated that she received her share in the form of a house, from which she collects rent. She also confirmed that DW2 received her share and similarly earns rental income.

Submissions by counsel

In his submissions, counsel for the plaintiffs argued that the plaintiffs had been successfully vetted through various meetings and the fact that the Administrator General had issued a certificate of no objection to the plaintiffs serves as a testament that they are fit and proper persons to be granted letters of administration to the estate of the Late Benezeri Nyakubiiha.

On the issue of accountability, counsel for the plaintiffs submitted that money withdrawn from the Centenary Bank Account was to cater for burial expenses, maintenance of the estate and taking care of the family members as stated by PW3 and PW2 during cross-examination.

Counsel for the plaintiff argued that the law on intermeddling with the property of the deceased has been amended by the Succession Amendment Act 2022. That the amendment allows a person to take possession of the property of the deceased for purposes of – preserving the estate, covering funeral expenses, providing immediate necessities for the deceased's family, and managing the deceased's business prudently.

Counsel further argued that the plaintiffs had managed the property of the deceased in accordance with Section 268(3) of the Succession Act, as amended, and that the plaintiffs provided accountability to family members annually on the 26th of December, as documented in Exhibit 9, which contains the minutes of the accountability meetings.

On the claims by the defendant that plaintiffs have always threatened him, counsel argued that there was no proof by the defendant that he was threatened and that there was evidence that he attended all the meetings where the plaintiffs were selected as administrators.

Counsel for the plaintiffs also argued that the defendant was not a fit and proper person to be granted letters of administration. This was because he had been detached from the family since he resides in Wakiso District, showed no interest in attending family meetings, and was unwilling to collaborate with family members. Counsel argued that the defendant should be bound by his pleadings as contained in paragraph 6(e) of his written statement of defence where he stated that it would be unfair and prejudicial to other beneficiaries if he was to be granted letters of administration alone.

On the other hand, counsel for the defendant submitted that the defendant had been selected to apply for letters of administration in the meeting held on the 5th of November 2014 and had applied for a certificate of no objection from the Administrator General. Counsel argued that the process leading to the petition by the plaintiff to obtain letters of administration was fraudulent because the petition was lodged on the 9th day of February 2015 and yet the office of the Administrator General had organized a meeting through the Town Clerk on 25th April 2015. Counsel argued that this shows that the plaintiffs had selected themselves to be the administrators.

Counsel for the defendant further argued that the defence had led evidence showing that the plaintiffs had intermeddled in the property of the deceased by withdrawing money from the deceased's bank account in a Centenary bank and using the proceeds from the tea estate and other businesses for their selfish interest. Counsel argued such intermeddling with the property of the deceased showed that the plaintiffs were not fit and proper persons to be granted letters of administration to the estate of the late Benezeri Nyakubiiha.

Analysis of issue 1

I have examined the evidence presented by both the plaintiffs and the defendant. Both parties claim to have been selected as administrators of the estate of the Late Benezeri Nyakubiiha. I have examined the minutes dated 5th November 2014 (Dexh 3) and established that nowhere was the defendant selected to apply for letters of administration to the estate of the late Nyakubiiha Benezeeri save for agreeing that the heir (defendant) *"had started his official duties officially"* and the *"committee and the heir should work closely"*.

On the other hand, I have examined the minutes of the meetings held on 26th December 2014, 2nd April 2015, and 29th September 2015 and established the following. The first meeting selected the plaintiffs to administer the estate of the late Benezeri Nyakubiiha. However, in this meeting, the defendant was absent. On page 3 of the minutes, the chairperson of the meeting, Chris Kaijuka, observed that he had tried as much as possible to involve the defendant, but his efforts were in vain. The meeting also observed that the defendant had also petitioned the RDC and the police to stop the meeting without involving family members.

Regarding the 2nd April 2015 meeting, which was chaired by the Town Clerk of Kyenjojo Town Council and which the defendant attended as per the attendance list, the plaintiffs were again selected as administrators of the estate of the Late Benezeri Nyakubiiha. It is noted on page 7 of the minutes that Dr. Richard Mwirumubi (the defendant) was proposed to be on the 'committee' "but he declined on the grounds that he was entrusted by all the children in the family meeting which sat in November 2014 as the right person to secure letters of administration". However that meeting was not witnessed by any officer from Kyenjojo Town Council and according to the children who attended the meeting, they are saying there was no person who was appointed to secure letters of administration but they discussed other family issues." [Sic]

With respect to the meeting convened by the Administrator General's Office on the 29th of September 2015, which was attended by the defendant and 33 other family members, including the plaintiffs, the defendant stated that he was the heir of the deceased and wanted to get letters of administration so that he can manage the estate alone. Members present objected to this proposal and stated that they had appointed the plaintiffs to apply for letters of administration. According to the minutes, members present signed a consent letter in favour of the plaintiffs to be given a certificate of no objection.

Subsequently, the administrator General issued a certificate of no objection which was led in evidence and marked *Pexh 7*.

Contrary to the argument of counsel for the defendant, the foregoing findings point to the fact that the plaintiffs, as opposed to the defendant, were duly appointed to be granted letters of administration to the estate of the Late Benezeri Nyakubiiha and issued with a certificate of no objection.

However, the key question that this court must answer is whether the plaintiffs herein are fit and proper persons to be granted letters of administration to the said estate.

The Succession Act Cap 162, as amended, does not define who is the fit and proper person to be granted letters of administration. However, it defines a person to whom letters of administration should not be granted.

Section 190(1) of the Act, as amended, provides that letters of administration shall not be granted to any person who is a minor or who has a mental illness.

It seems to me that the determination of who is a fit and proper person to be granted letters of administration is left to the discretion of the court as per section 190(2) of the Succession Act, as amended. According to that section court shall have the discretion to determine whether a person who is otherwise qualified to administer an estate under the Act, is fit and proper person to do so and the court may defer the appointment of an administrator to a later date or refuse to grant letters of administration where an applicant is not suitable.

Under section 201 of the Succession Act, as amended, when the deceased dies intestate, those who are connected with the deceased either by marriage or by consanguinity are entitled to obtain letters of administration of his or her estate. Under section 201A of the Succession Act, as amended, preference is given to the spouse of the deceased subject to the approval of the Administrator General in accordance with section 5 of the Administrator General's Act Cap 157.

Under section 203 of the Succession Act, as amended, Administration shall not be granted to any relative if there is some other relative or an appointed customary heir entitled to a greater proportion of the estate until a citation has been issued and published calling on that other relative or heir to accept or refuse letters of administration. Under section 204 of the Succession Act, as amended, where two or more persons are entitled to the same proportion of the estate, they shall be equally entitled to administration, and a grant may be made to one or some of them jointly after a citation has been issued and published.

In the instant case, evidence was led by the plaintiffs' witnesses to the effect that the plaintiffs are beneficiaries of the estate of the late Benezeri Nyakubiiha and were duly appointed as administrators of the estate in three family meetings by the majority of family members. The plaintiffs proceeded to apply for a certificate of no objection from the Administrator General which was granted after the majority of beneficiaries of the estate consented to its issuance save for the defendant who insisted that he wanted to administer the estate alone. The plaintiffs proceeded to apply for letters of administration and a citation was published in the Observer Newspaper on 20th November 2015. This is a demonstration that the family members had faith in the plaintiffs that they would discharge their statutory duties in managing the estate of the deceased. Equally, the certificate of no objection granted to the applicants by the Administrator General serves as a testament to that.

In the Matter for *Revocation of Letters of Administration and for Fresh grant to be made to Onen (son), Otto (daughter) Cankara (son) and Alikar (son) of the late John Peter Otto (Deceased) Miscellaneous Application 149 of 2023,* the court found the applicants fit and proper persons and appointed them as administrators because there were minutes of the family meeting appointing them as administrators which demonstrated that family members had faith in them, and the the applicants were children of the deceased.

In the case of **Betty Daisy** *Kampororo Kaliisa and 6 others Vs. The Administrator General Msc. Application No. 10 of 2014*, the court compelled the respondent to issue a certificate of no objection to the 5th applicant, Julius Kaliisa, because there was undisputed evidence that the 5th applicant was nominated to administer the estate by the majority of family members, and all the children of the deceased, except one, had endorsed him as a person to apply for letters of administration.

In the instant case, all the plaintiffs are beneficiaries of the estate of the late Benezeri Nyakubiiha and were selected in 3 family meetings, one of which was conducted by the Administrator General's office where all family members, save for the defendant, consented for the plaintiffs to be granted a certificate of objection. As argued by counsel for the plaintiffs, this indeed, serves as a testament that the majority of beneficiaries had faith in the plaintiffs that they are capable of executing their statutory duties as administrators of the estate.

As to whether the plaintiffs are guilty of intermeddling with the estate of the deceased, section 286 of the Succession Act, as amended, allows a person to take possession of the estate of the deceased person, before grant of letters of administration or probate, for the purpose of – preserving the estate of the deceased person, providing for funeral expenses of the deceased person, providing immediate necessities of the

family of the deceased person, preserving and prudent management of the business of the deceased person, or receiving money or other funds belonging to the deceased person. However, there is a period within which a person can take possession of the estate of the deceased without letters of administration. This period, according to section 268 (4) of the Succession Act, as amended, is 3 months and the person taking possession of the estate shall immediately report particulars of the property and the steps taken to the Administrator General or his or her agent.

I note that the deceased died in 2014 and the law then did not specify the timelines within which to manage the estate of the deceased for purposes herein stated. Nonetheless, evidence was led that the plaintiffs took possession of the estate of the deceased. In so doing, they catered for the funeral expenses, preserved the same estate, provided necessitates for immediate family members and prudently managed the deceased's businesses including the tea plantation and the butchery business by renting them out at a fee. They equally reported the death of the deceased to the Administrator General who subsequently granted a certificate of no objection to their application for letters of administration. The plaintiffs applied for letters of administration before this court vide HCT-01-CV-AC-007 of 2015. On the other hand, the defendant did not provide any cogent evidence showing that the defendants caused loss or damage to the estate. In the circumstances, I, therefore, find that the plaintiffs are not guilty of intermeddling with the estate of the late Benezeri Nyakubiiha.

The argument of counsel for the defendant that the application for letters of administration was irregular since the Administrator General had not convened the family meeting at the time the application was made is rejected simply because a certificate of no objection can be obtained any time before or after the application is made.

I take note of the fact that the defendant was appointed a customary heir. However, as it was held in the case of **Nyanzi Edward Vs. Namulindwa Margaret and 4 Others Civil Suit No. 404* 2018*, being a customary heir is a cultural function which does not bestow legal authority on the person to deal with the property of the deceased. Therefore, the fact that the defendant was appointed a customary heir does not confer to him the automatic right to be appointed the administrator of the estate of the late Benezeri Nyakubiiha.

In consideration of the foregoing analysis, I find that plaintiffs are fit and proper persons to be granted letters of administration to the estate of the late Benezeri Nyakubiiha.

On the contrary, the defendant's failure to attend family meetings and his application for a certificate of no objection without the nomination of the majority of family members are indicative of uncooperative and dishonest behaviour. Such actions lead me to the conclusion that even if the defendant was to be appointed a co-administrator, he would most likely make it difficult for the rest of the administrators to execute their statutory duties. Therefore, the defendant is not a suitable individual to co-administer the estate with the plaintiffs.

Issue 2: What Remedies are available to the parties?

The plaintiffs prayed to this court to grant the following remedies: a declaration that the plaintiffs are fit and proper persons to administer the estate of late Benezeri Nyakubiiha, an order vacating the applicant's caveat on the plaintiff's application for letters of administration, an order granting the applicants letters of administration to the estate of the late Benezeri Nyakubiiha, general damages of UGX. 30,000,000/=, costs of the suits and interest on damages and costs.

The defendant, on the other hand, prayed to this court to grant him costs of the suits, dismissal of the plaintiff's application for letters of administration, cancellation of the certificate of no objection issued to the plaintiffs and order allowing him to continue the process of applying for the letters of administration to the estate of the late Benezeri Nyakubiiha.

I have already made a finding on the suitability of the applicants to be granted letters of administration to the estate of the late Benzeri Nyakubiiha. It is therefore hereby declared that the plaintiffs are fit and proper persons to be granted letters of administration to the estate of the late Benezeri Nyakubiiha.

Regarding the prayer for an order vacating the defendant's caveat on the plaintiff's application for letters of administration, the defendant lodged a caveat against the application alleging that the plaintiffs had been nominated irregularly, that they were not fit and proper persons to be granted letters of administration to the estate and that they had intermeddled with the estate of the late Benezeri Nyakubiiha. The defendant also alleged that he was the one who was duly appointed to administer the estate. All these claims have been ruled out under the first issue. I therefore find no reasonable ground as to why such a caveat should not be vacated. Accordingly, an order vacating the defendant's caveat on the plaintiffs' application for letters of administration to the estate of the late Benezeri Nyakubiiha is hereby issued.

With regard to an order granting the applicants letters of administration, such order shall be dealt with in the application for a letter of administration vide HCT-01-CV-AC-007 OF 2015.

On the prayer of general damages, counsel for the plaintiffs argued that the defendant had subjected the plaintiffs to inconveniences and mental anguish throughout the 8 years they have been moving back and forth to obtain letters of administration. It is trite law that damages are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred *(see Hadley Vs. Baxendale (1894) 9 Exch 341).*

It is also trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain, and suffering. In the case of *Dennis Lwamafa Vs. Attorney General [1992] KALR 21*, it was held that the plaintiff who suffers damages due to the wrongful act of the defendant must be put in the position he would have been had he not suffered the wrong. In the instant case, the plaintiffs did not provide sufficient evidence to establish that they suffered mental anguish as a direct result of the defendant's actions. I note that mental anguish is subjective and difficult to quantify, and, in this case, I find it merely speculative. I therefore decline to grant any order as to general damages.

Regarding the costs of the suit, it is a trite law that costs follow the event. In the case of *Kivumbi Paul Vs. Namugenyi Zulah Civil Revision No. 10 of 2014*, Hon Lady Justice Elizabeth Musoke (as she then was) citing *Kiska Ltd Vs De Angelias [1969] EA 6*, noted that *"a successful party can only be deprived of his costs when it is shown that his conduct either prior to or during the course of the suit has led to litigation, which, but for his own conduct might have been averted."*

In the present case, evidence was presented indicating that the plaintiffs initially sought mediation but it was unsuccessful due to the defendant's insistence. The defendant's behaviour has consistently displayed defiance from the outset. Were it not for the defendant's defiance, this lawsuit could have been avoided. Thus, it is appropriate to award costs to the plaintiffs against the defendant.

Consequently, judgment is hereby entered for the plaintiffs with the following orders:

- (a) A declaration that the plaintiffs are fit and proper persons to administer the estate of the late Benezeri Nyakubiiha.
- (b) An order vacating the defendant's caveat to the plaintiffs' application for letters of administration to the estate of the late Benzeri Nyakubiiha is hereby issued.
- (c) Costs of the suit are awarded to the plaintiffs.

I so order.

Dated at Fort Portal this 29TH day of APRIL 2024.

Vincent Emmy Mugabo Judge 29/APRIL/2024

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