

UGANDA / JUDGMENT

Okurutu s/o Odeke v Gwapusi and Another (Civil Suit No. 5 of 2018)

[2021] UGHCCD 169 (26 February 2021)

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COURT

HC: Civil Division (Uganda)

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Civil Suit No. 5 of 2018

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBALE CIVIL SUIT NO. 005 OF 2018

OKURUT MOSES s/o ODEKE SAMSON:..... PLAINTIFF**VERSUS****1. GWAPUSI PATRICK :..... DEFENDANTS 2. KWAPE STANLEY**

JUDGMENT

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The Plaintiff **Okurut Moses s/o Odeke Samson** is suing the defendants **Gwapusi Patrick** and **Kwape Stanley s/o Obadia Okudo** (hereinafter referred to as the 1st and 2nd defendants respectively) jointly for revocation of Letters of administration granted to them, general damages and costs of the suit.
- [2] The background facts of the plaintiff's case are as follows:
 - a. There lived a one **Omoko** who had the following sons; **Odeke Samson**, **Kalayi**, **Kwape Stanley** and **Okiria**. By the time of his death in 1956, Omoko had distributed and given out all his estate to all his children. The plaintiff **Odeke Samson** was the heir to the said late **Omoko** and by the time of his death in 1999, he had discharged all matters pertaining to his late father Omoko.

- b. In the year 2014, the defendants jointly registered in the High Court **Administration Cause No. 0098 of 2014** for them to take charge and administer a non existing estate purported to be for their late **paternal grandfather and great grandfather Omoko** respectively. The **plaintiff** and a one late **John William Tegule** jointly lodged a caveat in the High Court at Mbale against the defendants' said joint application for Letters of administration to the purported estate of **Omoko** alleging fraud which was particularized, inter alia, as follows:-
 - i. Deliberate failure to notify persons to be affected and to disclose the notice of the application for Letters of administration.
 - ii. Proceeding with the prosecution of the Administration Cause in the High Court as though no caveat had been lodged in the matter and yet the receipt thereof had been acknowledged by court.
 - iii. The defendants stealthily and illegally obtaining grant of Letters of administration to take charge of the purported estate of their late grandfather/great grandfather Omoko by causing the caveat in the Administration Cause court file to disappear and concealment of the caveat from the presiding Judge.
- [3] It is the contention of the plaintiff that the defendants are relying on the said illegal Grant of Letters of administration to dispossess the plaintiff and his kinsmen of their land property their late father, **Odeke Samson** got from his late father **Omoko** during his lifetime, prior to his death in 1956.
- [4] On the other hand, it is the defendants' case that:
 - a. The late **Omoko** was survived by 4 sons who include the plaintiff's late father **Samson Odeke** who used their father's land jointly as **Omoko** had never distributed the same as the plaintiff alleges. The father of the plaintiff, the late **Samson Odeke** was the heir to the estate of the late **Omoko** but upon his demise, the plaintiff was appointed the heir of his late father **Samson Odeke** who then took that advantage and occupied all the undistributed land of Omoko with his family.
 - b. The estate of Omoko existed to which the defendants were granted Letters of administration as his property was never distributed to date and there is need to do so for the beneficiaries who include the plaintiff.
 - c. No caveat was ever lodged as alleged by the plaintiff and if it was so lodged, the same was never served upon the defendants.
- [5] As regards the particulars of fraud, the defendants contend that they followed a due process leading to the filing of **Administration Cause No.**

098 of 2014 with the knowledge of the plaintiff and all his family members;

- i. That prior to applying for the Letters of administration for the estate of **Omoko**, the defendants applied for and obtained a **Certificate of no objection** from the Administrator General following a family meeting dated 23rd May, 2004 conducted by the Sub county Chief of Kanginima Sub county and a meeting in the Administrator General's office dated 19th November, 2014 which the plaintiff never attended but delegated a one **Tatyabule Sosi Peter Modingi** from his family who never objected to the Grant save for inclusion of Odeke Samson's estate.
- ii. That the Notice of the application for the Letters of administration was published in the **Observer Newspapers of Wednesday 25th – 26th February, 2015** and no objection was raised.
- iii. That no caveat was ever lodged against the application for Letters of administration as none was on court record at the time the defendants appeared before the Registrar for Identification and that the defendants do not have any control on court files to cause the alleged caveat to disappear as alleged.
- iv. That the Grant for Letters of administration is therefore not illegal or intended to dispossess anyone his/their property as alleged but it's intended to streamline the estate of Omoko and distribute all his property to all his lawful beneficiaries, the plaintiff inclusive.
- [6] **Representation**; Mr. Mutenyo appeared for the plaintiff while Mr. Mugoda appeared for the defendants.
- [7] Mr. Mutenyo for the plaintiff submitted that the defendants jointly filed an application for Letters of administration in respect of land property they purported had been left by the late Omoko in 1956 undistributed. That the plaintiff however contend that such estate did not exist. That as a result, on 17th December, 2014, the plaintiff and his stepbrother **John William Tegule** jointly lodged a caveat against the said application by the defendants in the **H. C. A. C. No. 098 of 2014**. That however, without resolving the issue of the filed caveat, the defendants obtained Letters of

administration after the caveat had been removed from the **Administration Cause file No. 098/2014** without the knowledge of the presiding Judge and the caveators hence this suit to challenge the validity of the Grant of the Letters of administration to the defendants in **Administration Cause No. 098 of 2014**.

- [8] Counsel for the defendants on the other hand submitted that the defendants duly complied with the preliminary process before they jointly applied for Letters of administration to the estate of the their late paternal grandfather Omoko in High Court vide **Administration Cause No. 098/2014**. Further that the defendants legally obtained Letters of administration to administer their grandfather's estate, **Omoko** because **Omoko** never distributed his land to his children. That upon his death, the plaintiff's father **Odeke Samson** who was one of the sons of the late Omoko became the customary heir thereof but also died without having distributed Omoko's estate.

ISSUES OF DETERMINATION:

- [9] At scheduling, the following issues were framed for determination:-
- 1. Whether the defendants lawfully obtained Letters of administration in Administration Cause No. 0098 of 2014.
- 2. Whether the purported land distribution by the defendants made in reliance on the said Grant of Letters of administration is valid.
- 3. Whether the property in contention forms part of the estate of the late Omoko or forms part of the estate of the late Odeke Samson (issue included upon request by Counsel for the defendants during submissions).
- 4. What remedies are available to the parties.

ISSUE NO. 1:**Whether the defendants lawfully obtained Letters of administration in Administration Cause No. 0098 of 2014:**

^[10] The plaintiff in this case, challenges the validity of the Grant of Letters of administration to the defendants on the following grounds:-

- a. Misrepresentation of material facts on the alleged Omoko's estate. Counsel for the plaintiff submitted that in the petition for Letters of administration in question, the defendants jointly misrepresented a factual position that the 2nd defendant like the 1st defendant is a **grandson to the late Omoko** yet he is not.
- b. Deliberate nondisclosure of the deceased's full names in the process of applying for the Letters of administration in question. Counsel for the plaintiff submitted that in giving the particulars of the estate, when seeking the Letters of administration in question, the defendants deliberately omitted the deceased's **Omoko's** other name, **Kwapa**.
- c. There was an unresolved caveat that the plaintiff and another had jointly filed in **Administration Cause No. 098/2014** in question.
- d. There was no estate for the late **Omoko Kwapa** at the time of filing **Administration Cause No. 98 of 2014** and the Grant to the defendants concerned the property that was already covered by Letters of administration granted by court earlier to the plaintiff in **Administration Cause No. 028 of 2014**.
- [11] As a result of the foregoing, the plaintiff seeks a declaration that the defendants obtained Letters of administration in the **Administration Cause No. 098/2014** improperly and fraudulently and an order for revocation of the impugned Letters of administration to the defendants.

- [12] *Section 234 of the Succession Act Cap 162* provides that the Grant of Letters of administration shall be revoked for just cause. **Just cause** is defined to mean that the proceedings to obtain the Grant were defective in substance; the Grant was obtained fraudulently by making a false suggestion or concealing from court something material to the case; the Grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the Grant though, the allegation was made in ignorance or inadvertently; the Grant has become useless and inoperative through circumstances; or the person to whom the Grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account under part XXXIV of the Act, or has exhibited an inventory which is untrue in a material aspect.
- [13] As regards misrepresentation of material facts and deliberate nondisclosure of the deceased's full names in the process of applying for the Letters of administration in question, it is a fact and it was conceded by the 1st defendant during cross examination that the 2nd defendant, son of **Obadia Okudo** is a **great grandson** of the deceased **Omoko** and not a **grandson** as was indicated in the petition for Letters of administration in question. It is the submission of Counsel for the plaintiff that this misrepresentation was intended to mislead court that the 2nd defendant was entitled to administration of Omoko's estate since as great grandson of the deceased, he would be ineligible because Omoko is survived by many grandchildren entitled to the administration of the estate.
- [14] I have looked at the impugned Letters of administration (**P. Exh. V**) and the advert in the Observer Newspaper of 25th – 26th February, 2015 (**D. Ex. V**), the defendants misrepresented a factual position that the 2nd defendant, like the 1st defendant was a grandson to the late Omoko. It is also a fact that in the process of applying for this Grant, the full names of the deceased were not disclosed. In my view, the foregoing amounted to misrepresentation and omissions intended to conceal vital information that would benefit those that would be effected by the Grant. Both the misrepresentation by the 2nd defendant of his relation with the deceased and the omission by not indicating the 2nd name of the deceased **Kwapa** had the effect of concealing the true identities of the deceased and the petitioner.
- [15] Secondly, the defendants advertised the Notice of application for Letters of administration in the Observer Newspaper of 25th – 26th February, 2015, a Newspaper I find had no wide circulation. However, despite its limited circulation, the plaintiff accessed it and got notice of intended application for the impugned Grant. As a result, the plaintiff and his stepbrother **Tegule** filed a caveat on the application for the Grant. In the circumstances, I find that while it would have been appropriate to advertise in another Newspaper with a wide circulation, the defendants' failure to do so did not occasion any miscarriage of justice since the plaintiff accessed the Newspaper and was accordingly notified of the application upon which he took the necessary steps to lodge a caveat.
- [16] It is the plaintiff's case that the caveat in question (**P. Exh. III**) was filed and received on the **Administration Cause file No. 098/2014** on 17th

December, 2014 as clearly indicated by the court receiving stamp. It is the further contention of the plaintiff that this caveat was plucked off the file and therefore it was not brought to the attention of the presiding Judge who as a result, granted the defendants the impugned Letters of administration on 21st April, 2015 (P. Ex. V). It is the plaintiff's Counsel's submission that the disappearance of this caveat from the court administration cause file (and the file itself) could not have been work of the plaintiff who filed it with a compelling purpose of challenging the said application by the defendants for Letters of administration in question. He therefore attributed the disappearance of the caveat from the file to the defendants.

- [17] As for the defendants, they deny that the caveat in question was ever lodged against the impugned Grant of Letters of administration. That the caveat alleged to had been lodged was an afterthought or only sneaked on court record after the Grant of the Letters of administration were given since the same was never even endorsed by the Deputy Registrar to prove its authenticity.
- [18] I have had an opportunity to peruse the original and the photocopy documents (P. Exh. III) of the caveat attached to PW1's witness statement. I am satisfied that the caveat was filed on the **High Court Administration Cause file No. 098/2014** on 17th December, 2014 as proved by the High Court of Uganda Eastern Circuit received stamp thereon. The non endorsement of the caveat by the Deputy Registrar of the court does not render it invalid. It is therefore my finding that the plaintiff has established that the caveat was duly filed.
- [19] During cross examination, DW¹ denied knowledge of the administration cause file ever missing despite the glaring plaintiff's complaints on record (P. Exh. VI) to the effect that this particular file has ever gone missing. It is however my view that whether the administration cause file ever went missing or not, the plaintiff has established that the caveat in question dated 17th December, 2014 was accordingly filed and duly received by court on the same date as per the court receiving stamp. The defendants have not shown that it was sneaked on court record after the Grant of the impugned Letters of administration as Counsel for the defendant suggests in his submissions.
- [20] It is the law under *Section 255 of the Succession Act Cap 162* that once a caveat is lodged on a petition for Probate or Letters of administration, no action in whatever form or manner can be commenced on the mater without prior notice having been given to the caveator; see also *IN THE MATTER OF THE ESTATE OF THE LATE JUSTINE DAVID KIRUNDA H. C. M. A. NO. 252/2014 (FD)* and *MARGARET KABAHUNGUZI VS. ELIAZALI TIBEKINGA & ANOR. H. C. A. C. NO. 8/1995.*
- [21] In the instant case, I find that though the caveat was duly filed against the Grant of the Letters of administration vide H. C. A. C. No. 098/2014, it was never brought to the attention of the presiding Judge and as a result, he issued the impugned Grant.
- [22] Further evidence that the caveat in question was filed and received on court record of **Administration Cause No. 098/2014** can be found in the evidence of **Tatyabala Sosi Peter** (PW2). He stated, as admitted by the 1st defendant, that he represented the plaintiff's family

in a meeting at the Administrator General's office Mbale regarding the intended application by the defendants for Letters of administration in respect of the estate of **Omoko**. It is his testimony that he objected to the defendants being granted a Certificate of no objection on the grounds that the estate attributed to the late Omoko did not exist at all. Omoko had died in 1956, a period of 58 years had elapsed. This alone is evidence that from the onset the plaintiff's family were resisting the defendants' application and therefore, it is not correct as suggested by Counsel for the defendants that the caveat was a mere afterthought.

- [23] It is however the defendants' case that PW² did not object to the defendants being given a Certificate of no objection by the Administrator General, that he gave them a go ahead to proceed with the process leading to obtaining the impugned Letters of administration from court as long as **Odeke Samson's** estate was left out. That indeed, **Odeke Samson's** estate was left out and they do not even have any interest in it.
- [24] On record however, I have found no evidence that any meeting took place prior to the Grant of the Certificate of no objection by the Administrator General to the defendants. The only available minutes are those dated 23rd May, 2014 (**D. Exh. II**) which on a closer look were not about the identification of who was to apply and obtain the Certificate of

no objection or Grant of Letters of administration at that, but were about who was to become the heir of the late Omoko. Indeed, the 1st defendant **Gwapusi Patrick** in that meeting was chosen and he became the heir of the late Omoko. **Nkolwa Vincent** (DW2) therefore told court lies that in that meeting the family unanimously agreed that the defendants be given a **Certificate of no objection** to apply for Letters of administration to the estate of the late **Omoko Kwape**.

- [25] The name of the 2nd defendant, **Kwape Stanley** s/o **Obadia Okudo** did not appear anywhere in the minutes (**D. Exh. II**). Though in that meeting the 1st defendant **Gwapusi Patrick** was declared as the heir of the late **Omoko**, he did not apply for the impugned Grant (**D. Exh. VI**) as the heir, signifying that the family meeting minutes in question did not have anything to do with the application for Letters of administration in respect of the estate of Omoko. The 1st defendant/DW¹ purported to attach family meeting minutes before the Administrator General to his witness statement as **Annexure "D"** but they were never attached. There were therefore, no family meeting held or minutes before the Administrator General's office, Mbale as alleged prior to the issuance of the Certificate of no objection. If they were there, the defendants would have attached them to DW1's witness statement. PW2's non objection alleged by DW1 that it was in writing was also not produced in court. In the premises, court is entitled to impute the defendants none production of these minutes as supporting the plaintiff's contention that therein, PW2 outrightly objected to the application for the Certificate of no objection on the grounds that Omoko's estate was none existent.

- [26] The foregoing in my view, show how the plaintiff's family from the onset objected to the defendants' move to apply for Letters of administration in respect of the estate of the late Omoko as further evidenced by the caveat that followed upon the defendants' application for the Grant.
- [27] It is the 1st defendant/DW¹ evidence during cross examination that upon obtaining the Grant for administration of the estate of the late **Omoko Kwape**, he distributed the estate property to the beneficiaries. Though the defendants claim that the plaintiff is still a beneficiary to the late Omoko's estate, there is no evidence that the family of the plaintiff was considered during this distribution. It is not even clear when this distribution was done or took place. The 1st defendant/DW¹ conceded

that he had never filed with court an inventory as required by the Grant (D. Exh. VI) itself. Counsel for the defendants' submissions that there had not been any distribution done by the defendants is not correct. It is contrary to what DW1 told court himself.

[28] As was held in **MUKISA PATRICK & ANOR. VS. NABUKALU REBECCA H. C. C. S. NO. 29/2016 (F. D)**, the Grant provides by way of an order thus:

> The grantee(s) *"having undertaken to administer the same and to make a full and true inventory of the said property and credits, and to exhibit the same in this court within six months from the date of this Grant, or within such further time as the court may from time to time appoint, and also to render to this court a true account of the said property and credits within one year from the same date or within such further time as the court may from time to time appoint."*

In this case, it is admitted by the 1st defendant that the grantees have filed neither a full and true inventory nor a true account of the properties of the estate of the late **Omoko** as they undertook in the bond.

- [29] In conclusion, from the foregoing, I find that during the process of applying and obtaining the Letters of administration in respect of the estate of the late **Omoko**, the petitioners/defendants misrepresented material facts as to the true status of the 2nd petitioner/defendant labeling himself as a grandson of the deceased whereas he was not. Secondly, there was a deliberate nondisclosure of the deceased's full names in the process of applying for the impugned Letters of administration by omitting his second name "**Kwape**", thirdly, the Grant in respect of the estate of the late Omoko was granted during the subsistence of an unresolved and or determined caveat that the plaintiff and another had jointly filed. Lastly, despite the grantees/defendants purporting to have distributed the deceased's estate, they have never filed either full and true inventory or a true account of the properties of the estate of the deceased **Omoko** as they undertook in the bond.
- [30] In the circumstances of this case, I find the 1st issue in the negative, that is, the defendants unlawfully obtained Letters of administration in **Administration Cause No. 0098/2014** and in that regard, it is my

finding that there exists just cause for the revocation of the Grant of Letters of administration of the late **Omoko**.

[31] Having found that there exists just cause for the revocation of the Grant, it follows therefore that resolving issues **two** and **three** ie *whether the purported land distribution by the defendants made in reliance on the said Grant of Letters of administration is valid*, has been answered in the negative and *whether the property in contention forms part of the estate of the late Omoko or forms part of the estate of the late Odeke Samson,* becomes a moot.

ISSUE NO. 4: What remedies are available to the parties:

- [32] This court having found that there exists just cause for the revocation of the Grant, judgment is given in favour of the plaintiff on the following reliefs/terms:
- a. The defendants unlawfully obtained Letters of administration in the Administration Cause No. 0098/2014 and the Grant is therefore accordingly revoked.
- b. No order as to general damages as none have been demonstrated to have been suffered.
- c. Costs follow the event, *Section 27 Civil Procedure Act.* The plaintiff being a successful party, he is given costs of this suit.

Dated at **Mbale** this 26th day of February, 2021.

Byaruhanga Jesse Rugyema **JUDGE**

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