

UGANDA / JUDGMENT

Salabaya and Another v Sekitoleko Mugwanya and Another (Civil Suit 293 of 2014) [2023] UGHCFD 33 (27 September 2023) [2023] UGHCFD 33

COURT

HC: Family Division (Uganda)

BEFORE

Kazibwe, J

CASE / FILE NUMBER

Civil Suit 293 of 2014

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MUBENDE CIVIL SUIT NO. 293 OF 2014

1 SAI ABAYA HAKIM

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2 NAKIRIDDE ZAITUNI

PI AINTIFFS

VFRSUS

1. SEKITOOLEKO MUGWANYA ISAAC

NAKAFFEERO MADINA

DEFENDANTS

BEFORE HON. JUSTICE MOSES KAZIBWE KAWUMI**RULING**

The Plaintiffs brought this suit against the Defendants for revocation of letters of administration granted to the defendants in respect of the estate of late Ssempeera Alamanzani. The Plaintiffs contend that the Defendants illegally acquired the Letters of Administration because they had lodged a caveat against the process but the defendants instead of filing a suit for the court to determine the issues relating to the estate fraudulently proceeded to acquire the Letters of Administration.

In their joint written statement of defense, the Defendants denied the allegations and averred that they were lawfully appointed by Court upon obtaining a certificate of no objection from the Administrator General. It is contended by the defendants that they only learnt of the caveat when Police summoned them on allegations of intermeddling in the estate of the deceased after the grant had already been made.

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The Defendants also counter claimed against the Plaintiffs for among others, fraud and sought a declaration that various estate properties were illegally transferred by the 1st Plaintiff into his name and a declaration that the purported Will in the possession of the 1st Plaintiff is a forgery since the deceased died intestate.

Representation

M/S Lukwago & Co. Advocates represent the defendants while M/S Sengooba & Co. Advocates represent the Plaintiffs

When the suit came up for hearing on the 7th day of **June 2023**, Counsel for the Plaintiff's Counsel informed Court that he had filed Miscellaneous Application No. 93 of 2023 raising a preliminary objection to the hearing of the suit. The court allowed Counsel to raise the objections since he claimed the result would lead to the disposal of the main suit.

Preliminary objection

Mr. Sengooba submitted that Section 255 (1) and (2) of the Succession Amendment Act, 2012 provides for filing of a suit within six months upon lodgment of a caveat lodged against a petition for letters of administration. That the Plaintiffs lodged a caveat against the grant of letters of administration to the Defendants vide Administration Cause No. 396 of 2014. The Defendants did not file a suit but instead proceeded to acquire the Letters of Administration.

Counsel prayed that Administration Cause No. 396 of 2014 be struck out for want of prosecution/lapse with costs and the matter be referred back to the Administrator General for a Certificate of no Objection.

In the Affidavit supporting the Application the 1st Plaintiff /Applicant had contended that when the Defendants/respondents failed to file a suit their application for Letters of Administration abated and the Grant should be struck off for arising out of a nullity.

Mr. Kabuye for the Defendants submitted that the objection raised is moot. That Administration Cause No. 396 of 2014 cannot be struck out since the Court had already granted the Letters of Administration. Counsel submitted that Section 255 cannot apply after the grant has been issued. He added that the only available remedy is for the Plaintiffs/Applicants to apply for revocation of the grant.

Counsel submitted that the main suit was filed to challenge the grant thus the objections are only intended to pre-empt its hearing and a waste of Courts time. He prayed that the objections be over-ruled with costs and the parties be given a chance to be heard on the merit of the suit.

In rejoinder, Counsel for the Plaintiffs submitted that the grant was a nullity since there was a caveat lodged by the Plaintiffs. That whereas the Plaintiffs filed a suit, Court should pronounce itself on the merits of the issued caveat. He relied on Order 6 rule 30 Civil Procedure Rules.

The issues

- 1. Whether Administration Cause No. 396 abated or can be struck out. for want of prosecution.
- 2. What remedies are available to the parties

Resolution of the Court

Section 255A of the Succession (Amendment) Act 2022 provides:

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(1)" A petitioner for probate or letters of administration in respect of which a caveat has been lodged shall, within six months from the date the caveat was lodged, file a suit for removal of the caveat".

Rule 3 provides

"that where a person lodges a caveat and a petitioner for probate or letters of administration does not comply with subsection (I) or (2), the caveat and the petition for probate or letters of administration shall lapse."

The Black's law Dictionary 8th Edition defines the word" *lapse*" "in respect of an estate or right to mean "to pass away or revert to someone else because conditions have not been fulfilled or because a person entitled to possession has failed in some duty."

It is agreed by both Counsel that the petition for letters of administration was concluded leading to the grant issued on July 9th 2014. Civil Suit No.293 of 2014 filed by the Plaintiffs/Applicants seeks to have the Letters of Administration revoked and the grounds are the same as those raised in the Preliminary Objection.

Administration Cause No,396/2014 concluded by the issuance of the Letters of Administration cannot therefore lapse or be struck out. It cannot also be dismissed for Want of Prosecution as contended in the Application raising the preliminary objection.

From the foregoing, it is therefore a fallacy, for Counsel for the Plaintiffs to institute Miscellaneous Application No. 93 of 2023 seeking to strike out a concluded suit on the premise that it was not prosecuted or that it lapsed.

A determination as to whether the process leading to the issuance of the grant is a nullity was framed as an issue in Civil Suit No.293 of 2014 and the Succession Act provides for grounds for revoking Letters of Administration.

I accordingly over rule the objection and make the following orders; -

1. Miscellaneous Application No. 93 of 2023 arising out of civil Suit No. 396 of 2014 is hereby struck out with costs.

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- 2. Counsel are directed to file and serve each other with trial bundles, witness statements and a joint scheduling memorandum by the 20th day of October 2023.
- 3. This suit is fixed for hearing on 23rd November 2023 at 10:00 AM.

Moses Kazibwe Kawumi

Judge 27th September 2023

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