

UGANDA / JUDGMENT

Sunday v Byakatonda (Miscellaneous Cause No. 75 of 2021) [2021]

UGHCCD 162 (3 December 2021)

[2021] UGHCCD 162

COURT

HC: Civil Division (Uganda)

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Miscellaneous Cause No. 75 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION)

MISC. CAUSE NO. 75 OF 2021

1. SUNDAY IMMACULATE

2. BYAKATONDA WILSON :..... APPLICANTS

VERSUS

UGANDA NATIONAL ROADS AUTHORITY :..... RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING

Introduction

- [1] The Applicants brought this application by Notice of Motion under Articles 26 (b) (i), 44 of the Constitution of the Republic of Uganda, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 Rules 1 & 3 of the Civil Procedure Rules seeking for orders that;
- a) The refusal to pay and the continued holding onto the monies meant for compensation for property at Nalweyo Trading Centre, in Kakumiro District (hereinafter called "**the subject property**") is unfair and unlawful.

- b) The Respondent pays the approved value of compensation of the sum of UGX 207, 255,191/= in respect of the subject property to the Applicants without any further delay.
 - c) Costs of the Application be provided for.
- [2] The grounds of the application are laid out in the Notice of Motion and in an affidavit sworn in support of the application by **Sunday Immaculate**, the 1st Applicant. Briefly, the grounds of the application are that the Applicants are persons affected by the Buhimba-Kakumiro Road Construction Project by Uganda National Roads Authority, the Respondent (hereinafter referred to as "UNRA"). The subject property is located at Nalweyo trading centre, in Kakumiro District which formerly belonged to the late Ngaro Sam. The property was assessed by the Respondent and valued at UGX 207,255,191/= which value was approved under Assessment Reference No. BNBL/L/06655P3. The Respondent paid every other claimant/affected persons under the project but has not paid the Applicants and has not given any justifiable reason for the refusal to pay the Applicants. The sum payable is for the benefit of the estate of the late Ngaro Sam. It is just and equitable that the orders sought be granted by the court.
- [3] The Respondent opposed the application through an affidavit in reply sworn by **Lucy Namuleme**, a Senior Legal Officer with the Respondent, who stated that the Respondent intended to acquire property comprising a Kibanja and developments located at Nalweyo trading Centre in Kakumiro District belonging to the Estate of the late Ngaro Sam affected by the Buhimba-Kakumiro Road Project (the subject property). The Applicants who were the administrators of the Estate of the late Ngaro Sam were assessed for compensation and the property was valued at UGX 207,255,191/=. Before the Respondent could effect payment, a complaint was received from Dr. Kyakuha Solomon alleging that the letters of administration held by the Applicants were being challenged in the courts of law. The Respondent is willing to pay the compensation sum but is constrained due to the ownership disputes. The Respondent averred that if the court is to make an order for payment of the money, it should order that the said sum be deposited into the court.
- [4] The Applicants filed an affidavit in rejoinder also sworn by Sunday Immaculate, the 1st Applicant, whose contents I have taken into consideration.

Representation and Hearing

- [5] The Applicants were represented by Mr. Tumwesige Wycliff from M/s Talp Advocates while the Respondent was represented by Directorate of Legal Services of Uganda National Roads Authority (UNRA). The matter proceeded by way of written submissions which were duly filed by both Counsel. I have considered the submissions of Counsel in the course of resolution of the issues before the Court.

Issues for determination by the Court

[6] Two issues are up for determination by the Court, namely;

- 1. Whether the Respondent's refusal to pay the compensation sum to the Applicants is lawful.
- 2. What remedies are available to the parties?

Resolution by the Court

Issue 1: Whether the Respondent's refusal to pay the compensation sum to the Applicants is lawful.

Submissions by Counsel

[7] It was submitted by Counsel for the Applicants that according to the averments in the affidavit in support of the application, the Respondent had at all times been dealing with the Applicants with the knowledge that the Applicants are the legitimate administrators of the estate of the late Ngaro Sam whose property is due for compensation. Counsel submitted that the Respondent had not alluded to any provision of the law that prohibited the entity from paying the compensation money to the Applicants in the circumstances. Counsel argued that this act was illegal considering that there is no court order to that effect. Counsel for the Applicants invited the court to consider the balance of convenience since the estate comprises of more than 30 beneficiaries who should not be left to suffer as a result of individual contestations. Counsel prayed that the Court exercises its discretion in equity and order the Respondent to pay the compensation sum to the Applicants.

[8] In reply, Counsel for the Respondent stated that much as the Respondent holds the compensation sum that is due and payable, because of the pending disputes, the Respondent is constrained as to which of the claimants the compensation sum should be paid. Counsel submitted that the Respondent claims no interest in the compensation sum and there is no collusion between the Respondent and any of the claimants in the said estate. Counsel submitted that as a result of this dispute, the Respondent's project has stalled leading to charges and penalties. Counsel also submitted that the Respondent was considering instituting interpleader proceedings but in view of this application, the Court should invoke the power vested in it under Section 98 of the Civil Procedure Act to direct that the assessed sums be deposited in court pending the resolution of the disputes between the contending claimants.

Determination by the Court

[9] From the facts on record, a number of facts are not in dispute. It is not in dispute that the subject property belongs to the estate of the late Ngaro Sam. It is not in dispute that the Applicants are the Administrators of the said estate vide Letters of Administration granted

under Administration Cause No. 163 of 2015 by the Chief Magistrates Court of Hoima at Hoima. It is further not in dispute that the subject property, a kibanja, is affected by the construction of Buhimba-Kakumiro road, a project undertaken by the Respondent. The property was assessed by the Respondent and valued at UGX 207,255,191/= which value was approved by the Respondent. It was averred by the Applicants that the Respondent paid other similarly project affected persons but has not paid the Applicants. The Applicants further averred that the sum payable is for the benefit of the estate of the late Ngaro Sam and, as administrators of the said estate, they are entitled to receive the said payment.

- [10] On the other hand, it is shown by the Respondent that they neither objected to release of the said compensation sum nor are they interested in any further holding of the said monies. It was averred for the Respondent that the reason they could not release the monies was because of an existing dispute between the Applicants (being administrators of the estate) and some beneficiaries under the estate. The Respondent laid out to the court some facts to the effect that one Dr. Kyakuha Solomon, a son to the deceased Ngaro Sam, wrote to the Respondent objecting to the release of the compensation payment to the Applicants alleging that the latter did not lawfully obtain the letters of administration. According to the evidence adduced by the Respondent, the above named complainant alleged that the subject property was personally occupied by one Kisebo Margaret, a widow of the late Ngaro Sam and mother to the complainant (Dr. Kyakuha Solomon). It was further averred for the Respondent that upon learning of the said contestation, they were constrained to withhold release of the said compensation monies until the said contestations were resolved.
- [11] The attention of this Court has been drawn to two pending suits in court at Hoima, to wit, Originating Summons No. 13 of 2016: Kisebo Margaret & Another vs Sunday Immaculate & Another; and Civil Suit No. 108 of 2019: Kisebo Margaret & Another vs Sunday Immaculate & Another. From the information available on record, the Originating Summons was filed in the High Court holden at Hoima challenging the manner in which the present Applicants were managing the estate. The Civil Suit No. 108 of 2019 is before the Chief Magistrates Court at Hoima and challenges the grant of letters of administration to the Applicants. As per the Respondent's averments, these suits are still pending before the said Courts. The crux of the matter therefore, in my view, is whether the compensation monies should remain being held by the Respondent until disposal of the said suits.
- [12] The above question leads me to the purpose of grant of letters of administration and the extent of the power and authority of administrators of an estate. Under *Section 2(a) of the Succession Act Cap 162,* an administrator is defined as a person appointed by a court to administer the estate of a deceased person where there is no executor. *Section 180 of the Succession Act* provides that an executor or [administrator,](<https://ulii.org/akn/ug/act/ord/1906/1/eng%402000-12-31#defn-term-administrator>) as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such. Letters of Administration constitute a legal document issued by the Court, which allows the administrator(s) to manage and distribute

the deceased's assets. The purpose of a grant of Letters of Administration is to collect the deceased's assets, pay any debts and then distribute the assets to the beneficiaries. It is therefore the duty of the personal representative to make final distribution of the estate and any dissatisfied party would be free to contest the same in courts of law. See: *Elizabeth Nalumansi Wamala vs Jolly Kasande, SCCA No. 10 of 2015*.

- [13] In light of the above legal position, it is clear that the grant of letters of administration to some members of a deceased person's estate does not bestow ownership of the property under the estate. Rather, it bestows responsibility upon such person(s) to manage the property, pay off debts and distribute the assets to the beneficiaries under the estate. As indicated above, a party dissatisfied either by the grant or by the manner of exercise of the functions of an administrator has a right to contest the same in a court of law. Under the law, unless and until the grant of letters of administration has been revoked, the administrator(s) remain empowered to perform their functions. Similarly, even where a suit challenging the grant or the exercise of the functions of an administrator is pending, the pendency of that suit does not and cannot preclude the administrators from exercising their powers and functions. The pendency of any such suits may only have that effect if there is in existence an injunction duly issued by a court of competent jurisdiction.
- [14] In the present case, there is no evidence, let alone any allegation that any injunction has been issued by any court restraining or affecting the exercise by the Applicants of their powers and functions as administrators of the estate of the late Ngaro Sam. As such, they are in position and should be empowered by the Court to effectively perform their duties. Despite pendency of any disputes before the courts, this does not pose any risk to the estate since the administrators operate under set rules and have legal obligations as personal representatives of the deceased person. Irrespective of the outcomes of any pending disputes, the administrators have a duty to account to the estate and to the court on how they have managed the estate from the time of appointment to the date of last exercise of such functions. As such, there is nothing that would lawfully bar the Respondent from releasing the already assessed and approved compensation sums to the Applicants. In answer to the first issue therefore, the Respondent's refusal to pay the compensation sum to the Applicants is not lawful.

Issue 2: What remedies are available to the parties?

- [15] In view of my finding on the first above issue, the application by the Applicants succeeds. I accordingly allow the application with orders that:
- a) The Respondent pays the approved compensation sum of UGX 207, 255,191/= in respect of the subject property to the Applicants within fifteen (15) days from the date of this order.
 - b) Since it is clear that the Respondent simply acted on the side of caution, each party shall bear their own costs of the application. For avoidance of doubt, the costs incurred by the Applicants shall be defrayed from the estate. It is so ordered.

Signed, dated and delivered by email this 3rd day of December, 2021.

Boniface Wamala JUDGE

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Prepared on 14 October 2026 · Esheria