

UGANDA / JUDGMENT

Walwanyi Wakholi v Kiyonga Ddungu and 4 Others (misc. application. No. 167 of 2025) [2025] UGHCLD 97 (23 June 2025)

[2025] UGHCLD 97

COURT

HC: Land Division (Uganda)

BEFORE

Echokit, J

CASE / FILE NUMBER

misc. application. No. 167 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

Mtsc. APPLTCATTON NO. 0167 OF 2024 (ARTSTNG OUT OF CrVrL SUrT NO. 0052 OF 2008)

WALWANYI CHARLES FREDRICK WAKHOLI :..... APPLICANT (Administrator of the Estate of the Late Hon J N. K Wakholi)

VERSUS

- 1 ROGERS HANNS KIYONGA DDUNGU
- 2 M. TONDA NJABALA
- 3 NANKYA NJABALA MWAMINI
- 4 ANTHONY MUSOKE
- 5 THE REGISTRAR OF TITLE

RESPONDENTS

Before. Hon. Ladv Justice Dr. Christine A. Echookit

RULING

INTRODUCTION:

- [1] This application was brought under Section 33 of the Judicature Act, Section 273 of the Succession Act Cap 162 and Order 52 rules '1 & 3 of the Civil Procedure Rules for orders that;
- 1. The Decree in HCCS No. 52 of 2008 be altered/amended to reflect the name of the Applicant the only surviving Administrator of the Estate of the late Hon. J. N K Wakholi
- 2. Each Pafiy bears its own Costs.

Walwany Charles Fredrick Wakholi, and are briefly that;

GROUND OF THE APPLICATION:

[2] The grounds in support of this application are set out in the affidavit of the Applicant

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- a) Walwany Charles and Henry N. K Wabuyi applied and were granted letters of administration vide High Court Admin. Cause No. 175 of 1984 on 31il July 1984.
- b) Henry N. K Wabuyi co-administrator filed and successfully prosecuted HCCS No. 52 of 2008 in his capacity as one of the administrators of the estate of the late Hon. J. N. K. Wakholi.
- c) Court delivered ludgetment in HCCS No. 52 of 2008 in favour of the estate of the late Hon. J. N. K Wakholi the Judgment Creditor.
- d) Before the execution of the decree, Henry N. K. Wabuyi the co-Administrator of the Estate of the late Hon. J. N. K. Wakholi whose name featured in the Judgment and the decree in HCCS No. 52 of 2008 as the Plaintiff, died.
- e) The death of Henry N. K. Wabuyi a co-administrator makes it impossible to proceed with execution of the decree without the remaining legal representative being reflected in the decree.
- f) The Applicant Walwany Charles Fredrick Wakholi is the only surviving Administrator of the estate of the late Hon J. N. K. Wakholi and applies for amendment or alteration of the decree to reflect his name.
- g) It is fair, just and in the interest of justice that this application is granted
- [3] Viola Aleto of C/o M/s Luswata-Kibanda & Co. Advocates filed an affidavit of service to the effect that she served copies of the Notice of lVotion to the Respondents on the 13th tr

day of February 2024, to attend court on 1st day of February 2024. The Respondents did not file any affidavits in reply.

BACKGROUND:

- [4] The late J. N. K. Wakholi was initially the registered proprietor of several plots of land situated on Kyadondo Block 244 Plots No. 1654, 1656, 1657 and 1658. After J. N. K. Wakholi's death in 1972, Walwanyi Charles and Henry N. K. Wabuyi became administrators of his estate by Letters of Administration granted in 1984. Henry N. K. Wabuyi was entered on the register as proprietor of the described plots of land.
- [5] Sometime in 1984, Henry N. K. Wabuyi sold Plot 1654 to ROGERS HANNS KIYONGA DDUNGU the 1st Respondent. After he signed the transfer for Plot 1654 to be transferred into ROGERS HANNS KIYONGA DDUNGU's names, the transfer instrument was interfered with and two extra plots vide Plot 1655 and 1656, which he had not sold to ROGERS HANNS KIYONGA DDUNGU were added thereon and also transferred into the 1st Respondent's names. Thereafter, the 1st Respondent effected sub-divisions by creating Plots 3593 and 3954 from Plot 1655, and Plot 3680 from Plot 1656. The 1st Respondent then transferred Plot 3679 into the 2nd and 3rd Respondents' names for no consideration. He also donated Plot 3680 as a gift to the 4th Respondent.
- [6] Judgment was delivered by the Hon. Justice Bashaija K. Andrew in favour of Henry N. K. Wabuyi on 19th day of August 2016 with the following declarations and orders;
- a) The plaintiff (Henry N. K. Wabuyi) as the Administrator of the Estate of the Late Joshua N. K. Wakholi, is entitled to the possession of the property comprised in the said Kyadondo Block 244 Plot Nos. 3679 and 3680 formerly Plot No. 1656.
- b) It is ordered that the names of the 2nd, 3rd and 4th defendants be cancelled from the register and certificate of titles for Kyadondo Block 244 Plot Nos. 3679 and ^{>3680}</sup>

(formerly Plot 1656) be replaced thereof with the names of the Plaintiff as the legal representative of the late Joshua N. K. Wakholi.

- c) It is ordered that Kyadondo Block 244 Plot Nos. 3679 and 3680 be merged and the suit property do revert to its original status of Plot No. 1656.
- d) An eviction order doth issue against those presently in occupation.
- e) A Permanent injunction doth issue restraining the defendants or their agents or workers and servants from entering and carrying out any activity upon the suit premises,
- f) The defendants pay the costs of the suit.

- [7] N. K Wabuyi the Plaintiff died on the 2nd of January 2022 before executing the decree and orders of court. A death certificate NIRA No. 59857 issued on 1 Bth day of July 2022 was attached to the Applicant's affidavit. Hence, this application to amend and or alter the Decree to reflect the name of the Applicant as Judgment Creditor to enable him to execute the Decree.

REPRESENTATION AND HEARING:

[B] The Applicant was represented by IVI/s Luswata - Kibanda & Co, Advocates and filed written submissions.

ISSUES FOR DETERMINATION BY THE COURT:

- [9] The Applicant raised one issue for determination by the court;
- 1. Whether Couft has power to amend the Decree to reflect the name of the Applicant?

DETERMINATION OF THE ISSUES BY COURT:

M Since the Respondents did not file any affidavits in reply nor written submissions despite being served, I will rely only on the affidavit evidence and submissions of the Applicant, court proceedings in the main suit and applicable law, to make my decision.

Submissions of counsel for the Applicant;

- [1 0] Counsel cited the law of survivorship of administrators to the effect that upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.
- [1 1] Counsel referred to the powers of court under Section 33 of the Judicature Act, to grant appropriate remedies, as a justification for this court to amend or alter the Decree to reflect the name of the Applicant as the surviving administrator.

Consideration by court;

- [12] The letters of administration to the estate of the late Hon. N. K. Wakholi were granted to Walwany Charles and Henry N. K Wabuyi on 31st of July 1984 vide High Court Admin Cause No. 175 of 1984. Henry N. K Wabuyi issued in Civil Suit No. 52 of 2008, seeking reliefs as an administrator to the estate of the late Joshua N. K Wakholi. This court recognized him as such in the judgement delivered on the 19th of August 20'16
- [13] Section 269 of the Succession Act Cap. 268 empowers the surviving administrator(s) to continue exercising the powers of administration of the estate of a deceased person. However, court precedent has evolved that the surviving administrator would need to be endorsed as such by the beneficiaries of the estate of the late Joshua N. K Wakholi by an application filed in Court for the purpose It is only then that the sard administrator would have a right to have the Decree in Civil Suit No. 52 of 2008 amended/alterd to reflect his

name, by the exercise of court of its discretion under Section 98 of the Civil Procedure Act, Cap. 25 to award appropriate remedies by power of Section 37 of the Judicature Act, Cap. 16. K

[14] That notwithstanding, as shown in Section 337(2) of the Succession Act, Cap. 268, letters of administration granted before the amendment of the Succession Act in 2022 lapsed on 31st day of January 2025. If the estate did not seek an extension of the Letters of Administration granted vide High Court Admin. Cause No. 175 of 1984, they will have to apply afresh and then revert to this court to reflect the amendment on the Decree in Civil Suit No. 52 of 2008, subject to the validity period for decrees of court.

In any event, the names of the Applicant in the letters of administration granted vide High Court Admin. Cause No. 175 of 1984 are Walwanyi Charles and not Walwanyi Charles Fredrick Wakholi as reflected in the present application. Hence, there ought to be either a correction of name or a reflection of both names to identify the Applicant as the same person to whom the Letters of Administration was granted.

In the premises, I am unable to grant the orders sought

DECISION OF COURT:

[15] In the final result;

- a) This application is prematurely before this court.
 - b) The Applicant shall first obtain an extension of Letters of Administration granted vide High Court Admin. Cause No. 175 of 1984 or a grant of fresh Letters of Administration, before the Decree in Civil Suit No. 52 of 2008 can be amended/alterd to reflect his name alone or together with another administrator of the estate of the late Joshua N. K Wakholi.
-) The Applicant shall bear his own costs. q--c

I so order

Dated at Kampala this. 23rd day of. $\frac{\text{J}}{\text{V}}$ Dated at Kampala this.

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Hon. Lady Justice Dr. Christine A. Echokit Judge.

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