

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
HCCS NO. 56 OF 2007
ADMINISTRATOR GENERAL:::::::::::::::::::::::::::::::::PLAINTIFF
VERSUS
ANENA BEATRICE:::::::::::::::::::::::::::::::::DEFENDANT
BEFORE: HON. LADY JUSTICE C.A. OKELLO
JUDGEMENT

This suit was filed by the Administrator General, (the plaintiff), for an order revoking the Letters of Administration for the estate of Kageni Henry that was granted to the defendant by this court on the 11/10/2006. The plaintiff averred that the defendant obtained the said Letters of Administration by fraud and misrepresentation. Particulars of fraud and misrepresentation pleaded included:-

- (i) The defendant petitioning for Letters of Administration with knowledge that the plaintiff had already petitioned for a grant for the same estate.
- (ii) The defendant falsely representing herself to the plaintiff as widow and mother of the deceased's children in order to get a certificate of no objection.
- (iii) Opening a second file in the office of the plaintiff when she knew that the death had already been reported to the plaintiff.

The defendant filed a written statement of defence (WSD) and counter-claim. In the said WSD, she admitted getting a certificate of no objection from the plaintiff's office as well as obtaining Letters of Administration.

She however, denied that she obtained the grant by fraud. In the Counter-claim, the defendant pleaded that it is the Letters of Administration issued to the plaintiff (defendant in her counter-claim) that should be revoked because it was obtained by fraud. Particulars of fraud pleaded include failure to list all beneficiaries in the petition for Letters of Administration and failure to exhibit the inventory of the estate.

The defendant attended court twice in the early part of the proceedings. She was however absent when the plaintiff led evidence from its two witnesses; nonetheless, the hearing proceeded on satisfactory proof of service of hearing notice on her Counsel.

Three issues were framed for determination:-

- (1) Whether the defendant was entitled to obtain Letters of Administration.
- (2) Whether the defendant obtained Letters of Administration fraudulently.
- (3) What remedies are the parties entitled to.

The plaintiff called two witnesses: - Sylvia Nantongo (PW1) and Charity Nazziwa (PW2). I shall deal with their testimony in the course of disposing off the issues framed. I turn to the issues starting with the first one – Whether the defendant was entitled to obtain Letters of Administration.

Sylvia Nantongo's (PW1) testimony touched on this issue. She claimed in the testimony that she is the widow of the late Capt Henry Kageni (the deceased) whom she married under customary law. She co-habited with him till his death. As for the defendant, she claimed to have met her for the first time during the burial, then later at the offices of the plaintiff. It was at the meeting at the plaintiff's offices that the defendant made her claim to widowhood for the first time. At the meeting the defendant rejected a decision the meeting took that the estate should be administered by the plaintiff. All the same, the plaintiff applied for Letters of Administration. However, Sylvia later learnt from an official in the offices of the plaintiff that the defendant also obtained Letters of Administration to the same estate.

PW1 further testified that the deceased had constructed a residential house for the family but died on the eve of occupying it. PW1 locked the house and took the keys thereof to the offices of the plaintiff. The defendant and a nephew of the deceased by the name of John Maiso cut the door lock and forcefully occupied the house.

Charity Nazziwa (PW2) introduced herself as a State Attorney in the offices of the plaintiff who initially handled the estate of the late Henry Kageni. Charity testified that it was PW1 who reported the death and opened a file in respect to the death. PW1 claimed co-ownership of a house at Busega with the deceased. Charity convened a family meeting that was attended by the defendant who claimed to be the deceased's widow and who disputed PW1's claim of co-ownership of the house. The plaintiff decided to administer the estate so filed a petitioned for then summoned a second family meeting to inform family members including the defendant the intention to administer the estate.

In the course of processing the application she discovered that the defendant had reported the death afresh and had opened another Administration Cause file for the same estate. She had obtained a certificate of No objection and had gone ahead to obtain Letters of Administration from court. Charity prayed for a number of remedies from court. Counsel for the plaintiff tendered in evidence the two files that were opened in the offices of the plaintiff by PW1. This is the evidence before court.

Mr. Robert Ekirita Nashiero, Assistant Administrator General who appeared for the plaintiff submitted that the defendant is not the widow of the late Henry Kageni. She therefore had no right to apply to administer his estate.

The defendant pleaded in her written statement of defence and counter-claim that she is the widow of the late Henry Kageni. She also pleaded that the plaintiff recognised this status in consequence of which issued her with a certificate of No objection. The defendant added that having issued the said certificate, the plaintiff is estoppel from applying for revocation of her Letters of Administration. A widow or widower is in the category of persons who may apply to court for a grant of Letters of Administration without giving first option to do so to the office of the Administrator General or giving that office a Notice of his/her intention to administer the estate. (See Section 5 (1) of the Administrator General's Act (Cap, 157). (I should perhaps add that the provision is suitable only for monogamous marriages). The question is then whether the defendant is the widow and whether having issued to her a Certificate of No Objection as widow; the plaintiff is estopped from denying her widowhood status.

The defendant did not adduce evidence to prove her marriage to the deceased; she relied on estoppel as proof of the status. Concerning this defence, it should be observed that in law estoppel is the doctrine used in certain situations to prevent a party from relying upon certain rights or upon a set of facts which is different from what the same parties had earlier understood to be the facts and to have conducted themselves in the belief that the understood facts are true. There are different kinds of estoppel known to the law, and to rely on a particular type certain conditions have to be satisfied e.g. estoppel by representation (see

Halsbury's Laws of England Vol. 16 (2) 2003 Ed). There is also Estoppels by acquiescence the conditions for invoking it being slightly different from one that arises from representation.

In the case of estoppel by representation evidence before me shows that it is the defendant who first introduced herself to the plaintiff as the widow of Kageni; it was not the plaintiff who represented her as widow. She cannot therefore claim to have understood from representation made to her by the plaintiff, that she is widow. Estoppel by representation is therefore not available to her as a defence as she was the one who represented herself to the plaintiff as widow of the deceased. Nor can she claim estoppel by acquiescence because far from acquiescing in her presentation or misrepresentation as widow, the plaintiff filed this suit for revocation of the grant to her when the grant came to light. I therefore find in answer to the first issue that the defendant was not entitled to obtain Letters of Administration to the suit estate.

The second issue is whether the defendant obtained Letters of Administration fraudulently. Both PW1 and PW2 testified that there was a dispute concerning whom, between PW1 and the defendant was the widow. Secondly, because of a dispute over ownership of the deceased's house in Busega, the plaintiff decided to itself administer the estate rather than hand it to the family members for administration. The decision was according to evidence before me announced by the plaintiff to a family

meeting that was attended by the defendant among others. This court's records bear out the fact that the plaintiff petitioned for Letters of Administration on the 15th February 2005, (Despite the careless manner in which the petition was drawn). (Exh. P2). Notice of the Sunrise Newspaper of the 18th-27th February 2005 (Exh. P3).

The defendant on the other hand filed her petition over a year later on the 26th July 2006. The Notice of the petition was published in the Weekly Observer (Exh. P4). The grant was issued to her on the 11th October 2006 (Exh. P6). Available evidence shows that the defendant opened a second file in the offices of the plaintiff under the name of Kageni Henry Busindo – Bukedi/AC/1410/2006. According to PW2, the defendant deliberately confused the officials in the offices of the plaintiff by three devices:-

- (i) She opened the file under Bukedi as opposed to Mengo.
- (ii) She added a third name for the deceased "Busindo" that made it difficult for officials in the plaintiff's offices to realise that a file of this death already existed.
- (iii) She kept her previous dealings with the plaintiff's offices secret.

Because of the devices, the plaintiff issued a certificate of No objection to the defendant.

The evidence I have reviewed prove that the defendant knew the existence

of an earlier file with contention over the houses in Busega, and over widow (s). She side-stepped that by reporting Kageni's death afresh. She opened the file under a different District from the old file (She probably had inside advice from unscrupulous employees of the plaintiff). She added a name "Busindo" to the ones already on the records of the plaintiff to make it look like that of a different person. Her actions were calculated to mislead the plaintiff into issuing her a Certificate of No Objection; she succeeded. Her conduct and actions were fraudulent; it led to her obtaining Letters of Administration fraudulently.

The last issue is what remedies the parties are entitled to.

The plaintiff prayed for remedies including the following:-

- (a) A Declaration that Letters of Administration issued to the defendant be revoked.
- (b) Letters of Administration be granted to the plaintiff.
- © That the defendant be ordered to deposit the certificate of No Objection she obtained, to the plaintiff's office.
- (d) General damages and costs of the suit.

I have determined two substantive issues in favour of the plaintiff.

Consequently, I find the plaintiff entitled to the orders hereunder:-

- (1) I hereby revoke the letters of Administration issued to the defendant in Administration Cause No. 973 of 2006 forthwith. I order her to surrender and deposit the said Letters of Administration with this court within fourteen days from the date of delivery of or the reading of this Judgment.
- (2) Letters of Administration for the suit estate shall issue to the plaintiff forthwith.
- (3) The defendant shall within fourteen days from the delivery of this judgment or the reading thereof deposit with this court the certificate of No Objection issued to her by the plaintiff.
- (4) The defendant shall pay the plaintiff's costs.
- (5) The defendant's Counter-claim is dismissed with no order on costs.

C.A. Okello

JUDGE

18/11/2010