

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

MISC. APPLICATION NO. 227 OF 2023

(ARISING FROM MBALE PROBATE CAUSE NO. 066 OF 2023)

IN THE MATTER OF THE ESTATE OF THE LATE WAMBOYA MUHAMMED

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF PROBATE BY
WAMBOYA HASSAN (SON)**

1. WAMBOYA ZAKARIA

2. WAMBOYA USAMA

3. WASAGALI SHUKURAT :..... APPLICANTS

VERSUS

WAMBOYA HASSAN :..... RESPONDENT

BEFORE: HON. JUSTICE LUBEGA FAROUQ

RULING

1. Background

2. The background of this Application is that the Applicants and the Respondent are all biological children of late Wamboya Muhammad who died on 6th of May, 2022 at Mbale Regional Hospital. According to the Respondent, his father left a Will where he was appointed the heir which was allegedly read before his burial. That after the burial, the Respondent proceeded and processed for letters of probate vide Administration Cause No. 009 of 2022 which were granted to him on 7th of December, 2022 by the Chief Magistrate of Mbale.
3. On the other hand, the Applicants' facts are that following the burial of their father, the family reported his death to the office of the Administrator General who convened various meetings that led to issuance of a certificate of no objection. That upon receiving the

certificate of no objection, they filed Administration Cause No. 035 of 2023 on 30th of March, 2023 for their appointment as administrators of the estate of late Wamboya Muhammad which was objected by the Respondent on the ground that he had already obtained letters of probate for that estate.

4. The Applicants then filed Misc. Application No. 77 of 2023, for revocation of the aforesaid letters of probate on 30th of June, 2023 and further instituted Civil Suit No. 048 of 2023 arising from A.C. No. 035 of 2023.
5. The Respondent also further instituted Administration Cause No. 066 of 2023 seeking to be appointed administrator of the late Wamboya Mohammad's estate. That Petition was filed in court on 20th of June, 2023.
6. Following the above background, the Applicants brought this Application by way of notice of motion under section 33 of the Judicature Act, section 98 of the Civil Procedure Act and Order 52 rules 1 and 3 of the Civil Procedure Rules SI.71 for orders that-
 - (a) The petition vide Administration Cause No. 066 of 2023, lodged by the Respondent be struck out for constituting abuse of court process and
 - (b) Award of costs.
7. This Application was supported by the affidavit sworn by **WAMBOYA ZAKARIA** and the grounds are as follows-
 - (a) That on the 30th of March, 2023, following issuance to him and his co-applicants with a certificate of no objection by the Administrator General, they applied vide High Court A.C. No. 035 of 2023 for their joint appointment as the administrators of the estate of late Wamboya Muhammed, their father;
 - (b) However, upon publication of the notice of application in the daily monitor newspaper, the Respondent lodged a caveat thereon

reasoning that he already had letters of probate issued to him by the chief magistrate's court of Mbale Vide A.C. No. 099 of 2022;

- (c) That the deponent and his co-applicants subsequently filed M.A No. 077 of 2023 seeking revocation of the said grant on account of forgery, fraud and misrepresentation and the same is pending determination by the chief magistrate;
- (d) That the Respondent who was aware of the state of affairs went ahead and filed application for issuance of another set of letters of probate, which the Applicants have since caveated;
- (e) That the Respondent's conduct constitutes abuse of court process in as much as he has freshly applied for another grant of letters of probate to the suit estate, without first giving chance to determination of the on-going suit vide M.A. No. 077 of 2023 before the chief magistrate and H.C.A.C. No. 035 of 2023, caveated by him.

8. In the affidavit in reply sworn by **WAMBOYA HASSAN** averred as follows-

- (a) That the Applicants are alive to the fact of the existence of a Will with regards to the estate of the late Wamboya Muhammed who left the Respondent as his executor and heir but the Applicants have without ceasing attempted to fraudulently obtain the estate of the late Wamboya Muhammed through forged death reports and are secretly processing letters of Administration without the knowledge of their mother nor their brother the Respondent;
- (b) That Miscellaneous Application No. 077 of 2023 is non-existent as the same was dismissed and as such cannot be a ground enough to grant orders sought by the Applicants;
- (c) That the Applicants are selfish persons who intend to utilize the said estate for their personal benefit;
- (d) That the Respondent noticing the fraudulent nature of the Applicants filed Civil Suit No. 48 of 2023 against the Defendant pointing concerns that the Applicants who were aware of the

existence of a Will left by their late father, went ahead to fraudulently process letters of administration which the Respondent has ever since caveated;

- (e) That I applied for letters of administration in the High Court which the Applicants caveated;
- (f) That upon the Applicants putting such caveat, I instituted HCCS No. 48 of 2023 for removal of the said caveats which suit is still pending in this honorable court;
- (g) The Respondent further averred that the issue in this Application would be resolved in HCCS No. 48 of 2023 and that this Application just cause a multiplicity of proceedings and creates backlog which amounts to abuse of court process;
- (h) That the Applicants have not showed enough grounds to obtain orders sought of and have no cause to seek orders in this Application;
- (i) That it is just and equitable that this Application is dismissed.

9. Legal Representation

- 10. Counsel Kisambira Isma represented the Applicants whereas Counsel Nappa Godfrey represented the Respondent.

11. Submissions

- 12. At the hearing, counsel for the parties prayed this court to allow them proceed by written submissions which was granted. Both parties complied and I will consider them as and when necessary in this ruling.
- 13. It should be noted that although counsel referred to the old laws in their submissions, since the 7th revised editions of the laws of Uganda became effective on 1st July, 2024, I will use the same in my analysis.

14. Analysis of Court

- 15. As guided by Order 15 rule 5 (1) of the Civil Procedure Rules SI.71, this court has framed the following issues for its resolution-



(a) Whether institution of Administration Cause No. 066 of 2023 amounts to an abuse of court process?

(b) What are the remedies available to the parties?

16. Issue No.1: Whether institution of Administration Cause No. 066 of 2023 amounts to an abuse of court process?


17. Section 98 of the Civil Procedure Act Cap 282 provides that-

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

18. In **Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar (2017) 5 SCC 496**, D.Y. Chandrachud J, speaking for a three Judge bench held that-

“This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth. Courts across the legal system—this Court not being an exception—are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as

the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."



19. From the background of this Application, it is apparent that it is the Respondent who applied for letters of probate first which were granted to him on 7th of December, 2022 by the Chief Magistrate Court of Mbale. However, given the valid letters of probate that were granted to the Respondent, the Applicants also instituted Administration Cause No. 35 of 2023 for letters of administration over the same estate of late Wamboya Mohammed before revoking the letters of administration issued by the chief magistrate.
20. After instituting Administration Cause No. 35 of 2023 in March, 2023, the same was published in the daily monitor newspaper as per paragraph 3 of the affidavit in support. Upon publication of the notice of the application for letters, the Respondent lodged a caveat on ground that he had already obtained letters of probate in respect of same estate.
21. In light of the above, on 29th of June, 2023 the Applicants then filed Miscellaneous Application No. 77 of 2023 for revocation of letters of administration granted to the Respondent in the chief magistrate court of Mbale which is pending determination as per paragraph 4 of the Applicants' affidavit in support.
22. Therefore, following the powers given to this court under the above provision of the law and the guidance in the authority cited, it is an abuse of court process for the Respondent to file Administration Cause No. 066 of 2023 before revocation of the earlier grant.
23. It is also important to note that as clearly elaborated in **Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar (Supra)**, the litigants in this matter have so far filed several petitions and applications which in effect arise out of the same subject matter, yet a single suit seeking determination of the validity of the Will and probably an application for temporary injunction would be sufficient to resolve the issue in dispute than eroding court with so many frivolous and groundless petitions for



letters of administration. This kind of practice minimizes proper administration of justice and should in all circumstances be avoided.

24. Consequently, Administration Cause No. 066 of 2023 is accordingly struck out.

25. Issue No. 2: What are remedies available to the parties?

26. Costs of this Application are awarded to the Applicants.

I so order


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LUBEGA FAROUQ
JUDGE

Ruling delivered via emails of the parties on **5th** day of **July**, 2024