

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO 170/2014
ARISING FROM HCCS NO 541/2003

ROBINAH ISUMBA.....PLAINTIFF/APPLICANT

VERSUS

DIANA BULYA.....DEFENDANT/RESPONDENT

**IN THE MATTER OF AN APPLICATION TO NULLIFY THE ACTIONS OF THE
FORMER ADMINISTRATOR OF THE ESTATE OF THE LATE AUGUSTINE
ISUMBA RUHARA**

RULING BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

This is an application by Notice of Motion brought under section 98 of the Civil Procedure Act; section 14 of the Judicature Act; and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules. It is for orders that the court nullifies all actions done by the defendant in connection with the administration of the estate of the late Augustine Isumba Ruhara (the deceased), and that costs of the application be provided for.

The application is supported by the affidavit of **Robinah Isumba Ruhara** the applicant and opposed by the respondent who filed an affidavit in reply to which the applicant filed an affidavit in rejoinder. Counsel filed written submissions on the matter within time schedules set by this court.

The applicant's affidavits state that she is the widow of Augustine Isumba Ruhara who passed away intestate in 2000 leaving several dependants and immovable property. On 9th August 2000 the defendant obtained letters of administration to the deceased's estate vide Administration Cause No 320/2000 claiming to be the deceased's widow. On 1st December 2003 the applicant filed HCCS No 541/2003 seeking, among other things, the revocation of the defendant's letters of administration and the granting of the same to herself. On 23rd May 2014 the defendant's grant

was revoked and was given to the applicant/plaintiff's brother in law, Deo Bigirimana, and the defendant was requested to file a full account of the properties of the deceased's estate which she had administered within one month. On 26/05/2014 the defendant served on the applicant an alleged full account of the property purported to have been filed on 22/05/2014 prior to the date of judgement, where she claimed to have distributed the entire estate to Raymond Barasa (son of the deceased) and Iramuha Racheal (daughter of the deceased). The applicant avers in his affidavit that the said distribution is false and intended to pre-empt the letters of administration to the applicant and her brother in law, that it could not have happened since at all material times the applicant has been and is still in possession of the deceased's entire estate which the respondent claims to have distributed, also since it includes distribution of property that does not belong to the deceased's estate. The applicant further avers that the distribution is null and void, that it causes no injustice to the defendant if the application is granted, that there will be grave injustice occasioning irreparable loss to the deceased's estate... and that it is just and equitable in the circumstances that the application is granted.

The respondent states in her affidavit in reply that she is the widow of the late Augustine Isumba Ruhara mother of one of his two children; that she was granted letters of administration to the estate of the deceased vide Miscellaneous Cause No 320/2000; that she distributed the estate on 14/04/2014 and filed an inventory on 22/05/2014 when still clothed with the authority and power to administer the estate; that all the property she administered was part of the estate of the late Augustine Isumba Ruhara; that she never distributed the land on which Star Nursery School is situated as the same belongs to the applicant; that the late Augustine Isumba owned land adjacent to Star Nursery School; and that it is in the interests of justice that the distribution of the deceased's estate by the respondent be upheld by the court.

The applicant averred in her affidavit in rejoinder that the respondent is not a widow as evidenced from the judgement in HCCS 541/2003; that being a mother of one of his children does not give the respondent the right to commit fraudulent acts to render court judgements pyrrhic; that there is nothing in the respondent's actions as administrator which the court cannot nullify; that the respondent's falsehood is seen where she avers she has never distributed the land on which Star Nursery School is situated yet paragraph 1 of the inventory says so; that since it is not contested that the entire estate is in the applicant's possession, there will be no injustice to

the beneficiaries or the respondent if the latter's actions are nullified by court and orders for a transparent distribution to cater for all beneficiaries is made; that by claiming to have divided the estate between the deceased's two children, the respondent is merely advancing her selfish interests against the applicant and the deceased's family and dependants; and that the respondent cannot have consulted and agreed with all the beneficiaries and distributed the estate as she claims to have done.

I have carefully perused the application and the affidavits from both sides, including the court record of AC 320/2000 and HCCS 541/2003 from which this application arises. The application was for orders that the court nullifies all actions done by the defendant in connection with the administration of the estate of the late Augustine Isumba Ruhara (deceased). The gist of the applicant's affidavit evidence is that the respondent's letters of administration granted vide AC AC 320/2000 were revoked by this court in HCCS 541/2003. In the same judgement the respondent was ordered to, within one month from the date the defendant's (now respondent) being served with the order, a full account of the property of the estate of the late Augustine Isumba Ruhara (deceased) which she had administered ordered.

The defendant/respondent does not dispute the judgement and its contents in her affidavit in reply, nor is there anything on record to suggest that she has ever sought to have the same reviewed or set aside. However she avers in her affidavit in reply that she distributed the deceased's estate on 14/04/2014 and filed an account on 22/05/2014, which was one day prior to the judgement in HCCS 541/2003.

The affidavit evidence and submissions of both counsel have raised issues of whether or not the defendant/respondent acted fraudulently in the filing of the inventory. This court will not involve itself in deliberating on matters of fraud since, as correctly submitted by the respondent's counsel, such matters require calling oral evidence including calling court officials who received and filed the accounts, rather than relying on affidavit evidence.

However, without prejudice, even without delving into issues of fraud, it is apparent on the face of the record that the court's ordering the defendant to file a full account of the estate infers that court was not aware of any inventory or account by the time of delivery of the judgement. The record clearly shows that the defendant was present when the judgement was delivered. In such

circumstances, prudence and due diligence would demand that the defendant, on being made aware of the judgement and the orders against her, which, in this case was on the date of delivery of the judgement, should have eventually sought review of the judgement on account of some mistake or error apparent on the face of the record, or any other sufficient cause as is required under Order 46 of the Civil Procedure Rules.

It is now two years since the judgement was delivered. There is nothing on record to show that the defendant ever moved court to review the judgement on account of the fact that she had already filed accounts of the estate by the time the judgement was delivered, more so since the court orders were clearly issued against her, and since she was physically in court when the judgement was delivered against her. It is not enough for the respondent's counsel, as was the case in the instant application, to merely submit in the instant application that the judge missed seeing the documents or that it was the duty of the court officials to bring the same to the attention of the trial Judge, or, worse still, to submit that it was duplicity for the Judge to order the respondent to file an inventory and account of the estate. To that extent, on the face of the record, the defendant's purported inventory and account of the estate of Augustine Isumba Ruhara (deceased) would stand questionable in the face of a two year old judgement that she has never been sought to be reviewed when she is very much aware of its existence since the day it was delivered.

This application was brought under sections 98 of the Civil Procedure Act and 14 of the Judicature Act. Sections 98 of the Civil Procedure Act empowers this court to exercise its inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of court process. Section 14 of the Judicature Act confers this court with unlimited original jurisdiction, and where no express law is applicable to the matter in issue, to apply the law in conformity with principles of natural justice, equity and good conscience. In this case the defendant's letters of administration to the estate of the late Augustine Ruhara issued vide AC 320/2000 were revoked by this court on 23/05/2014 vide Civil Suit No. 541/2003. There are standing court orders against the defendant/respondent regarding the estate which the defendant has never moved to review albeit her claims that the judgement or orders were issued a day after she had filed her accounts of the estate. It is in that spirit, and in good conscience that I would nullify the respondent's purported inventory and account of the estate.

The application is allowed.

Dated at Kampala this 13th day of June 2016.

Percy Night Tuhaise

Judge.