THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL MISC. APPLICATION NO. 062/2024

ARISING OUT OF CIVIL SUIT NO. 040 OF 2022

BEINAGERA JUSTINE:: APPLICANT

VERSUS

NIWAGABA NORMAN :: RESPONDENT

RULING BY HON. JUSTICE KAROLI LWANGA SSEMOGERERE

This is an application by way of Notice of Motion under Section 98 of the Civil Procedure Act, Cap 282, Order 9, Rules 12 and 17; and Order 52 of the Civil Procedure Rules, S.I. 71-1 requesting this honourable court for several orders.

These orders are for the following reliefs : (i) Leave to file out of a time a Statement of Defence in Civil Suit No. 040 of 2022; (ii) That the Court's order allowing the Respondent to proceed ex-parte be set aside; (iii) And the Judgment made and entered against the Applicant in Civil Suit No. 040 of 2022 be set aside and (iv) Costs of the application are provided for.

Brief Facts:

Beinagera Justine, (the"applicant") was sued in Civil Suit No. 040 of 2022 by her step-son Niwagaba Norman (the "respondent") in a suit for revocation of letters of administration of the estate of the late Erisa Ndayija (the "deceased") who died in 2012, granted by the Chief Magistrate's Court in Kabale vide Administration Cause No. 92 of 2021.

The relevant grounds for revocation are set out in paragraph 4(e); to the effect that the applicant under-estimated the value of the property; (h) the letters were obtained without the knowledge of the respondent, even though he admits he admits he was listed as one of the 27 beneficiaries of the estate in paragraph 4(f) of the Plaint. Paragraph 4(i) has additional allegations with a new allegation in paragraph in 4(i)(a) that the applicant failed to convene or hold a family meeting before applying for letters of administration.

Lastly, the plaint alleges mismanagement of the estate, failure to distribute and account and failure to disclose information. The plaint states the estate is worth more than 200 million shillings and requests that the grant be revoked.

Several documents are attached to the plaint; namely the application for grant of letters of administration "A"; Letters of Administration "B" granted by the Chief Magistrate's Court dated September 29th, 2021; A translated list of tenancy agreements for land at Murutinda marked "C" and Demand letter for money marked "D". The application to proceed ex-parte was by a letter to the Registrar on November 8, 2022, and an order entered by the Acting Deputy Registrar on November 15, 2022.

This order was vacated by the Trial Judge, my brother Emokor J., on May 11, 2023 and fresh summons issued. These were not responded to and court granted another order on April 16th, 2024. The suit proceeded ex-parte and was heard, and fixed for judgment in December 2024. No judgment to-date has been made.

Representation:

This application proceeded by way of written submissions. Applicant was represented by M/S Atlas & Co. Advocates, while the respondent was represented by M/S Elgon & Co Advocates.

Discussion and Analysis:

I have reviewed carefully the submissions by both parties; namely to establish whether sufficient cause exists to vacate the ex-parte order made by court on

April 16th, 2024. Second, I have also addressed myself to the reliefs in the main suit, namely revocation for grant of the letters of administration. I have framed two issues for resolution which dispose of this application.

These are:

(a) Whether sufficient cause exists for the leave sought to be granted;
(b) What remedies are available to the parties.

I wish to make a preliminary observation. First, that this application was filed August 26, 2024, more than four months after the ex-parte order was granted on April 16, 2024. The respondent filed a reply on October 18, 2024. No further attempt was made by either party to resolve this application, a failure by both parties. I now turn to the issues:

(a) Whether sufficient cause exists for the leave sought to be granted;

In the main application, the applicant makes general denials, and stated the respondent and beneficiaries of the estate had held several meetings but the respondent purposely concealed from them the fact that he had taken the matter to court. The applicant also in paragraph 14, states that every party to the suit is accorded a right to a fair hearing. In her submissions, the applicant denied effective service due to lack of her personal endorsement on the summons and prayed for court's discretion to grant her leave to appear for sufficient cause. She cited the decision of the Supreme Court in **Geoffrey Gatete and another v William Kyobe UGSC 7, decided September 2, 2007** on effective service quoting Mulenga J.S.C in his lead judgment, stating:

> "....the surest mode of achieving that result is serving the defendant in person, rules of procedure, however, provide for such diverse modes of serving summons that the possibility of service failing to produce the intended result cannot be ruled out in every case."

The cause argued in this application was whether sufficient cause was shown to set aside the ex-parte decree, even though the record before me does not show an actual decree extracted by court.

The respondent in reply makes a number of arguments, specifically that sufficient cause was not shown. He states that the applicant was guilty of dilatory conduct, specifically in the fact that the applicant deliberately refused

to sign the summons issued to her on May 17th, 2024. Respondent relies on the same decision by the Supreme Court, **Geoffrey Gatete (op cit)** for a proposition by Mulenga J.S.C., to the effect that:

> "the desired and intended result of serving summons is to make the defendant aware of the suit against him."

Respondent finally states there is insufficient cause has been shown for the application to be set aside, as no decree exists to invoke **Order 9 Rule 27 of the Civil Procedure Rules** S.I. 71-1 (the "Civil Procedure Rules").

I find that this application must fail as a matter of law; as the application for leave is incurably defective being brought under the wrong provisions of the law. The notice of motion is brought under **Order 9 Rule 12 of the Civil Procedure Rules** which provides as follows:

> "Where judgment has been passed pursuant to any of the preceding rules of this order.....the court may set aside or vary the judgment upon such terms as may be just." [Emphasis mine]

The notice of motion is also brought under Order 9 Rule 17, [this may have been a typographical error] as the correct rule is **Order 9 Rule 27 of the Civil Procedure Rules** which provides as follows:

> "In any case, in which a decree is passed ex-parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside and if he or she satisfies the court that the summons was not duly served, or that she was prevented by any sufficient cause from appearing when the suit was called for hearing, the court shall make an order setting aside the decree ....."
>
> [Emphasis mine].

Upon perusal of the notice of motion, I find that it does not contain a copy of any ex-parte judgment or decree. This renders the application incurably defective as lacking a proper basis for court to determine its merits. Best practice would have been for the losing party to extract a decree, in order to found this application under the above cited orders.

This ground fails as a matter of law.

(b)What remedies are available to the parties?

While sufficient ground may have been shown, the determination of the first issue largely resolves the application. However, I must note the clear provisions of the law under which the impugned grant lapses by operation of law.

First, under Section 337(2) of the Succession Act, Cap 262, a grant issued by a court of competent jurisdiction before May 31st, 2022, shall remain in force for a period of three years from the 31st day of May 2022. If there were a finding that the grant was by a competent court, which is at the root of Civil Suit 40 of 2022, the grant expired on May 31, 2022 rendering this suit moot.

Comment.

For an application to revoke letters of administration under Section 230 of the Succession Act, Cap 268, the applicant must show just cause- Section 230(2) defines just cause as:

> (a) That the proceedings to obtain the grant were defective in substance;
> (b) That the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case.....

The defect complained of here, was the grant of a court without pecuniary jurisdiction. The correct procedure to challenge the grant by a Chief Magistrates' Court would be an appeal under Section 8 of the Administration of Estates (Small Estates)(Special Provisions) Act, Cap 263. On this point of law, this specific provision of the law would override the general provision in Section 230 of the Succession Act, Cap 268. This is the rule in the Court of Appeal (Supreme Court) decision of **David Sejjaaka Nalima v Rebecca Musoke, Civil Appeal No. 12 of 1985**. Neither of these provisions were invoked by the parties in the pleadings. The plaint as a result at disposal may also have been liable to suffer the same fate.

Before taking leave of this application, I find that both parties did not exercise sufficient due diligence to try their matter in a timely manner.

Finding and Conclusion:

This application fails, and is dismissed with costs to the respondent.

Civil Suit 40 of 2022 is also dismissed by operation of law, Section 337(2) of the Succession Act, Cap 268 automatically lapsed the impugned grant. There is no grant to revoke by this Honourable Court. No order is made as to costs.

Parties are advised to apply afresh for letters of administration under the correct law.

I so order,

DATED AT **KABALE** THIS **12th DAY** OF **JUNE 2025.**

SSEMOGERERE, KAROLI LWANGA

JUDGE.

HON. MR. JUSTICE KAROLI LWANGA SSEMOGERERE, ESQ.
12 JUN 2025
JUDGE HIGH COURT OF UGANDA.