

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]
MISCELLANEOUS APPLICATION NO. 497 OF 2024
(ARISING FROM MISCELLANEOUS APPLICATION NO. 70 OF
2024)
(ALL ARISING FROM ADMINISTRATION CAUSE NO. 919 OF
2023)

BUKENYA TWAHA ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. MUHAMMED LUBEGA BUKENYA
2. NAMATOVU HALIMA ::::::::::::::::::::::::::::::: RESPONDENTS
3. REHEMA NAKANWAGI BUKENYA

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 INTRODUCTION

- 1.1 This ruling relates to a Notice of Motion that was filed before this Honorable Court by the Applicant against the Respondents under Sections 82 and 98 of the Civil Procedure Act, Cap. 71, Section 33 of the Judicature Act, Cap. 13, Order 46 Rule 1 and Order 52 Rules 1 and 3 of the Civil Procedure Rules SI-71-1 seeking orders that;
- i. Court vacates, sets aside or reviews its order of striking off the Applicant from the Certificate of No Objection granted by this Court in Miscellaneous Application No. 70 of 2024 arising from Administration Cause No. 919 of 2023.



ii. Court sets aside its order to the effect that the Respondents be issued Letters of Administration in respect of the Estate of the Late Zakaria Sajabbi Bukenya.

iii. Costs of this Application to be provided for.

1.2 The grounds of the application are set out in the Notice of Motion and explicated in the supporting affidavit sworn by the Applicant, Bukenya Twaha but in brief are that;

a) The court allowed an Application to strike off the Applicant from the Certificate of No Objection that was issued in favor of the parties herein on 8th December, 2021 in Miscellaneous Application No. 70 of 2024 arising from Administration Cause No. 919 of 2023 that was heard and determined *ex parte*.

b) The Applicant's signature was forged on all the documents presented to the Court in respect of the Petition and the Application arising there from.

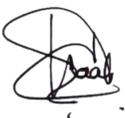
c) There are facts which were issues of law that were not brought to the attention of Court or over looked by the Court.

d) The Order of Court has adversely affected the Applicant since the Respondents will mismanage the Estate of the Late Zakaliya Bukenya for their own selfish benefits at the detriment of the other beneficiaries of the Estate.

e) There was no consent sought from other family members/beneficiaries while striking off the Applicant and appointing the Respondents as Administrators and that it is in the interest of justice that the Application be granted and the Applicant be heard.



- 1.3 The Respondents opposed the application through an Affidavit in Reply sworn by the 1st Respondent who described the Applicant's affidavit as being incurably defective and put the Applicant on notice that their lawyer would, at the hearing raise a preliminary objection that would have the affidavit struck off.
- 1.4 In further answer to the affidavit of the Applicant, the 1st Respondent averred that the Applicant's application is aimed at distorting the entertainment and the hearing of the Civil Suit No. 156 of 2023 where the Applicant is tried for intermeddling and the Civil Suit is at trial.
- 1.5 The 1st Respondent stated that Administration Cause No. 919 of 2023 was jointly drawn by two firms representing the parties in this application and at the time of filing Civil Suit No. 156 of 2023, the Respondents notified this Honorable Court that they were in the process of acquiring the Letters of Administration.
- 1.6 That Administration Cause No. 919 of 2023 did not in any way disfranchise the Applicant or declare him dead but proceeded under Miscellaneous Application No. 70 of 2024 to have the Applicant struck off the Certificate of Objection and Letters of Administration.
- 1.7 The Respondents averred that the Applicant takes administration as a way of "eating" but they do not see it as that, they are trying to see that the estate preserves its glory of the Late Zakaliya Bukenya by recovering all property fraudulently taken from the estate and fairly distributing it to the rightful beneficiaries.
- 1.8 The 1st Respondent stated further that the issue at hand is that there was disharmony which was orchestrated by the Applicant towards the other Respondents and they thought it prudent to have the

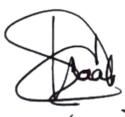


Applicant struck off the Letters of Administration for smooth administration of the Estate.

- 1.9 That the Applicant has not disclosed the new facts or matter which were not considered during the hearing of Miscellaneous Application No. 70 of 2024 and that during the hearing of the said application, there was no evidence on court record to show that the Respondents in any way referred to the Applicant as having consented to the grant of letters but the Respondents moved court and he was removed from the Certificate of No Objection.
- 1.10 The Applicant made oral submissions in rejoinder whose contents I have also taken into consideration.

2.0 Background

- 2.1. The Respondents filed an application against the Applicant vide Miscellaneous Application No. 70 of 2024 for an order to strike off Bukenya Twaha from the Certificate of No Objection, have Letters of Administration to the estate of the Late Zakaliya Kasa Sajjabi Bukenya issued to them and costs to be provided for.
- 2.2. The grounds in the said application were that both parties are children and beneficiaries of the Late Zakaliya Kasa Sajjabi Bukenya formerly of Kyanja, Kampala District. A Certificate of No Objection in respect to the estate of the deceased was issued on 8th December, 2021. Bukenya Twaha took the Certificate of No Objection, minutes and death certificate to the USA where he resides and that his action was aimed at delaying and frustrating the process of getting Letters of Administration and yet he went ahead to intermeddle with the estate by intending to sale and forcefully giving himself property of



the estate to wit; building the wall fence around the property in Kyanja without the family consent.

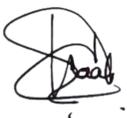
2.3. According to the Respondents, the Applicant acted with impunity and they had fears that when he gets his name on the Letters of Administration, other beneficiaries may not get anything. They felt it prudent that the Court strikes the Respondent off the Certificate of No Objection as well as the Letters of Administration.

2.4. The Applicant was not served nor heard. The said application proceeded *ex parte*.

3.0 Representation and Hearing

3.1. At the hearing, the Applicant was represented by Mr. Hassan Kateregga together with Mr. Kiige Abdullah of Matovu, Kateregga & Co. Advocates. The Respondents were represented by Mr. Khauka Dennis of Kiira Advocates & Legal Consultants. The Applicant was present in Court while the Respondents appeared online. (The 1st Respondent was in Canada and 2nd and 3rd Respondent were in the USA respectively).

3.2. Counsel for the Respondents prayed that the matter should be adjourned and heard on 18th April, 2024 since he had not received the response from his clients who reside abroad. Upon inquiring from the 1st Respondent, Lubega Mohammed who deponed the affidavit in reply, he affirmed to this Court that he had immediately upon signing sent back the affidavit in reply electronically to his lawyer for filing and he shared with the Court a copy of the affidavit in reply which was filed and the matter proceeded.



3.3. The parties based their arguments on the respective affidavits summarized herein and cited a number of authorities. I have carefully perused the record and considered the oral submissions by counsel for the Respondents and the written submissions for the Applicant in determining this application.

4.0. Issues for Determination by the Court.

- 4.1. Two issues are up for determination by the court, namely;
- I. Whether or not the Applicant is an aggrieved party?
 - II. Whether the Applicant is entitled to the reliefs sought?

5.0. The Law

5.1. The law governing applications of this nature is set out in Section 82 of the Civil Procedure Act, Cap. 71 and Order 46 Rule 1 (1) of the Civil Procedure Rules, SI 71-1 which states as follows:

Section 82 of the Civil Procedure Act, Cap. 71 provides that “*any person considering himself or herself aggrieved-*

- a) *by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*
- b) *by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgement to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit”.*



5.2. The considerations for grant of an application for review of a judgment, decree or order are set out under Order 46 Rule 1 (1) of the Civil Procedure Rules, SI 71-1 which provides that: -

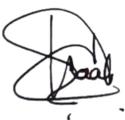
1. Any person considering himself or herself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.[Emphasis added]

5.3. The provisions of the law cited above specifically allow any party that feels aggrieved by a decree or order to seek for review. The Applicant is therefore acting within his rights under the law to present this application as an aggrieved person by the decision in Miscellaneous Application No. 70 of 2024.

5.4. The Court in **Re Nakivubo Chemist (U) Ltd [1979] HCB 12** while interpreting Order 46 held that an applicant in order to succeed in a claim for review has to show firstly, that there is discovery of a new and important matter of evidence previously overlooked by excusable



misfortune. Secondly, that there is discovery of some error or mistake apparent on the face of the record and lastly that review ought to be made by court for any other sufficient reason.

5.5. In the case of **Chhajju Ram Versus Neki (1922), 49 I.A 144** cited with approval in **Yusuf Versus Nokrach [1971] EA 104**, it was held that any other sufficient reason ought to be read as meaning sufficiently of a kind analogous to the first two grounds.

6.0. Determination of the Issues:

Issue No. 1: Whether or not the Applicant is an aggrieved party?

6.1. In the instant application, it is the Applicant's argument that he was never served and therefore did not participate in Miscellaneous Application No. 70 of 2024 (Muhammed Lubega Bukenya, Namatovu Halima and Rehema Nakanwangi Bukenya Versus Bukenya Twaha) in which Court granted the order to strike him off the Certificate of No Objection which affected him as an appointed Administrator of the Estate of the Late Zakaliya Bukenya.

6.2. It was further submitted for the Applicant that he was not afforded an opportunity to be heard moreover the signature that appeared on the petition as his was forged the fact that the Respondents in Miscellaneous Application No. 70 of 2024 stated that his where about was unknown yet to him the Respondents at all material times knew that the original Certificate of No Objection was in the custody of his lawyer. He further submitted that the Respondents in the said application sought no consent from the other beneficiaries of the estate to strike off the Applicant from the Certificate of No Objection



and the Letters of Administration. The said order has adversely affected the Applicant as a beneficiary to the estate and other beneficiaries as well.

6.3. On the ground of sufficient reason, counsel for the Applicant submitted that the Respondents fraudulently petitioned the Court vide Probate and Administration Cause No. 919 of 2023 on 8th September, 2023 for the grant of Letters of Administration of the estate of the Late Zakalia Bukenya without the knowledge or consent of the Applicant and forged the Applicant's signature.

6.4. To the Applicant, he has sufficient reason as to why this instant application for review of the decision made on 25th January, 2024 should be granted. There was no effective service and his right to be heard under Article 28 of the Constitution of the Republic of Uganda was infringed.

6.5. On the other hand, it was argued for the Respondents that while filing Civil Suit No. 156 of 2023 they indicated that they were in the process of applying for Letters of Administration. They further stated that they did not declare the Applicant dead but instead filed the Miscellaneous Application to strike off the Applicant since he was delaying and frustrating the process.

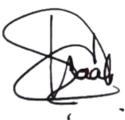
7.0. Determination by the Court

7.1. I have perused the record in Miscellaneous Application No. 70 of 2024, the orders sought by the Applicants in that application against the Respondent were that the Respondent be expunged from the Certificate of No Objection, the Applicants be granted the



administration of the estate of the Late Zakaliya Sajjabi Kasa Bukenya without the Respondent/Twaha Bukenya and Costs be in the cause.

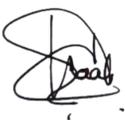
- 7.2. A Certificate of No Objection vide Mengo Administration Cause No. 1842 of 2019 in the names of Zakaria Bukenya was granted to Muhammed Lubega (son), Namatovu Halima (daughter), Bukenya Twaha (son), and Rehema Nakanwagi Bukenya (daughter) dated 8th December, 2021 and indeed following the appearance by counsel for the Applicants in the said Miscellaneous Application No. 70 of 2024, the Respondent/Twaha Bukenya was struck off the Certificate of No Objection and the Letters of Administration were issued to the Applicants by the trial judge.
- 7.3. After a careful analysis of the pleadings and the submissions, it is clear that the siblings are trying to outdo each other in this matter to the extent that the Respondents gave information that is not in tandem with the facts provided during the petition for Letters of Administration, in particular, that the Applicant Bukenya Twaha signed the Petition for the grant of Letters of Administration vide Probate and Administration Cause No. 919 of 2023 and that his whereabouts since 2021 is unknown. The Respondents seem to have forgotten that the Petition was filed in 2023.
- 7.4. This application is premised on the grounds of discovery of new and important matter of evidence and existence of sufficient reason. According to the Applicant his signature was forged by the Respondents while filing the Petition for Letters of Administration. Counsel for the Applicant invited this court to examine the signature



on said Petition with its supporting documents and the signature which off course differs on the face of it from that on the minutes at the Administer General, National Identity Card and Passport.

7.5. Regarding the forged signature, it is then clear that if according to the Respondents indeed the Applicant had disappeared with the relevant documents to enable them support their Petition for Letters of Administration, then where did they find him to sign on the Petition for Letters of Administration on 16th August, 2023 and eventually filing the Petition in this court on 7th September, 2023? One or the other must be correct, that is, either the forgery of the Applicant's signature or indeed they did not contact him or find him. These allegations were never refuted by the Respondents that indeed the signature was not for the Applicant. If the rebuttal was not true, the Respondents would have gone ahead to call oral evidence to give the Court the right position regarding the procurement of the Applicant's signature on the Petition and to affirm that indeed the where about of the Applicant was unknown. The Respondents having failed to do so, the only option left for this Court is to believe the version of the Applicant that indeed his signature was forged on the Petition and that the Respondents maliciously made false allegations that he had disappeared since 2021 yet they knew his address and the fact that they knew who had the original documents.

7.6. From the submissions made, I find and hold that the Respondents are not truthful and it would not be safe to solely grant the Letters of Administration to them as issued earlier by the Court. Why do I



say this? I say so because in their application Miscellaneous Application No. 70 of 2024 before the trial judge they stated that they were not aware of the Applicant where unknown to them and that the Applicant upon the issuance of the Certificate of No Objection had disappeared with it together with other relevant documents and disappeared to the USA yet the 2nd Respondent, Namatovu Halima resides at 19031 Festival Dr, Boyds MD just 10.7 Kms away from the Applicant who resides in Clarksburg, Maryland USA. Surely, the 2nd Respondent knows the brother's residence but chose to act otherwise.

7.8. In addition, while presenting Miscellaneous Application No. 70 of 2024, the Respondents concealed from Court the fact that they had filed a civil suit in 2023 against the Applicant and that the suit was on going. The Applicant was well represented meaning his whereabouts were fully known to them.

7.9. I have further perused the minutes from the Administrator General, minute number 8, 9 and 10 and I will reproduce them herein below;

No. 8 *"I have received a letter from MACB Advocates requesting the office to issue a CONO to three of the administrators leaving out Bukenya Twaha (son of deceased) for reasons that he has intermeddled with the estate"* Signed dated **27th May, 2021**.

No. 9 *"In response, I have informed counsel for Twaha Bukenya and requested for his indulgence in the said matter and a written response was filed clearly indicating that Twaha Bukenya is still interested in administering the estate and he has never intermeddled in the estate as alleged"*. Signed dated **7th October, 2021**.



No. 10 *“Discussion with A.G in respect to this estate and was advised to write to counsel for the other three applicants to avail proof as to the allegations levied on Bukenya Twaha to be filed within 14 days, otherwise a Certificate of No objection to be issued”*. Signed and dated **19th October, 2021**.

8.0. It is my finding that the Applicant is an aggrieved party. Upon arguing Miscellaneous Application No. 70 of 2024, the Respondents herein were granted Letters of Administration vide Administration Cause No. 919 of 2023 dated 25th January, 2024. On 1st February, 2024 the Registrar of Titles on behalf of the Commissioner Land Registration communicated to the Court that the Respondents were in the process of transferring land comprised in Kyadondo Block 197 Plots 174, 175 and 868 land at Kitekika and on 5th March, 2024 they filed an inventory through their present lawyer which is on court record. In all this the Applicant was not aware of what was going on. At the moment some of the estate properties have since been transferred into the names of third parties as Registered Proprietors. This issue is therefore resolved in the affirmative.

Issue 2. Whether the Applicant is entitled to the reliefs sought?

8.1. Before I make the final pronouncement on whether the Applicant is entitled to the reliefs sought, it is not in dispute that the Respondents filed Civil Suit No. 156 of 2023 against the Applicant and Khadijja Nabukeera on 16th May, 2023 which suit was ongoing by the time they filed Administration Cause No. 919 of 2023 on 8th September, 2023 and the circumstances under which the Respondents obtained the orders in Miscellaneous Application No.



70 of 2024 were tainted with deceit basing on Administration Cause No. 919 of 2023 which was a non-starter on the face of it.

- 8.2. Given that background, I therefore find that the Applicant is entitled to the reliefs sought with further orders of this court.
- 8.3. I hereby make an order for citation against the Respondents directing them to surrender and deliver to this court the Letters of Administration together with all the certified copies granted to them on 25th January, 2024 vide Administration Cause No. 919 of 2023 **In the Matter of the Estate of the Late Zakaria Bukenya** within 2 days from the date of this Ruling.
- 8.3. The Letters of Administration are not revoked/cancelled since there is a pending civil suit for determination and besides an application cannot lead to cancellation/revocation of Letters of Administration.
- 8.4. I accordingly, vacate and set aside the order striking off the Applicant from the Certificate of No Objection and granting the Letters of Administration granted in Miscellaneous Application No. 70 of 2024 arising from Administration Cause No. 919 of 2023.
- 8.5. The Applicant is awarded costs of this Application, reason being that the Respondents concealed from Court material information while obtaining the Letters of Administration and therefore causing a multiplicity of these applications.
- 8.6. The Commissioner Land Registration, Ministry of Lands, Housing and Urban Development is hereby directed to cancel all entries in respect of properties comprised in Kyadondo Block 197 Plots 174, 175 and 868 land at Kitetika entered on behalf of the Respondents



as Administrators of the Estate of the Late Zakaria Bukenya vide Administration Cause No. 919 of 2023 and all entries of any third parties arising out of the said Administration Cause.

8.7. The Commissioner Land Registration is further directed to cancel all entries on any registered land transferred by the Administrators of the Estate of the Late Zakaria Bukenya Vide Administration Cause No. 919 of 2023.

9.0. Conclusion.

9.1. This application succeeds and consequently upon my findings above, I make the following orders;

- i. Miscellaneous Application No. 70 of 2024 arising from Administration Cause No. 919 of 2023 is set aside and the orders therein vacated.
- ii. A citation against the Respondents directing them to surrender and deliver to this Court the Letters of Administration together with all the certified copies granted to them on 25th January, 2024 vide Administration Cause No. 919 of 2023 **In the Matter of the Estate of the Late Zakaria Bukenya** within 2 days from the date of this Ruling.
- iii. The Commissioner Land Registration is hereby directed to cancel all entries in respect of properties comprised in Kyadondo Block 197 Plots 174, 175 and 868 land at Kitetika entered on behalf of the Respondents as Administrators of the Estate of the Late Zakaria Bukenya vide Administration Cause No. 919 of 2023 and all entries of any third parties arising out to the said Administration Cause.



- iv. The Commissioner Land Registration is hereby directed to cancel all entries on any registered land by the Administrators of the Estate of the Late Zakaria Bukenya Vide Administration Cause No. 919 of 2023.
- v. The Applicant is awarded Costs.

I so Order.

Dated, Signed and Delivered via email this 22nd day of April, 2024.



**CELIA NAGAWA
AG. JUDGE**