

The Hon. Mr. Justice J.W.M. Tsekooko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 656 OF 1989

*Probate  
Fraudulent  
grant*

ADMINISTRATOR GENERAL ::::::::::::::: PLAINTIFF

V E R S U S

*Amendment*

1. NICHOLAS OKWENDA Ø  
2. ALFRED OLWORA Ø ::::::::::::::: DEFENDANTS

Before: The Hon. Mr. Justice J.P.M. Tabaro

Ruling:

The application in question arose in connection with the estate of the late Norbert Onanchan Adegwi who was a resident of Agiermach, Warr in the District of Nebbi. The estate is currently being administered by Nicholas Okwenda and Alfred Olwora father and uncle, to the deceased respectively. The estate comprised of inter alia, land, a lorry, 4 permanent houses, pick-ups (3) according to widow's assertions, at the time of the deceased's demise. Curiously enough the learned magistrate Grade I, of Nebbi Court, treated the matter as a small estate and proceeded to grant letters of administration to the respondents in this application. The deceased's widow, Sarah Onanchan Adegwi appears on the letters of administration as one of the grantees but she avers that her name was included on the application without her knowledge. Under section 1 (1) of the administration of Estates (Small Estates) Decree (No. 13 of 1972) a small estate is one whose value does not exceed shs. 100,000/=.

In the substantive suit the Administrator General brought an action for revocation of the Nebbi Court grant among other prayers. In the plaint it is pleaded that the grant



was obtained fraudulently by including the name of the widow when she had not consented to the grant being obtained in her names.

On 9/5/1990, counsel for the applicant Mr. Modama, argued an application under O.6 rr 18 and 30 of the Civil Procedure Rules for leave to amend the plaint so as to give details of the alleged fraud. He rightly filed a Chamber Summons for the purpose. Learned counsel for the respondents Mr. Ulwor Mundu opposed the application and submitted that the particulars of fraud were not pleaded and, consequently, the plaint disclosed no cause of action. It will be recalled, as both learned counsel pointed out, that in terms of O.6 r. 2 Civil Procedure Rules in cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in other cases in which particulars may be necessary, such particulars with dates shall be stated in the particulars. Mr. Ulwor Mundu prayed for dismissal of the suit.

In deciding whether or not a plaint discloses a cause of action the court considers whether the plaintiff enjoys a right, that the right has been violated and the defendant is liable - see this court's ruling in Civil Suit No. 1193 Kampala Traders Co-op. Society Ltd. v. K.C.C. (unreported) and H.M.B. Kayondo S.C. v. Attorney General Civil Suit No. 422 of 1988, before C.K. Byamugisha Ag. J. (as Her Lordship then was), following a decision of the then Court of Appeal for East Africa in Auto Garage v. Motokov (No. 3) /1971 / E.A. 514 at P. 519 para. D per Spry V.P.



(as he then was). Once the court arrives at the conclusion that no cause of action is disclosed in the plaint, the same is rejected in accordance with O.7 r. 11 (a) of the Civil Procedure Rules.

In Mbarara Coffee Curing Works Ltd. v. Grindlays Bank (U) Ltd. /1975/7 HGB 57, cited by Mr. Ulwor Mundu

counsel for the respondent, it was pointed out that the purpose of pleadings is to allow the parties an opportunity to prepare their cases adequately. Then the Court of Appeal for Eastern Africa in Eastern Bakery v. Casteline /1958/7 E.A. 461 at P. 462 para C, Sir Kenneth O'Connor, P. (as he then was) observed:-

"It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs: Tildesley v. Harper 1878, 10 Ch. D. 393; Clarepede. Commercial Union Association 1883, 32 W.R. 262". As the court later on stated, the main principle is that an amendment should not be allowed if it causes injustice to the other side".

It is these principles which guide this court in deciding whether a party should be allowed to amend the pleadings or not, as, recently in Banex Limited v. Daniel Mulika, C.S. 184 of 1988, per C.K. Byamugisha J. (Unreported).

The plaintiff, in the present case, expressly averred in the plaint that the Letters of Administration were granted to Alfred Olwore, Sarah Adeg, and Nicholas Okwenda



by the court in Nebbi on the 21st day of February, 1988. As already pointed out, in the next paragraph the plaintiff states that the grant was obtained fraudulently by including the name of the widow when she had not consented to the grant being obtained in her names.

Perusing the plaint and applying the provisions of O.6 r. 2 Civil Procedure Rules (supra) it cannot be said that no particulars of fraud are expressed. Perhaps the plaint is lacking in form but <sup>not</sup> in substance. The ground for alleging fraud is given and the date of the alleged fraud is stated in clear terms.

I would be slow to dismiss this suit without determining it on merit as the court which granted the Letters of Administration grievously violated the law, apparently, as the value of the estate was ignored for reasons which are not wholly clear. But applying the principles above outlined it cannot in my way prejudice the respondents if the plaintiff/applicant is granted leave to amend the pleadings in question. By amending the plaint it appears to me the issue in the cases will become all the more clearer, for the benefit of all the parties to the suit. I grant the application to amend the plaint with costs to the respondents.

J.P.M. TABARO

J U D G E.

4/6/1990

4/6/1990:- Mr. Madama for applicant,

Mr. Ulwor Mundu for respondents.

Widow present.

Ruling delivered.

J.P.M. TABARO

J U D G E.

4/6/1990.