

THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CIVIL APPEAL NO. 1 OF 1988.

(From Civil Suit No. 76/85).

LAWRENCE PALOLO GIDUDU APPELLANT

VERSUS

KASIFA NAGUDI RESPONDENT

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

J U D G M E N T:

In the court of Magistrate Grade 1 at Soroti, the appellant had applied for and was granted Letters of Administration in the estate of the deceased Aisa Nabukwasi on 20.8.85. The estate included one semi permanent house at Teso Inn in Soroti Municipality, partly used for renting and partly used for accommodation by the deceased and her immediate family of three daughters. 5

The appellant is a brother to the deceased and the respondent is the first daughter of the deceased. As a result of mismanagement of the estate, a caveat was lodged in which grant of Letters of Administration was revoked on 26.2.88. In the caveat, it was alleged that the appellant had chased the daughters of the deceased from the estate house and denied them the rents realised and that the appellant had no locus standi in his claim for the administration of the estate as he is a mere brother vis avis the respondent and her 2 sisters who are the direct children of the deceased. 10
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The appellant based his claim of legal heir on the assumption that he is the legal heir of his aged father, Kalolo Wobuge who is still alive. He asserts his heirship on Kigisu customs that once a father is too old, a son becomes the legal heir even when the father is still very much alive and that such a son becomes also the heir of all children born at home outside marriage as is the case in the instant suit. It is also alleged in evidence that the aged Kalolo Wobuge had contributed some money in building the said house, but no proof of such contribution surfaced at the trial in the court of first instance. 20

The learned trial Magistrate also observed that under the law of succession, both the appellant and respondent may apply for Letters of Administration to the estate of the deceased Aisa Nabukwasi. 25

However under the order of priority to such application, the respondent is considered first priority as she is the first daughter of the deceased. Worse still on the allegation of mismanagement of the estate which is not denied by the appellant, the trial court deemed it fit to revoke grant of Letters of Administration and it 5
~~was revoked accordingly hence this appeal.~~

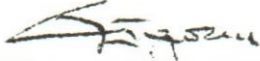
I quite agree with the submission of the learned Counsel for the respondent that the appellant has abandoned his grounds of appeal stated in the Memorandum of Appeal. On the strength of that the ~~appeal becomes misconceived and incompetent~~ in law: O39 r 2 C.P.R. 10
However the appellant was given a sufficient opportunity of ~~contesting~~ the appeal.

It is in evidence that Kalolo Wobuge is the father of both the ~~appellant and the deceased Aisa Nabukwasi. The estate in dispute is~~ for the mother of the respondent. If Kalolo Wobuge has interest in the 15 estate, but he is alive and should be the one to sue and not the appellant. The trial Magistrate rightly observed that there is no evidence to prove Wobuge's interest in the disputed estate. If anything, the respondent on 13.7.80 was elected the heir of her ~~mother's estate. It was the clan who appointed her out of the three~~ 20 children. ~~Secreti Municipal officials also attended that meeting but~~ did not influence the outcome.

Kigisu customs allegedly conferring upon the appellant legal heir are matters which are extreme as the same were not on record. In matters of such customs expert evidence is necessary to guide courts. 25
In the instant case such evidence was not adduced. The respondent is the first daughter of the deceased and as a matter of priority was appointed by the clan to inherit the estate of her deceased mother. The appellant is a brother of the deceased who is not directly under estate of the deceased. The mere claim that he is the legal heir of their 30 father does not qualify him also to be the heir of the deceased. He has no locus standi and the trial court was right to revoke Letters of Administration originally granted to him.


Under section 232 (2) M.C.A. 1970, it is mandatory that a decree be drawn up and extracted before an appeal is filed to the High 35 Court where an appeal stems from the court of the Chief Magistrate or Magistrate Grade as is the case here.

This is not done by the appellant and on that ground alone the appeal is incompetent. On merit, however, this appeal fails for reasons stated above and it is dismissed with costs here and in the court below.


STEVEN GEORGE ENGWAU
J U D G E

6/12/93.

7.12.93: Both parties present.
Mr. Kakembo holding brief for Mr. Elayu for
respondent present.
Judgment delivered in open Court.


STEVEN GEORGE ENGWAU
J U D G E

7/12/93.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI

HIGH COURT CIVIL SUIT NO. 3/92.

1. ESEZA A. OODO) PLAINTIFFS
2. STEPHEN ODO IPOROTUM)

VERSUS

UGANDA ELECTRICITY BOARD DEFENDANT.

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

R U L I N G:

By consent of both sides, the matter is settled out of court in the following terms:-

a) General damages at Shs	4,000,000/-;	
b) Special damages at Shs	495,000/-;	
c) Plaintiffs' transport at Shs ..	120,000/-;	5
d) Counsel's fee at Shs	400,000/-;	
e) Counsel's transport at Shs ..	50,000/-;	
f) Other costs-Disbursements at Shs	400,000/-;	
Total: Shs	<u>5,465,000/-;</u>	

In the premises, consent judgment in the above terms herein entered in favour of the plaintiffs. 10


STEVEN GEORGE ENGWAU

J U D G E

20.12.93.