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THE REPUBLIC OF UGANDA

IN THE HIGH OF UGANDA AT KABALE

MISCELLANEOUS CAUSE NO. 0001 OF 2022

Arising from HCT -11-CV-ADMINISTRATION CAUSE NO.0003 OF 2019

**IN THE MATTER OF ADMINISTRATION OF THE ESTATE OF THE LATE
KESHAVDAS LAXMAN 9FORMELY OF CENTRAL VILLAGE, CENTRAL
PARISH, CENTRAL DIVISION, KABALE DISTRICT**

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AND

**IN THE MATTER OF AN APPLICATION FOR DIRECTIONS ON
DISTRUBUTION OF UGX 318,476,000/= (THREE HUNDRED EIGHTEEN
MILLION FOUR HUNDRED SEVENTY SIX THOUSAND) BEING PROCEEDS
OF THE ESTATE OF THE LATE KESHAVDAS LAXMAN.**

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BACHU SHAMLAL:.....:APPLICANT

VERSUS

DONATILA MUKASEKURU LAXMAN:.....:RESPONDENT

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BEFORE HON. JUSTICE SAMUEL EMOKOR

RULING

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The Applicant brings the Instant Application under Article 21 of the Uganda Constitution, Section 33 of the Judicature (Amendment Act), Section 98 of the Civil Procedure Act, Section 28 of the Succession Act and Order 52 Rule 1 of the Civil Procedure Rules seeking Orders that UgX Shs 318,476,000/= being proceeds of the sale of Estate property known as Plot 17, Bwankosya Road at Central Division, Kabale Municipality of the late Keshavdas Laxman be immediately distributed equally to all the beneficiaries of the estate of the late Keshavdas Laxman and that the Applicant and Respondent be compelled to file full and true inventory of the property and credits of the Estate of the late Keshavdas Laxman and exhibit the same in this hounorable Court within one month from the date of

5 distribution of the money or within such further time as the Court may appoint and that provision be made for costs.

The grounds upon which this application is premised is that the Applicant and Respondent are joint Administrators of the Estate of the late Keshavdas Laxman having been granted Letters of Administration of the property by this honourable
10 Court on the 25th day of February 2019 and that the Applicant and Respondent were registered as proprietors of property described as Plot 17, Bwankosya Road at Central Division Kabale Municipality measuring 0.0460 Hectares.

That on the 30/08/2021 the Applicant and Respondent sold Estate property known as Plot 17, Bwankosya Road at Central Division Kabale Municipality
15 measuring 0.0460 Hectares to the Registered Trustees of Kabale Diocese in their capacity as Administrators of the late Keshavdas Laxman at a purchase price of 340,000,000/= and that the said sum was deposited into the Estate Account No.3100084535 with Centenary Bank Kabale on the 30th Day of August, 2021. Further that the Applicant and Respondent agreed to spend UgX
20 shs.21,524,000/= toward the expenses they had incurred in the course of Administration of the Estate but that the Applicant and Respondent developed a disagreement on the formular for distribution of UgX shs. 318,476,000/= to the beneficiaries of the Estate of the late Keshavdas Laxman. That while the Applicant desires that the money be distributed equally to all the beneficiaries of the Estate
25 the Respondent wants UgX shs. 180,000,000/= from the proceeds of the sale of the Estate property without any justification and that the Respondent has since 1976 to this day been residing in the property and none of the beneficiaries had ever derived any benefit from the same.

The application is supported by the affidavit of the Applicant. The Applicant in his
30 affidavit makes averments along the lines of the grounds of this application.

The Respondent filed an affidavit in opposition to the Instant Application and in brief avers that she is the window and Administrator to the Estate of the late Laxman Shantilal Bruce Brian who was a son and beneficiary of the Estate of the late Keshavdas Laxman to which she is a Co-Administrator. That she is one of the

5 registered proprietors as a joint tenant with the Applicant for the Estate property
comprised in FRV KAB1 folio 15 situated at Central Division Kabale municipality,
Bwankosya Road Plot 17 measuring 0.0460 Hectares and that as Administrators
they executed an agreement of sale of the Estate property at a consideration of
UgX shs. 340,000,000/=. That the said sale agreement dated 30th day of August
10 2021 was premised on the Memorandum of Understanding that was executed
between the Applicant and the Respondent in respect of the expenses incurred by
the Administrators in preserving the Estate property but the same was never
complied with by the Applicant who became elusive and yet it was a condition in
the agreement that the Advocates should mediate in case of any dispute. That the
15 Respondent signed the sale agreement in mistaken belief and or
misrepresentation that the Applicant had agreed as Co-Administrator to pay off
her expenses in renovations and preservation of the estate property and the
balance was to be shared by all the beneficiaries in equal shares after the
deduction and that it is not true that the Applicant agreed with the Respondent
20 that UgX shs. 21,524,000/= was the final expense incurred in the course of
administering and preserving the Estate property of the late Keshavdas Laxman.
That of the UgX shs. 21,524,000/= released UgX shs. 17,524,000/= was paid to
M/s Onyango & Co. Advocates and M/s Mujurizi, Arinaitwe & Byamukama
Advocates as expenses that were incurred in the course of the execution of the
25 land sale agreement of the 30th day of August 2021 and UgX shs 4,000,000/= was
paid as expenses for processing the Letters of Administration and Duplicate
certificate for the land comprised in FRV KAB 1 folio 15. The Respondent avers
that she proposes UgX shs. 180,000,000/= as sufficient consideration for the
expenses that were incurred in preserving the Estate property plus renovations
30 and most of the family members are buried on her private property, school fees
and financial assistance for most of the beneficiaries.

The Respondent further avers that she is in receipt of an eviction notice from the
premises dated 1st day of December, 2021 before the dispute relating to the Suit
property and distribution is resolved yet she has nowhere to go and settle and yet
35 the premises were used by her as a matrimonial property for the last 45 years.

5 At the hearing of this Application Mr. Arinaitwe Rajab appeared for the Applicant while Ms. Monica held brief for Mr. John Paul Rusangumya for the Respondent. It was agreed upon that Counsel proceed by written submissions which was dully done.

10 I do not find it necessary to reproduce verbatim the submissions of Counsel since the same is on the Court record. It should suffice to note that I have studied carefully the averments of the parties as contained in their affidavits and perused in detail the submissions of Counsel.

Section 98 of the Civil Procedure Act and 33 of the Judicature Act under which this Application is brought confer upon this Court unlimited Jurisdiction to grant
15 absolutely or on such terms and conditions as it may think just all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim property brought before it.

See also Lakhamishi Lakhamshi Bros versus Raja & sons (1966) EA 313.

20 It is not in dispute that the Applicant and Respondent are joint Administrators of the Estate of the late Keshavdas Laxman having obtained letters of Administration to the Estate on the 25th day of February, 2019.

It is also not in dispute that the Applicant and Respondent as registered proprietors of the Suit property described as Plot 17, Bwankosya Road at Central Division Kabale Municipality measuring 0.0460 Hectares sold the same to the
25 Registered Trustees of Kabale Dioceses in their capacity as Administrators of the Estate at UgX shs. 340,00,000/= and the same was deposited into the Estate Account No. 3100084535 held at the Centenary Bank Kabale Branch.

It is further not in issue that from the said purchase price of UgX shs. 340,000,000/=, UgX shs. 21,524,000/= was spent towards expenses incurred in
30 the course of administering the Estate leaving behind a balance of UgX shs. 318,476,000/= in the Estate Account.

The Central issue before this Court therefor is what portion of the UgX shs. 318,476,000/= should be used to offset the expenses incurred in the

5 *Administration of the Estate by the Respondent and what sum remaining there from should be distributed to the beneficiaries of the Estate.*

The Respondent however in her affidavit in reply to this Application raises an issue that this Court is required to dispense with before it delves into the crux of the Application.

10 The Respondent in her reply avers that the Instant Application is premature and this is premised on the fact that the Applicant and Respondent on the 30th day of August, 2021 entered into a Memorandum of Understanding in which it was agreed that the expenses of the Administrators would be deducted from the purchase price and that the same would be mediated by their lawyers. Counsel
15 for the Respondent in his written submissions alludes to the same.

I have studied the Memorandum of Understanding made reference to by the Respondent that is annexured to her affidavit in reply as annexure “D” and indeed the Applicant and Respondent agreed to hold a meeting to establish the expenses incurred by each Administrator in order to deduct the same from the purchase
20 price.

The Applicant on the one hand avers that the Respondent has turned down reconciliation meetings at family level while the Respondent accuses the Applicant of being elusive and not attending mediation meetings. The Respondent attaches as annexure “G” minutes of a mediation meeting in which she was
25 present but the Applicant was represented by his lawyer. The issues for discussion covered a wide range of issues including removal of a caveat lodged on the title of the purchase property by the Registered Trustees of Kabale Diocese and the sum of UgX shs. 180,000,000/= that the Respondent is on the record as claiming for as compensation for taking care of the Estate for 48 years. The minutes do
30 indicate that a follow up meeting was to be held on the 26th day of November 2021.

Annexure “E” is an invite dated 30th November, 2021 to both parties to attend a mediation meeting on the 10th day of December, 2021 at 10:00am at the Chambers of M/s Onyango & Co. Advocates signed by their lawyers/mediators. There is no

5 proper record of what transpired on the 10th day of December, 2021 by any of the parties here. Be that as it may I am sufficiently satisfied by the contents of annexure “G” that attempts were made as per the Memorandum of Understanding to try and establish the expenses of the Administrators and the sum of UgX shs. 180,000,000/= demanded by the Respondent in that meeting
10 was not acceptable to the Applicant.

Further proof of compliance to the Memorandum of Understanding is the agreement of the parties to withdraw UgX shs. 21,524,000/= from the Estate Account to which they are both signatories to pay off legal costs related to the sale and processing of Letters of Administration. These were ascertained expenses by
15 the Administrators.

The Instant Application in the above context cannot be found to be premature.

I will now return to the crux of this Application which is what portion of the UgX shs. 318,476,000/= should be used to offset the expenses incurred in the
20 Administration of the Estate by the Respondent and what sum remaining there from should be distributed to the beneficiaries of the Estate.

The Respondent avers to proposing that the sum of UgX shs. 180,000,000/= be considered as sufficient consideration for expenses that she incurred in preserving the Estate plus renovations and that most of the family members are
25 buried on her private property, and payment made of school fees to seven children plus financial assistance for most of the beneficiaries.

This Court is alive to a host of authorities to the effect that Administrators within limits are allowed to recover expenses that are incurred in the course of their Administration of an Estate. I however take issue with the Respondent proposing
30 a figure to the tune of UgX shs. 180,000,000/= without attempting to offer a breakdown of the same in justification. The Respondent instead lumped activities such as preservation, renovations, paying of fees and offering financial assistance to beneficiaries. This in itself cannot and will not amount to acceptable basic accounting standards to convenience this Court or any other that these expenses

5 were genuinely incurred by the Respondent. There is no evidence attached to the record by the Respondent of how these expenses were incurred.

The Applicants averments that the Respondents claim for UgX shs. 180,000,000/= from the proceeds of sale of property belonging to the Estate of the deceased Keshavdas Laxman amounts to unjust enrichment on her part
10 stands un rebutted by the Respondent.

The Respondent is averring to have occupied Estate premises for the last 45 years as her matrimonial property to which the Applicant avers that in this period the Respondent has not paid any rent to the estate.

The Respondent without a doubt has enjoyed certain liberties on the Estate
15 property before and after becoming an Administrator of the same.

In any case renovation and preservation of the Estate by the Respondent over a period of 45 years was a necessity in order for her to continue to live in a habitable environment and it was therefore more to her benefit. In view of this glaring fact and in the absence of any credible evidence of expenses incurred by the
20 Respondent in the Administration of the Estate of the late Keshavdas Laxman it is practically impossible for this Court to allow or order any deductions towards such expenses. I would therefore find that the sum of UgX shs. 318,476,000/= being proceeds of the sale of Estate property be distributed equally to the beneficiaries of the Estate of the late Keshavdas Laxman.

25 The Respondents claim that she deserves compensation for her property vide FRV HQT 1589 folio 16 Block 3 Plot 636 situated at Kazigizi, Ndorwa County, Kabale that is being used as family burial grounds was never canvassed prior to this Application in any of the meetings held. It appears to be more of an afterthought in my view and as a result I will refrain from making a finding on the same.

30 The list of beneficiaries to the Estate of the lake Keshavdas Laxman would appear to largely be an accepted list save for the inclusion of one a “Rose” as one of the wives of the late Laxman Shantilal Bruce Brian. The Respondent has presented evidence that she was in a monogamous marriage with the late Laxman Shantilal

5 Bruce Brian and this is by adducing a marriage certificate that shows that their marriage was solemnized at Abundant Life Church on 25th day of May, 2005 and the same was registered with the Registrar of Marriages.

In the absence of any evidence as to what form of marriage the alleged “Rose” had with Laxman Shantalal Bruce Brian I am persuaded to accept the evidence of
10 the Respondent that she was his only spouse.

On the issue of costs of this application it is my considered view that it would be unfair to saddle the Estate with the legal costs of the Administrators who should have been in position to resolve this matter amicably without recourse to this Court action.

15 It is therefore only proper that each party in this matter bears their own costs.

In the final result the Instant Application is allowed in the terms sought with each party bearing their own costs.

It is so ordered.

Before

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Samuel Emokor
Ag. Judge.
05/12/2022.

05/12/2022

25 Parties present

Clerk – Judith

Court: Ruling delivered in open Court.

30 Samuel Emokor
Ag. Judge.
05/12/2022.