

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**CIVIL SUIT NO. 007 OF 2019**

1. KAKUMIRIZI REGINA KAWUKI  
5 2. NALUMU FRANSCO  
3. NALUKWAGO OLIVER } .....PLAINTIFFS

**VERSUS**

1. NAMUYOMBA ROSE  
2. CHANDIARY ALI  
10 3. COMMISSIONER LAND REGISTRATION } .....DEFENDANTS

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE**

**Judgment**

15 The plaintiffs sued the defendant's jointly and severally seeking for orders  
revoking the grant of Letters of Administration to the 1<sup>st</sup> Defendant; order of  
comprehensive accountabilities or inventory of how the estate of the late  
Tegajjogwa Maria Suzana has been managed by the 1<sup>st</sup> defendant, order granting  
Letters of Administration to the estate of the late Tegajjongwa Maria Suzana to  
20 the plaintiffs, an order for cancellation of the Certificate of title of land comprised  
in Block 110 Plot 41 at Mabanda and Mavugera registered in the 2<sup>nd</sup> defendant's  
name, a permanent injunction to be issued against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants  
from transferring the land comprised in Block 110 Plot 41 at Mabanda and  
Mavugera to a 3<sup>rd</sup> party, general damages and the costs of the suit.

25 The plaintiffs averred that the 1<sup>st</sup> defendant fraudulently omitted to notify the  
Administrator that the deceased though a nun had some surviving relatives that  
is her siblings and went ahead and undervalued the land. That the 2<sup>nd</sup> defendant  
purchased the suit land well knowing that there was a conflict of interest and no  
consent was ever obtained from the beneficiaries.

The 1<sup>st</sup> defendant contended that much as the plaintiffs are siblings to the late Sr. Tegajjongwa at the time of her death she had already declared that the mother of the 1<sup>st</sup> defendant should take over her property.

- 5 The 2<sup>nd</sup> defendant did not have any knowledge of any 3<sup>rd</sup> party interests whether actual or constructive as alleged by the plaintiffs as he inspected the suit land before purchase and there was no such notice and being as it may be, the alleged notice did not indicate when it was put, therefore, the defendant is a bonafide purchaser for value without notice.

**Representation:**

- 10 M/s Absolomu Kato represented the plaintiffs while Ms. Apwono Stella Charity jointly with Mr. Peter Sebuuma represented the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The plaintiffs, 1<sup>st</sup> and 2<sup>nd</sup> defendants filed submissions. There was no Written Statement of Defence or any representation for the 3<sup>rd</sup> defendant.

**Issues:**

- 15 1. Whether the 1<sup>st</sup> defendant's acquisition of Letters of Administration to the late Sr. Tegajjongwa Maria SuSana was lawful?  
2. Whether the suit land forms part of the estate of the Late Yoana Kawuki Buzabaliawo?  
3. Whether the transfer of the suit property from the 1<sup>st</sup> defendant to the 2<sup>nd</sup>  
20 defendant was lawful?  
4. What are the remedies available?

**Resolution:**

**Issue 1: Whether the 1<sup>st</sup> defendant's acquisition of Letters of Administration to the late Sr. Tegajjongwa Maria SuSana was lawful?**

- 25 Counsel for the plaintiffs submitted that it was the unchallenged evidence of PW1 that the 1<sup>st</sup> defendant was granted a certificate of no objection after several meetings had been held with the Administrator General and she stated that the deceased had no surviving relatives other than a few nieces and nephews. It was argued that the plaintiffs are all siblings of the deceased and the surviving chain of  
30 likely executors had not yet been broken as per the meaning of the legal principle "de bonis non administrates" and relied on Parry and Clark: The Law of Succession, 8<sup>th</sup> Edition, P. 173, where it was stated that; an applicant for de bonis non administrates must clear off all persons who have a prior right to a grant.

That this principle is embodied in **Sections 230, 203 and 194 (1)** of the Succession Act and the cases of **John Kyeswa v. Administrator General, Miscellaneous Application No. 232/2009 and Richard Babuma & 13 Others v. James Ssali Babuma (Administrator to the estate of the late Dr. Eria Muwanga Babumba, HCCS No. 78 of 2012.** Counsel added that the entire process of  
5 obtained the Letters of Administration by the 1<sup>st</sup> defendant was tainted with illegalities and material falsehoods and the same should not be ignored by this court. **(See: Makula International v. Cardinal Nsubuga & Another, [1982] HCB 11).**

10 Further, that the 1<sup>st</sup> defendant also under declared the value of the land at a paltry UGX 25,000,000/= away from what it was valued at as UGX 63,392,000/=. The said land was also sold off by the 1<sup>st</sup> defendant at UGX 60,000,000/=.

The 1<sup>st</sup> defendant on the other hand submitted that she only gave the  
15 Administrator General's chambers the correct information that the deceased had no children of her own. That it was the unchallenged evidence of the 1<sup>st</sup> defendant that her late mother Maria Solome Namuli got the same land as a gift from her sister the late Sr. Maria Suzana Tegajjongwa and that before her mother's death, the same was donated to her as per exhibits DEX2, DEX3 and  
20 DEX4. That it was on that basis that the 1<sup>st</sup> defendant reported the death of Sr. Tegajjongwa Maria Suzana to the Administrator General's Chambers. The 1<sup>st</sup> defendant also argued that the plaintiffs were never appointed as executors according to any will to claim under the surviving chain of executors. That this argument and authority as cited there under are therefore misplaced and should  
25 be disregarded.

In regard to obtaining Letters of Administration from the Chief Magistrate's Court of Mpigi, the 1<sup>st</sup> defendant admitted the same and added that she was later advised to apply for Letters of Administration from the High Court of Uganda at  
30 Kampala and the two sets of Letters of Administration were exhibited as DEX5 and DEX6. That it cannot be explained why the Commissioner Land Registration chose to use the Letters of Administration from the Chief Magistrate's Court as opposed to those of the High Court. And the 1<sup>st</sup> defendant cannot therefore be held liable for this. Thus, the acquisition of the Letters of Administration for the estate of Sr. Tegajjongwa Maria Suzana by the 1<sup>st</sup> defendant was lawful.

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**Analysis of court:**

In civil matters the burden of proof is on the plaintiff to prove his or her case as against the defendant on a balance of probabilities. According to **Sections 101, 102, 103** of the Evidence Act, he who alleges must prove.

- 5    **Section 101(1)** of the Evidence Act provides that;

*“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist”.*

**Section 102** of the same Act provides as follows;

- 10    *“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”*

It is trite that allegations of fraud must be strictly pleaded and proved. (**See: F. J. K. Zaabwe v. Orient Bank and 5 Others, SCCA No. 4 of 2006**).

- 15    The plaintiffs in this case have the duty to prove that the 1<sup>st</sup> defendant fraudulently obtained the letters of administration to the estate of Sr. Tegajongwa Susana Maria.

- 20    In the instant case the plaintiffs contended that the 1<sup>st</sup> defendant did not give correct information to the Administrator General’s chambers in regard to the fact that late Sr. Tegajongwa Susana Maria had surviving relatives. That the 1<sup>st</sup> defendant omitted mentioning the plaintiffs who were siblings of the deceased and only mentioned that she had nieces and nephews who were also not outlined.

**Black’s Law Dictionary 6<sup>th</sup> Edition** at page 660 defines fraud as;

- 25    *“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right” – a false representation of a matter of fact, whether by words or by conduct by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.”*

Fraud as a ground for revocation of letters of administration is covered under the procedure which one followed when obtaining the impugned Letters of Administration.

5 The 1<sup>st</sup> defendant on the other hand averred that she mentioned the truth that the deceased had no biological children.

10 I have carefully perused the pleadings, annexures thereto, and the entire record, it is not in dispute that the 1<sup>st</sup> defendant is a niece to the deceased and applied for Letters of Administration to her estate. The 1<sup>st</sup> defendant according to the court record applied for Letters of Administration from the Chief Magistrate's Court of Mpigi and later applied for Letters of Administration from the High Court of Kampala vide Administration Cause No. 865 of 2016. So, the argument that the 1<sup>st</sup> defendant undervalued the suit land and obtained Letters of Administration from only the Chief Magistrate's court at Mpigi is not true as this anomaly was rectified by the 1<sup>st</sup> defendant who later obtained Letters of Administration from  
15 the High Court of Kampala, the court vested with the jurisdiction to grant the same. The Letters of Administration for the estate of late Tegajongwa were therefore obtained from the right court which automatically invalidated the Chief Magistrate's court grant upon advice from the Administrator General's Chambers.

20 In regard, to the meetings and whole procedure with the Administrator General's Chambers the 1<sup>st</sup> defendant's approach from my reading and understanding was based on her applying for Letters of Administration by virtue of the fact that the suit land had been given to her by her mother who also obtained the same from her sister the late Sr. Tegajongwa Susana Maria as evidenced by DEX2, DEX3 and  
25 DEX4 and thus she applied for Letters of Administration to be able to register the suit property into her name. It was therefore, not relevant to outline all the siblings and other relatives of the deceased as the same were not beneficiaries of the said estate. The 1<sup>st</sup> defendant was the sole beneficiary and she accordingly obtained the Letters of Administration. It was true that the deceased had no  
30 children and chose to leave the suit land to the 1<sup>st</sup> defendant's mother which information was relied to the Administrator General.

The salient features of a gift *inter vivos* are that the donor must intend to give a gift, the donor must deliver the property and the donee must accept the gift, as was held in **Joy Mukobe V Willy Wambu** HCCA 055/2005. In the instant case  
35 the late Sr. Sr. Tegajongwa Susana Maria gave her land to her sister Maria



Solome Namuli the mother to the 1<sup>st</sup> defendant who also passed on the same to Namuyomba Rose who received the same as a gift as evidenced by DEX3. Thus, there was intention to give by the donor, the donor delivered the land and the same was received by the donee the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant in the  
5 instant case obtained the suit land as a gift and it meets all the criteria required for the suit land to qualify as a gift inter vivos.

The principle of "*de bonis non administrates*" though good law is inapplicable in the instant case as the suit property belongs to the 1<sup>st</sup> defendant as the Administrator of the deceased's estate. The plaintiffs were not named as executors  
10 of the estate nor were they in line for those eligible to be given first priority for Letters of Administration since the deceased Sr. Tegajongwa Susana left her land to the 1<sup>st</sup> defendant's mother.

I therefore, find and hold that the 1<sup>st</sup> defendant did not illegally deal with the estate of the deceased. Even though the plaintiffs claimed that the entire land  
15 belonged to the late Yowana Kawuki Buzabaliawo and was not properly divided since their two siblings were not given no evidence was adduced to support this allegation. From the record of the Administrator General, it shows that the deceased only left six children who equally received from his estate and a return was made where the 60 acres were equally divided amongst the 6 children with  
20 each child getting 10 acres each. The plaintiffs did not adduce any evidence showing that they started contesting the division in 1991 when they received their respective shares, then why wait till 2016 when the 1<sup>st</sup> defendant obtained the Letters of Administration?

No additional evidence was provided to this court to prove that there were  
25 additional siblings who missed out during distribution and were disgruntled by the same. Why were these two siblings Valention Kiggundu and Kalooli Tamale, not added as plaintiffs? Where there were no birth certificates attached to prove that indeed children of the deceased were also there and missed out on the distribution of their father's estate and were dissatisfied? How come, the  
30 Administrator General's record missed out on the children? All the questions were not addressed by the plaintiffs.

In the circumstances it is hard to believe the allegations by the plaintiffs that the entire estate of their father has been intact since subdivisions were made in 1991. The estate was divided and all the children who were captured by the  
35 Administrator General's record received an equal share of their father's estate

without any protest. The six children who received the suit property in equal shares of 10 acres each were as follows; Solome Namuli; Sr. Maria Susana Tegajogwa; Oliva Nalukagwa; Regina Bagala; Frasco Lumu and Kyolaba Nasalai. It is from that division that Sr. Tegajongwa Susana Maria gave her share to the  
5 1<sup>st</sup> defendant's mother who also passed on the same to the 1<sup>st</sup> defendant. It was on that basis that the 1<sup>st</sup> defendant went ahead to apply for Letters of Administration. I find the same were legally obtained by the 1<sup>st</sup> defendant.

I accordingly resolve this issue in the affirmative.

10 **Issue 2: Whether the suit land forms part of the estate of the Late Yoana Kawuki Buzabaliawo?**

Counsel for the plaintiffs submitted that from the onset the plaintiffs contended that the suit land is part of the estate of the late Sr. Maria Suzana Tegajjongwa and does not form part of the estate of Yoana Kawuki Buzabaliawo and decided not to discuss anything under this issue.

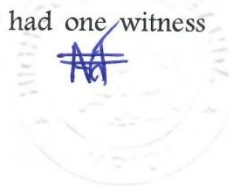
15 The 1<sup>st</sup> and 2<sup>nd</sup> defendant also confirmed that the suit property does not form part of the estate of the Late Yoana Kawuki.

**Analysis of court:**

I therefore find no reason why I should delve into discussing an issue that is not in contention among the plaintiffs, the 1<sup>st</sup> and 2<sup>nd</sup> defendants. This issue is  
20 accordingly struck out.

**Issue 3: Whether the transfer of the suit property from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant was lawful?**

Counsel for the plaintiffs challenged the contents of DEX2 and DEX3 the alleged transfer documents relied on by DW2 which he said did not give a proper  
25 description of the land (no block number or plot number), it was never signed by the donor or the donee. And that the said documents are thus inadmissible under **Section 66** of the Evidence Act. That it was also the evidence of DW2 that he did not seek the consent of the beneficiaries of the Estate of the Late Sr. Maria Suzana Tegajjongwa before purchasing the suit land other than a one Samuel. That this  
30 can even be witnessed from the sale agreements which only had one witness Samuel and not other beneficiaries present.





It was further submitted for the plaintiffs that PW2 notified the 2<sup>nd</sup> defendant that the 1<sup>st</sup> defendant did not legally acquire the suit land but he still went ahead and purchased the same. That in the circumstances he was not a bona fide purchaser. Counsel relied on the **Black's Law Dictionary 9<sup>th</sup> Edition page 1355**,  
5 definition of bona fide purchaser as;

*"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or iniquities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior claims."*  
10

And the case of **Eric Kimbowa v. Bernard Kasitro**, HCCS No. 197 of 2009, where Justice Nyanzi Yasin quoted the dictum in the case of **Hannington Njuki v. George William Musisi [1999] KALR 794**, where it was noted that the following are the elements on a plea of a bona fide purchaser;

- 15 *"i. That the defendant holds a duplicate certificate of title.*  
*ii. That the purchaser purchased the property for valuable consideration.*  
*iii. That he or she bought in good faith without any such defect in title.*  
*iv. That the vendor was the former registered owner of the property."*

20 Counsel for the plaintiffs argued that indeed the 2<sup>nd</sup> defendant meets all the above elements save for the fact that he purchased in bad faith without any defect for having failed to seek consent from the other beneficiaries. That the 2<sup>nd</sup> defendant also ought to have noticed that the Letters of Administration were granted by a court with no pecuniary jurisdiction as the suit land had been undervalued.

25 Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants submitted that it was the evidence of DW2 that he bought the suit land from the 1<sup>st</sup> defendant after perusing the Letters of Administration and other supporting documents. Thus, he legally bought from the 1<sup>st</sup> defendant having paid the purchase price of UGX 60,000,000/= as a bona fide purchaser for value without notice. That the 2<sup>nd</sup> defendant could not  
30 seek consent from people he did not know however, he made sure he met the 1<sup>st</sup> defendant who was the registered proprietor of the suit land. That the 2<sup>nd</sup> defendant did not know of any other interests as he approached the 1<sup>st</sup> defendant and made his purchase as a bona fide purchaser for value without notice. That



according to **Section 59** of the Registration of Titles Act possession of a Certificate of Title by the registered person is conclusive evidence of ownership of the land described therein. (See: **Transroad Uganda Limited v. Commissioner Land Registration, Civil Suit No. 621 of 2017 at page 6**).

5 **Analysis of court:**

The plaintiffs challenged the contents of DEX1 and DEX2 but did not go ahead and disprove to this court that the same were never made by the late Sr. Maria Susana Tegajjongwa. It was on the basis of the same documents that DEX4 was generated from which the 1<sup>st</sup> defendant derived her interest. DEX4 was never  
10 challenged by the plaintiffs. In my view since the suit land was left to the 1<sup>st</sup> defendant, there was no need for the 2<sup>nd</sup> defendant to seek consent from any of the relatives of the deceased as they were not beneficiaries to the suit land.

The plaintiffs also claimed that there was a notice on the suit land warning buyers that the land belonged to the Late Yoana Kawuki and was not on sale. The  
15 said notice had no date and it was therefore not possible to tell if it had been there all along to warn any buyers or was an afterthought after the 1<sup>st</sup> defendant had sold off the suit land.

Secondly, the 1<sup>st</sup> and 2<sup>nd</sup> defendants denied ever seeing the said notice on the land.

20 Thirdly, there was a contradiction by the plaintiffs as they said that the notice was protecting the entire estate of the Late Yoana Kawuki yet they again stated that the suit land did not form part of the estate of the Late Yoana Kawuki. So what in essence were the plaintiffs protecting or currently fighting for? The plaintiffs seem to be unsure of what their interests are.

25 Be that as it may, having found that the 1<sup>st</sup> defendant legally obtained the Letters of Administration, I accordingly find and hold that the transfer of the suit land between the 1<sup>st</sup> and 2<sup>nd</sup> defendants was lawful.

This issue is also resolved in the affirmative.

**Issue 4: what are the remedies available?**

30 It was submitted for the plaintiffs that Letters of Administration granted vide Mpigi Chief Magistrate's Court Administration Cause No. 0040 of 2016 and DEX5 Letters of Administration vide HCT-00-FD-AC-865 of 2016 be revoked

under Section 234 of the Succession Act. That Letters of Administration for the Estate of the Late Maria Susana Tegajjongwa be granted to the plaintiffs.

5 The plaintiffs also prayed that court cancels, Certificate of title for land comprised in Block 110 Plot 41 at Mabanda & Mavugera registered in the 2<sup>nd</sup> defendant's name and have the same revert back to the deceased's estate as per **Section 177** of the Registration of Titles Act. A permanent injunction, doth issue, general damages to a tune of UGX 40,000,000/= as against the defendants and costs of the suit.

10 Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants on the other hand submitted that the plaintiff's case be dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendant, that the Letters of Administration for the Estate of the late Sr. Tegajjongwa Maria Suzana was lawful, and so was the transfer to the 2<sup>nd</sup> defendant who was a bonafide purchaser and that the caveat lodged by the plaintiffs on the 2<sup>nd</sup> defendant's title be vacated.

15 **Analysis of court:**

**Section 234** of the Succession Act provides that;

20 *"A grant of letters of administration may be revoked for just cause under the following circumstances; if it is proved that the grant was obtained through substantially defective proceedings or obtained by fraudulently making a false suggestion or by concealing from the court something material to the case; that the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently; that the grant has become useless and inoperative through circumstances; or that the person*  
25 *to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that part an inventory or account which is untrue in a material respect."*

30 In summary it can be said that conditions that may lead the court to revoke the grant for Letters of Administration are; if the process leading to the grant is found to have been defective, if the grant becomes inoperative; or failure to file an inventory or account.

Revocation of a grant is to ensure that the due and proper administration of an estate and protection of the interest of those beneficially interested. **(See: In the goods of William Loveday [1990] P 154).**

5 This court takes cognizance of the fact that concealing information from the Administrator General's Office to obtain Letters of Administration fraudulently is an offence however that is not the case in the present matter as the 1<sup>st</sup> defendant declared the relevant information to the office of the Administrator General and did not obtain the Letters of Administration unlawfully.

10 The plaintiffs prayed for revocation of Letters of Administration, cancellation of Title, permanent injunction, general damages and costs.

The plaintiffs having failed to prove their case on a balance of probabilities as per **Sections 101, 102, 103** of the Evidence Act, they are not entitled to the remedies prayed for.

15 Judgment is accordingly entered in favour of the defendants. The suit is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

I so order. Right of appeal explained.

.....  
**OYUKO ANTHONY OJOK**

**JUDGE**

20 **13/05/2022**

Judgment read and delivered in open Court in the presence of;

1. Apwono Stella Charity counsel for the defendants.
2. The 1<sup>st</sup> plaintiff

In the absence of counsel for the plaintiffs.

25 .....  
**OYUKO ANTHONY OJOK**

**JUDGE**

**13/05/2022**