

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL SUIT NO. 0071 OF 2005

JANE MWESIGWA ::::::::::::::::::::::::::::::: COUNTER CLAIMANT

VERSUS

1. ERIC NTUNGURA	}} COUNTER DEFENDANTS
2. AIDA MARY NTUNGURA	
3. KAMADI KAGORO	

BEFORE: HON.MR. JUSTICE BASHAIJA .K. ANDREW

JUDGMENT:

This judgment is upon a counterclaim filed by **JANE MWESIGWA** (*hereinafter referred to as the “counterclaimant”*) against **ERIC NTUGUNGURA, AIDA MARY NTUNGURA** and **KAMADI KAGORO** (*hereinafter referred to as the “1st”, “2nd” and “3rd” counter defendants”*) jointly and severally for the recovery of various estate property of **Wycliffe Mwesigwa Ntungura,(deceased)** and the validation by High Court of the letters of administration issued by the Chief Magistrate’s Court under citation of the 1st counter defendant’s letters of administration obtained earlier from a Magistrate Grade II Court, for having allegedly mismanaged the estate.

The counterclaimant contends that she is the lawful widow of the deceased with whom she had five issues the eldest of whom they live together at their principal home in Seeta, Mukono. It is further stated that after the 1st counter defendant’s letters of administration were revoked under citation, he nonetheless went ahead and retrospectively sold part of the estate land, which was registered in the deceased’s names, comprised in **Kyaggwe, Block 110 Plot 2225** to the 3rd counter defendant, and this property had been distributed to one of the estate beneficiaries by the counterclaimant as administrator, and an inventory was filed in court.

The 1st counter defendant, in the head suit plaint in paragraph 4 (iii), averred that the late **Lt. Col Wycliffe Mwesigwa Ntungura** left property which included, among others, a commercial building in Rukungiri Town comprised in **LWR/0183/LRV 3097 Folio 14 Plot 80 Karegyesa Road**, which the 1st

counter defendant illegally caused registration into his wife's names, and the 2nd counter defendant who were not beneficiaries of the deceased's estate. The Counter claimant prayed for the following declarations and orders:

- a) That Letters of Administration granted to the counterclaimant by the Chief Magistrate's court and transactions thereof be validated by the High Court.***
- b) Sale of estate property Kyaggwe Block 110 Plot 2225 by the 1st counter defendant be nullified.***
- c) The 3rd counter defendant be evicted from estate land Kyaggwe Block 110 Plot 2225.***
- d) The Commissioner land registration cancels the 2nd counter defendant's names and or any illegal subsequent entries on estate certificate of title LWR/0183/LVR 3097 Folio 14, Plot 80 Karegyesa Road.***
- e) The counterclaimant be registered as administrator of estate land LWR/0183/LVR 3097 Folio 14, Plot 80 Karegyesa Road, Rukungiri.***
- f) The 1st and 2nd counter defendants, their agents and or assignees give immediate vacant possession of estate property comprised in LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri.***
- g) The 1st and 2nd counter defendants jointly and or severally account to court for rental proceeds from estate property LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri since the date of registration of the 2nd counter defendant on the title till date of judgment.***
- h) The counter defendants, their agents and servants or assignees be permanently restrained from any acts of trespass and interfering in respective estate properties and estate administration.***
- i) All caveats lodged on estate property Kyaggwe Block 110 Plot 2225 LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road be vacated.***
- j) Counter defendants jointly and severally pay general damages.***
- k) Counter defendants jointly and severally pay costs of the counter claim.***

The matter proceeded *ex-parte* and the following issues were framed:

1. ***Whether the Plaintiff/1st counter defendant's sale of suit land Kyaggwe Block 110 Plot 2225 to the 3rd counter defendant was unlawful.***
2. ***Whether the plaintiff/1st counter defendant's transfer and registration of estate property LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri to his wife, the 2nd defendant was unlawful.***
3. ***Whether Letters of Administration of the lower court held by the counter claimant should be validated or in the alternative whether this court should give an order that the 1st counter claimant be given letters of administration for her late husband's efforts.***

Resolution of Issues.

Issue 1 and 2 were addressed together, and mainly concerned the alleged illegality by the 1st counter defendant, which stems from his sale of part of the estate land in ***Kyaggwe Block 110 Plot 225 at Seta, Mukono*** when he was not registered as proprietor.

Counsel for the counterclaimant submitted that where the deceased dies intestate, immediately the property becomes the estate property administered by an administrator with letters of administration, and that it is such an administrator after being endorsed on the deceased's title that can legally sell and transfer the property.

This court agrees with Counsel's submissions, as they reflect the position of the law. ***Section 134 (1) of the Registration of Titles Act (cap. 231)*** states:

“ Upon receipt of an office copy of any will or of letters of Administration..... the Registrar shall on application of the executor or administrator to be registered as proprietor in respect of any land..... enter in the register book and on the duplicate instrument and upon that entry being made to be the proprietor of such land... or of such part of it as then remains unadministered, and shall hold it subject to the equities upon which the deceased held it, but for the purpose or any dealings therewith, the executor or administrator shall be deemed to be absolute thereof.”

From the evidence on the record, the 1st counter defendant clearly did not apply to the registrar to be registered as proprietor, and was never entered in register book and duplicate instrument. It

follows then that he could not hold the suit land subject to the equities the deceased held it for the purpose of any dealing, which renders the transaction with the 2nd counter defendant illegal. In the same vein, the 1st counter defendant's distribution, transfer and registration of 2nd counter defendant's names contravened the provisions of **Section 134 of RTA (supra)**.

In addition, **Section 191 of Succession Act (Cap.162)** is instructive on the issue. It stipulates that:

“Except as herein after provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction”.

The 2nd counter defendant apparently did not hold letters administration granted by a court of competent jurisdiction for the deceased's estate, and was as such, precluded from dealing with the deceased's estate property. His registration in contravention of the law and was illegal. See ***Israel Kabwa v. Martin Banoba Musinga, S.C. Civ.Appeal No.52 of 1995; Paulo Kawesa v. administrator general & 2 or's, H.C.C.S No.918 of 1993.***

It has also been held that a court of law cannot sanction what is illegal and that no court ought to enforce an illegal contract or allow itself to be made an instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the attention of the court and if the person invoking the aid of court is himself implicated in the illegality. See ***Kisugu Quarries v. Administrator General, S.C. Civ.Appeal No. 10 of 1998.*** The court went further at page 10 and held that:

“Further as the agreement was like in the instant case prohibited by law and void ab initio, nothing subsequently done could convert it into an enforceable contract” and similarly... subsequent issue of repossession certificate could not validate the illegal lease.”

In the same case above, Mulenga JSC. (R.I.P) held:

“Respondent in acting on the lease ... It is trite law that the court cannot be used to enforce an illegal contract even if both parties entered into it willingly.

Given the above position of the law as expounded by the Supreme Court, this court agrees with the counterclaimant's Counsel's submissions that invalid letters of administration and subsequent

invalid sale and/or transfer of the suit land property **LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri** based on invalid grant could not validate the illegal entries and the void status of the suit land. Issue, 1 and 2 are answered in the affirmative.

Issue 3.

This issue related to whether letters of administration of the lower court held by the counter claimant should be validated or, in the alternative, whether this court should give an order that the 1st counterclaimant be granted letters of administration for her late husband's estate. It was submitted for the counterclaimant that she is administering well other estate property as registered proprietor and that she has filed inventories and provided for estate beneficiaries' welfare and education and is the widow of the deceased keeping custody of his children. Having held as above, it would follow that **Issue 3** is answered in the affirmative.

It is noted that the counter defendants did not file any reply to the counterclaim. Under **Order 8 r.18 (5) Civil Procedure Rules**, it is provided that:

“Except that this sub- rule shall not apply to a reply to a counterclaim and unless a plaintiff files a reply to a counterclaim within the time fixed by or in accordance with these rules, the statement of facts contained in the counterclaim shall, at the expiration of the time fixed be deemed to be admitted, but the court may at any subsequent time give leave to the Plaintiff to file a reply.”

Given the above position, it follows that the provisions of **O.8 r.18 (5) (supra)** would apply with equal force in the instant case. See **Daaka Nganwa v.Emmanuel Rukyema & A'nor (Mbarara) H.C. Civ. Suit No.05 of 2000**. Similarly, it was held in **Mubangizi Julius v. Uganda Baati, HCT. Misc. Appl. No. 311 of 2009**, that a party who has not filed a defence is deemed to have admitted the allegations. See also **Hajji Zubairi Musoke v. Betty Naggayi, (Land Division) H.C.Civ. Suit No.389 of 2010** per Tuhaise.J.

The net effect is that the counterclaim succeeds in its entirety with the following orders:

- a) Letters of Administration granted to the counterclaimant by the Chief Magistrate's court and transactions thereof are hereby validated.**
- b) The sale of estate property Kyaggwe Block 110 Plot 2225 by the 1st counter defendant is hereby nullified.**

- c) It is ordered that the 3rd counter defendant be evicted from estate land Kyaggwe Block 110 Plot 2225.*
- d) The Commissioner land registration is directed to cancel the 2nd counter defendant's names and/or any subsequent entries on estate certificate of title LWR/0183/LVR 3097 Folio 14, Plot 80 Karegyesa Road, Rukungiri.*
- e) The counterclaimant be registered as administrator of estate land LWR/0183/LVR 3097 Folio 14, Plot 80 Karegyesa Road, Rukungiri.*
- f) The 1st and 2nd counter defendants, their agents and or assignees give immediate vacant possession of estate property comprised in LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri.*
- g) The 1st and 2nd counter defendants jointly and or severally account to court for rental proceeds from estate property LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road, Rukungiri since the date of registration of the 2nd counter defendant on the title till date of judgment.*
- h) The counter defendants, their agents and servants or assignees are permanently restrained from any acts of trespass and interfering in respective estate properties and estate administration.*
- i) All caveats lodged on estate property Kyaggwe Block 110 Plot 2225 LWR/0183/LVR 3097 Folio 16, Plot 80 Karegyesa Road be vacated.*
- j) Counter defendants jointly and severally pay costs of the counterclaim.*

BASHAIJA K.ANDREW
JUDGE
06/12/12