

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HTC – 01 – LD – CS – 0042 – 2021
(ARISING FROM ADMIN. CAUSE NO. 572 OF 1993)

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- 1. MARGRET NSEMERE**
 - 2. ENID NYINDOMBI KEBIRUNGI**
 - 3. HOPE GLADES**
 - 4. JOHN BALINDA ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**

VERSUS

10 **ISEBO MOSES ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

BEFORE: HON. JUSTICE VINCENT WAGONA
JUDGMENT (EXPARTE)

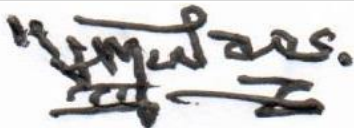
Introduction:

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The plaintiffs brought this suit against the defendant for orders that:

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- 1. An order for cancellation of LRV 1342, Folio 8, Block 63, Plot 5, land at Kyanga, Bunyangabu from the proprietorship of the defendant and a one Tibenderana Florence and registration of the plaintiffs as proprietors thereto in accordance with their respective beneficial shares of 6.96 in the said land.**
- 2. A declaration that the defendant and a one Tibenderana Florence fraudulently and illegally obtained registration and proprietorship of the said land as joint tenants.**

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3. An order of eviction and vacant possession of the defendant from the suit land.

4. A permanent injunction restraining the defendant, his agents and workmen who illegally bought the suit land or transacted therein.

5 5. An order for cancellation and nullification of any dealings and transaction relating to the suit land illicitly carried out by the defendants and amongst themselves and any third party.

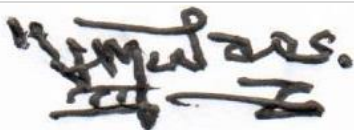
6. An order of payment of general damages, interests on general damages and costs of the suit.

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The History:

It was contended by the plaintiffs that the defendant was their biological brother and children of the late John Tibenderana. That upon the death of the late John
15 Tibenderana, the Administrator General applied and was granted letters of administration to the estate on 27th May 1994 under Admin. Cause No. 572 of 1993.

That the Administrator General distributed the suit land to the rightful beneficiaries including the plaintiffs and the defendant on 4th March 2005. That after the
20 distribution, the defendant and the late Florence Tebenderana resisted the plaintiff's takeover and possession of their respective beneficial shares and unknown to the plaintiffs, the defendant had forcefully applied for and obtained a title to the entire estate as joint tenants.

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That the actions of the defendant and the late Florence Tebendarana were fraudulent since they made a misrepresentation that the land was theirs whereas not and thus got illegally registered as proprietors. That the actions of the defendant caused the plaintiffs inconveniences, hardship and suffering resulting from denial to use their
5 respectiveshares to which they sought to recover general damages. The plaintiffs thus prayed for judgment in their favor.

Representation and Hearing:

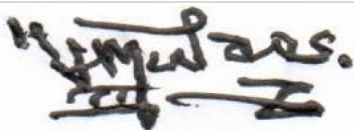
10 The plaintiffs were represented by Mr. Kaahwa Muhumuza and filed written submissions to that effect. The defendants were served and failed to answer to the summons in the manner for provided for under the civil procedure rules as such the case proceeded ex parte against them.

15 **Issues:**

I find the following as the issues at the heart of this suit thus:

- (1) **Whether or not the suit land forms part of the estate of the late Tibenderana John.**
- 20 (2) **Whether the defendant fraudulently transferred the suit land into his name and that of the late Tibenderana Florence.**
- (3) **Remedies available to the parties**

Burden and Standard of proof:

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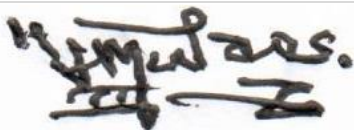
The burden of proof is in two broad categories that is the legal burden and the evidential burden. Sections 101 and 102 of the Evidence Act Cap 6 rests the burden of proof on whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts to prove that those facts exist or who would fail if no evidence is adduced at all. Therefore, the plaintiff bears the legal burden of proof to prove his case on the balance of probability.

Section 103 of the Evidence on the other hand places the evidential burden on any party who alleges the existence of a set facts to prove such facts. It provides thus: *The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.* Therefore, whereas the legal burden solely lies upon the plaintiff and does not shift, the evidential burden keeps shifting depending on the facts alleged by either side.

Resolution:

- 1. Whether or not the suit land forms part of the estate of the late Tibenderana John.***

Section 24 of the Succession Act is to the effect that a person dies intestate in respect of all property which has not been disposed of by a valid testamentary disposition. Section 25 adds that all property in an intestate estate devolves upon the personal

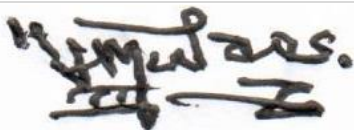


representative of the deceased upon trust for those persons entitled to the property under this Act.

Therefore, an administrator's powers are limited to properties which the deceased
5 did not dispose of by will or otherwise. This by implication means that an
administrator is entitled to administer properties that were owned by the deceased at
the time of death. It is thus my considered view, that the applicant for letters must
satisfy court that the properties to which he or she seeks a grant indeed belonged to
the deceased at the time of his death and the same must be listed in the petition.
10 Letters of administration should not be granted to an indeterminate estate. They
should be restricted to properties which were owned by the deceased or those in
which he had interest and they must be indicated in the petition.

The requirement to list the properties constituting the estate is to ensure that the
15 administrator accounts to court regarding how he had managed the same. A grant
cannot be grant over an estate which is not ascertainable in the petition.

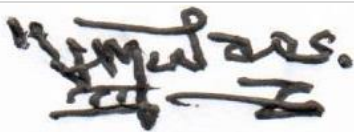
In the present case, it was submitted by Mr. Kaahwa for the plaintiffs that the suit
land belonged to the late and was distributed by the Administrator General in 2005.
20 That to their surprise, the plaintiff discovered that the defendant and the late Florence
Tibenderana had transferred the same into their names as tenants in common in 2000
per PE3. That the plaintiff claims a share from the said land per PE2. That as such
the same formed part of the estate of their late father.

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I have considered the evidence of the plaintiffs and the submissions of counsel as regards the suit land being part of the estate of the late Tibenderana John. PW1 testified in chief that the defendant is a step brother whose mother was the late Tibenderana Florence. That upon the demise of his father the late John Tibenderana, the Administrator General applied and was granted letters of administration under Admin Cause No. 572 of 1993 (PE1). That armed with the grant, the Administrator General went ahead and distributed the estate of the late to all the beneficiaries the plaintiffs inclusive on 4th March 2005 (PE2). That the plaintiffs claim a benefit out of the suit land per PE2 and unknown to them, the defendant transferred the suit land into his names and the names of the late Florence Tibenderana on 4th September 2000 inclusive of their shares (PE3).

First, there is no evidence as to when the late John Tibenderana died. Further, whereas the plaintiffs claim that the suit land was under the administration of the Administrator General per PE1, no evidence was presented in court for me to ascertain whether or not, it formed part of the properties that the deceased left at the time of his death that came to the Administrator General as administrator. No petition was attached to the plaint and no evidence was provided in the evidence of the plaintiff to assist me to confirm that indeed the suit land was among the properties that the deceased left and that were placed under the Administrator General.

Further, the distribution happened on 4th March 2005 per PE2, however by then, the land was already registered in the names of the defendant and a one Tibenderana Florence which per PE3 was done on 4th September 2000. PE3 clearly demonstrates that the defendant and a one Tibenderana Florence were granted a lease over the suit



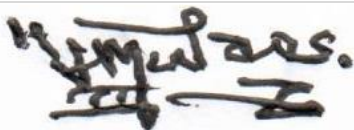
land effective from 4th September 2000 for 44 years with effect from 1st January 1979. No evidence was placed before me to show that indeed the land ever belonged to the late John Tibenderana as a lessee or in any other capacity under which he owned the same. The evidence on record is inconclusive in my view and I have found
5 it hard to conclude that the suit land formed part of the estate of the late John Tibenderana.

I find PE2 and the rest of the evidence insufficient for me to make a finding that the suit land formed part of the estate of the late John Tibenderana. This is mainly
10 because, by the time the estate of the deceased was distributed by the Administrator General, the suit property was already registered in the names of the defendant and the late Florence Tibenderana meaning it was no longer under the Administrator General as the administrator. In the absence of evidence to show ownership of the same by the late John Tibenderana prior to the defendant and Florence Tibenderana
15 getting registered, am hesitant to find that the same belonged to the late John Tibenderana and that it was ever placed under the Administrator General. I therefore resolve this issue in the negative.

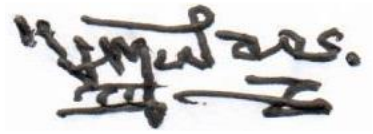
2. *Whether the defendant fraudulently transferred the suit land into his name
20 and that of the late Tibenderana Florence.*

The resolution of the first issue in the negative renders the resolution of issue 2 redundant.

3. *Remedies available to the parties*

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The plaintiffs have not in my view proved their case on a balance of probabilities since the evidence supplied was insufficient to sustain their claims. Their claim therefore fails and it is hereby dismissed with no orders as to costs. It is so ordered



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Vincent Wagona

High Court Judge

FORTPORTAL

10 **DATE: 13/11/2023**

