**THE REPUBLIC OF UGANDA**

**IN THE HIFH COURT OF UGANDA AT FORT PORTAL**

**CIVIL SUIT NO. 037 OF 2018**

**(ARISING FROM HCT-01-CV-AC-NO. 0016 OF 2017)**

**(HCT – 01 – CV – AC – MA – 019 OF 2005)**

**(ADMIN CAUSE NO. DR MFP 8 OF 1998)**

1. **MOSHE MUJOGYA**
2. **STEVEN KISUNGA MULINDWA**
3. **ESTATE OF THE LATE GERALD KAROGO MULINDWA**
4. **EMMANUEL MUSAGIKA MULINDWA :::::::::::::::::: PLAINTIFFS**

**VERSUS**

1. **SMART BWANGO**
2. **JOHN MULINDWA**
3. **JENNIFER KAAHWA :::::::::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

**JUDGMENT**

**Introduction:**

The plaintiffs originated this claim against the defendants seeking declarations and orders that:

1. A declaration that the defendants willfully and without reasonable cause omitted to exhibit an inventory or account of the assets and liabilities of the estate of the late Yakobo R.K. Mulindwa within the required time;

2. That the inventory purportedly filed by the defendants is untrue in material aspects;

3. That there is just cause to revoke or annul the letters of administration granted to the defendants and thus the letters of administration vide HCT – CV – MA 119 of 2019 be revoked;

4. An order directing the defendants to furnish court with a true inventory and account of the estate of the late Yakobo R.K. Mulindwa

5. A permanent injunction restraining the defendants from further dealing with the estate of the deceased;

6. An order that the letters of administration be granted to the Administrator General and administration be concluded within six months from the date thereof;

7. General damages and costs.

**The case of the Plaintiffs:**

This brief history gathered from the pleadings is that Yakobo R.K. Mulindwa (deceased) died testate by virtue of the will dated 6th March 1978. That the plaintiff and the defendants are children of the deceased and others who include Gilbert Nkurumah Jimmy, Rwabaingi Mulindwa, Kayondo James and Kasande Julius.

That the late left properties among others, (i) LRV 1402 Folio 17 described as Block 46, Plot 15, land at Buraika, Burahya, Kabarole District approximately 25.6 hectares; (ii) Burahya Block 114, Plot 5, Land at Kanyamakere, Burahya, Kabarole District approximately 1.25 hectares; (iii) Burahya Block 114, Plot 7, land at Kanyamakere, Burahya, Kabarole District approximately 0.1 hectares; (iv) a piece of land held under customary tenure at Kanyamakere Burahya, Kabarole District measuring 10.7 acres; (v) cattle and Bank accounts with Uganda Commercial Bank and Post Office Savings Bank.

That by consent of the family members, the defendants applied for and were granted letters of administration over the estate following a resolution dated 25th August 2015, before His Lordship V.F Musoke Kibuuka. It was contended that after the defendant securing the letters of administration, they failed to implement the resolutions previously made by the family despite reminders from the plaintiffs. That the defendants assumed exclusive possession of the estate to the detriment of other beneficiaries under the estate especially Block 46, Plot 15 land at Buraika where they proceeded to construct permanent houses and planted a forest without the knowledge and consent of the plaintiffs.

That due to the exclusion of the plaintiffs from the happenings in the estate, the plaintiffs wrote several demand notices asking for the distribution of the estate which were ignored by the defendants. That the estate of the late Mulindwa Yakobo remains undistributed to date and the defendants did not make any efforts to do so as administrators.

That when the defendants invited the plaintiffs for a meeting, the plaintiffs raised issues about the venue which were ignored by the defendants and that the defendants also declined invitations by the administrator general to have the issues in the estate resolved.

That the defendants did not file an inventory within the required time and the one filed was challenged by the plaintiffs on account that there was never a distribution of the estate. That the swapping of land that took place was illegal and the inventory excluded some properties case in point land at Kyabakale in Rwenganju Parish, Busoro Sub County, Kabarole District measuring 10 acres. That the plaintiffs lost confidence in the defendants on account of their being dishonest, segregate and discriminative and as such the grant of letters of administration to them should be revoked on just cause. They thus prayed for judgment in their favour.

**The case of the Defendants:**

The defendants denied the claims of the plaintiffs and indicated that the plaintiffs had no cause of action against them. That upon getting the letters of administration, they pursued the legal process of getting registered on the titles to the estate land since the same was still in the names of the late Yakobo R.K. Mulindwa, a process which consumed a considerable amount of time and thus they were unable to distribute the estate within the stipulated time.

That they distributed the estate to all the intended beneficiaries within the mandate given to them in 2015 and therefore the plaintiffs had no cause of action against them

since majority of the beneficiaries assumed possession of their respective properties per the inventory filed in court. That the deceased by will had bequeathed his house (family house), a kibanja and cattle farm to Julius Kasande, one of the executors hence the said Julius Kasande could dispose of the property as he pleased. That the defendants fully distributed the estate as per the resolution of 22nd August 2015 and thus the estate of the late Mulindwa was dissolved and they filed an inventory in court to that effect.

That the beneficiaries under the estate were free to enter into any transactions regarding their beneficial interests among themselves and this was ratified by the inventory. That it was the duty of the 1st plaintiff and the co-administrators to account for what came to them as administrators and not the defendants. That the estate was fully distributed to all the beneficiaries to the best of the administrators' knowledge and thus the case ought to be dismissed with costs.

**Reply for the Plaintiffs:**

In reply to the written statement of defense, the plaintiffs maintained that the defendants were to file an inventory within the required time which they failed. It was contended that there had been no actual distribution of the estate and that the distribution was merely on paper and not on ground. That the plaintiffs could not take possession of any property until the dispute arising out of misuse of authority and mismanagement was resolved by court.

It was contended that the will of the deceased became irrelevant following the resolution dated 22nd August 2015 that led to the subsequent grant of letters of

administration on 30th October 2017. It was contended that the distribution ought to have been done in accordance with the law which was not done. That the inventory had excluded the unregistered land at Baraika which formed part of the estate of the late and further that the swapping was not explained in the inventory.

**Issues:**

The following issues were agreed upon during scheduling:

1. **Whether the estate of the late Yakobo R.K. Mulindwa was distributed.**
2. **Whether the defendants willfully and without reasonable cause omitted to exhibit an inventory or account of the assets and liabilities of the estate of the late Yakobo R.K. Mulindwa within the required time.**
3. **Whether the inventory purportedly filed by the defendants is untrue in a material aspect.**
4. **Whether there is just cause for revocation or annulment of the letters if administration granted to the defendants.**
5. **Whether the will by the deceased was overtaken by the resolution of 22nd August 2015 which led to the appointment of the defendants as administrators.**
6. **Remedies available to the parties.**

**RESOLUTION:**

**Burden of Proof and Standard of proof:**

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, the plaintiffs bear the legal burden of proof to satisfy court on a balance of probabilities that there is just cause to annul the grant of letters of administration over the estate of the late Yakobo R.K. Mulindwa granted to the defendants and other reliefs in the plaint. The evidential burden shall rest on whoever alleges a fact.

**Issue No. 1 and Issue No. 5: Whether the estate of the late Yakobo R.K. Mulindwa was distributed; and whether the will by the deceased was overtaken by the resolution of 22nd August 2015 which led to the appointment of the defendants as administrators.**

I will resolve ***issues (1)*** and ***(5)*** concurrently since they relate to the distribution of the estate of the late Yakobo R.K. Mulindwa. I will begin with the later.

Primarily, a will connotes a legal expression or declaration of a person's mind or wishes as to the disposition of his property, to be performed or take effect after his death. A Will by its nature is ambulatory that is, it must establish the testator's wishes and only takes effect upon death of the testator ***(Black's Law Dictionary 11th Edition p. 1772).***It is an important legal instrument that ensures that the property of the testator will be distributed according to his or her wishes upon death. That is, it establishes or enumerates the wishes of testator which he or she desires to be implemented in relation to his estate after death. (See**In** ***re- Estate pf Julius Mimano (Deceased) (2019) Eklr & Beatrice Asire Mallinga v Jonathan Obukunyang Mallinga, HCT-04-CV-CS-0013-2013***).

Therefore, where a party dies testate living behind a valid will, Court's duty is to enforce the wishes of the deceased as exposited in the will. This was explained in ***Re Bailey {1951} CL 407*** where it was held thus: ***"It is not the function of a Court of construction to improve upon or perfect testamentary dispositions. The function of the Court is to give effect to the dispositions actuallymade as appearing expressly or by necessary implications from the language of the Will applied to the surrounding circumstances of the case."***

Further in ***Knight Bruce in Bird*** *v* ***Luckie {1850} 68 ER 373***, court guided in relation to wills thus: "***No man is bound to make a Will in such a manner as to deserve approbation from the prudent, the wise or the good. A testator is permitted to be***

***capricious and improvident, and is more at liberty to conceal the circumstances and the motives by which he has been actuated in his dispositions. Many a testamentary provision may seem to the world arbitrary, capricious and eccentric, for which the testator, if he be heard, might be able to answer, most satisfactorily."***

It is thus my considered view that where a testator pens down his wishes in a will which is valid according to the applicable laws in this case the Succession Act, court is duty bound to enforce the terms thereof and not purport to perfect or alter the terms of the will to suite the interests of the parties before it. A will by nature is an irrevocable testament which cannot be changed or altered in a manner that a party wishes especially where the intentions of the testator are clearly ascertainable from the will itself.

In this case, the will of the late Yakobo R.K. Mulindwa was admitted as DE1. Learned counsel for the plaintiff argued that the will was overtaken by events pursuant to the resolution made on 22nd August 2015 (PX1). That the will had never been executed and it was the evidence of the defendants that they have never received a report to that effect from the executors of the will. That since the defendants applied for letters of administration, it implied that the estate was managed as an intestate estate. Thus the provisions of the will were abated by the grant of letters of administration to the defendants. Mr. Kaahwa on the other hand argued that the resolution merely operationalized the provisions of the will and merely deemed clause 5 of the will inoperative and did not nullify the will and as such it was not overtaken by events. That this is elaborated by the fact that the defendants petitioned for letters of administration with a will annexed.

It is an admitted fact by both parties that the late Yakobo R.K Mulindwa died testate and left a will. The said will was proved in court at the time the executors secured the grant. There is therefore in existence a valid and subsisting will of the late Yakobo R.K. Mulindwa. It is my view that where there is a valid and subsisting will, no party or authority is allowed to alter, modify or improve the terms thereof contrary to the wishes of the testator. In the same spirit, beneficiaries under a will have no capacity to agree or consent to alter the terms of the will or render it inoperative as submitted by counsel for the plaintiffs. A will binds all those who are beneficiaries there under and the entire world unless it is challenged or declared a nullity by a competent court. I therefore find that there is a subsisting will of the late Yakobo R.K. Mulindwa over his estate which is valid and binding on the beneficiaries there under and was not overtaken by events or rendered in operative by a resolution dated 22nd August 2015.

That being the case, the next fundamental question to investigate is the effect of the resolution dated 22nd August 2015 on the will of the late Yakobo R.K Mulindwa. The testator provided under clauses 5, 6, 7 and 8 of his will thus:

5. ***My cattle farm situate at Rwemiyaga Baraika shall together with my money or property not assigned to any person in this will be known as MULINDWA ESTATE which estate shall be administered by the executors of this will and they may appoint any of my children who acquires necessary training in farm management to be the manager of the said farm on such terms and conditions as the executors shall think fit.***

6. ***Upon my death any money lying on my Bank account with Uganda Commercial Bank and Post Office Savings Bank shall be transferred to MULINDWA ESTATE but before that is done the executors of this will shall pay therefrom 10% of the total sum to my wife PERUSI BONABWA MULINDWA, JULIUS KASANDE MULINDWA, and GERALD KARANGO MULINDWA respectively.***
7. ***The executors of this will shall open a Bank account in the names of MULINDWA ESTATE to be operated by them jointly and the money therefrom shall be used by the executors upon due deliberation to provide assistance to the needy members of my family at the time of sickness or to provide for marriage requirements basing on the individual merit of a case.***
8. ***The executors may lend, invest or otherwise use the money on MULINDWA ESTATE as they think fir in the interest of the estate.***

The reading of the above clauses of the will paint a clear picture which is that the deceased created a trust in the names of ***MULINDWA ESTATE*** where all his other properties were to be managed by the executors for the benefit of the estate. The resolution of 22nd August 2015 was focused on the said trust. Under clause 1 (ii) (iv) (vi) of the resolution it is indicated that:

> ***(ii) that our late father left a will in which he made specific bequest of the family home and kibanja at Kanyamakere to his heir, our elder brother Dr. Julius Kasande, and also the fact that he willed that the rest of the estate be converted into a company whereby the beneficiaries would share the proceeds;***

***(iv) the fact that while part of the estate of our late father was administered by the executors soon after obtaining the grant of probate, they have failed to administer the greater part of the estate in line with the requirements under the will to turn the farm at Baraika into a profitable company and that there has been an enormous wastage of the administered part of the estate.***

***(vi) finally, the fact that due to the passage of time and the attendant wastage of the un-administered part of the estate, the dynamics have since been uttered and it would neither be possible nor wise or profitable to pursue the requirements of the will that a company be formed for the benefit of the beneficiaries.***

It is clearly ascertainable from the above that the resolution was restricted to land that was dictated by the deceased to be managed under a trust and not the validity or operation of the will. The follow up question would be whether beneficiaries under a testamentary trust like the one created by the late Yakobo R.K Mulindwa have the authority and capacity to modify, terminate or alter the terms of the trust.

A testamentary trust is a specific type of trust that is created as part of a last will and testament. A grantor (the creator of the trust) leaves instructions in their will for a named executor detailing how their assets are managed by a trustee and distributed to beneficiaries. It is a trust that is established in accordance with the instructions contained in a last will and testament that allows a trustee, who is a third party, to manage assets on behalf of the beneficiaries of the trust. (***See Julia Kagan (October***

***6th 2023), Testamentary Trust, Definition, examples, pros and cons, available on http://www.investopedia.com accessed on 25th October 2023).***

Therefore, a testator may by will create a trust where his or her properties are to be managed for the benefit of the members of his family. In this case, the terms of the will clearly allude to creation of the trust where the farm and other properties which were never bequeathed by the late would be managed for benefit of the family members under MULINDWA ESTATE as trust named by the testator. The testator made efforts to elaborate the manner in which it was to be operated and the people to operate it. It is thus my view, that a testamentary trust was created by the late Yakobo R.K. Mulindwa over properties which were not bequeathed to any beneficiary in the will.

The lingering question would be whether the beneficiaries of the trust have capacity to terminate or modify the trust. The Succession Act does not offer clear guidance on this. However, scholars and Courts have made attempts to offer counsel to the scenario beforehand relying on the equitable doctrine of "equitable deviation". ***Bradley E.S Fogel; Terminating or Modifying Irrevocable Trusts by Consent of the beneficiairies; a proposal to respect the primary of the settlors intent; American Bar,*** available on www.americanbar.org argues that the doctrine of equitable deviation was intended to create a balance between the two competing theories of freedom of disposition and respect of the terms of the will and the interests of the beneficiaries under the trust created by will.

The author made an eloquent argument worth the judicial eye, that under the doctrine, beneficiaries are allowed to modify or terminate the trust where cases or circumstances arise which were not anticipated by the testator that make it impossible to maintain the trust or where the purpose for which the trust was created has been fulfilled or is impossible to fulfill. That however, this can only be done by the consent of all the beneficiaries under the estate and it should not be contrary to the intention of the testator.

I have found the postulates of ***Bradly (supra***) quite persuasive. In this case, the beneficiaries all agreed that the trust that the deceased had created was not serving the intended purpose, that is; of benefiting the beneficiaries under the estate. Further, that the executors had completely failed on their mandate to sustain the trust since the farm was not generating any income to the family and the cows had instead dwindled in numbers, per the testimony of PW1.Therefore, the beneficiaries consented and resolved to have the trust terminated. In my view the termination was lawful but it did not invalidate or render the entire will inoperative. Therefore, the resolution was limited to the trust and not the provisions of the entire will. Moreover the said resolution itself recognized the existence and validity of the will as already cited, in stating that: "***that our late father left a will in which he made specific bequest of the family home and kibanja at Kanyamakere to his heir, our elder brother Dr. Julius Kasande, and also the fact that he willed that the rest of the estate be converted into a company whereby the beneficiaries would share the proceeds".*** I therefore resolve the fifth issue in the negative.

Regarding the first issue, the duty of the administrator is to collect the estate and distribute it among the beneficiaries. Whereas under section 192 of the Succession Act the properties of an intestate vest in the legal representative that is an administrator, the administrator holds such properties as a trustee for the benefit of all the beneficiaries under the estate. The law imposes a fiduciary obligation upon the administrator to manage the estate for the best interests of the beneficiaries under the estate and where he or she falls below the required standard, a beneficiary has a right to sue him for breach of that trust. This was well expounded by my Musyoka, J in the persuasive Kenyan case of ***Re –Estate of Julius Mimano (Deceased) (2019) eKLR*** citing provisions of the Succession Act of Kenya that contains similar provisions that exist in Uganda's Succession Act thus:

> **The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the Law of Succession Act. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also**

**be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.**

In this case, it was argued for the plaintiffs that the estate was not distributed by the defendants as administrators and that whereas there was a semblance of distribution, it was only on paper and not on ground. Mr. Kaahwa on the other hand contended that the defendant executed their mandate as administrators by distributing the estate and filed an inventory to that effect. That the plaintiffs were allocated there shares which they refused to take. That these shares were showed to court at locus which confirmed they exist and asked court to resolve the issue in the negative.

To begin with, the estate of the late Yakobo R.K Mulindwa was distributed at two different intervals, one by will and the other by the administrators subsequently appointed. The bequests made by the late in the will to Kasande Julius remain binding and as such took effect upon the executors applying for the grant of probate. Whether the same was effected or not is an issue to be raised by those who were

entitled to such bequests and not the plaintiffs. The second distribution was after a grant of letters to the defendants.

The defendants testified that after getting letters of administration, they proceeded to have a transfer of the titles into their names and later distributed the estate and that they filed an inventory which was admitted as PX13 detailing how the distribution was done. The plaintiffs acknowledge that there was a distribution but they claim that it was not a physical one but only on paper. Further that they were invited for a meeting where the alleged distribution took place and they never attended claiming that the venue was not a friendly one.

It is my opinion that the manner in which an administrator reports to court of what he or she has done in an estate from the time of appointment is through an inventory filed in court. Whether or not the said inventory was proper or not is a question to be investigated on its own. In this case, the defendants clearly indicated that a surveyor was appointed and he divided land into 12 portions for each of the 12 beneficiaries. That each of the beneficiaries got their shares save for the plaintiffs who never attended the meeting where the distribution was done but their portions were reserved for them. It was the evidence of the defendants that they went ahead and filed an inventory to that effect. DW2 while at locus identified the land which was distributed and the 9.6 acres which were not distributed since they fell in the swamp and they feared the distribution could be contrary to NEMA laws. That the late left 12 cows which they found on the land and the same were also distributed. It was the evidence that the swapping of the land was between four people. That the meeting to distribute was after fling the inventory. PW1 while at locus agreed with

DW2 that the land at Buraika was one of the items of land to be distributed. That he was last on the last years back. That he was invited for a meeting where the land was subdivided and the meeting took place at Bulaika where the land was located.

The evidence on record ably demonstrates that the estate of the late Yakobo R.K. Mulindwa that came to the defendants as administrators was distributed. Whether or not the distribution was legal and proper is a different question to be investigated independently. I therefore find that the estate of the late Yakobo R.K. Mulindwa was distributed leaving out 9.6 acres that fell within the swamp. I therefore resolve this issue in the affirmative.

**Issue No. 2: Whether the defendants willfully and without reasonable cause omitted to exhibit an inventory or account of the assets and liabilities of the estate of the late Yakobo R.K Mulindwa within the required time.**

Section 234 of the Succession Act allows Court to annul any grant upon proof of just cause. Subsection 2 defines just cause to include among others where the person 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 the Act, or has exhibited under that Part an inventory or account which is untrue in a material respect. An administrator shoulders the burden to account to Court and to the beneficiaries on how he or she has managed the estate. This duty was expounded is well elaborate terms by ***Musyoka J in Re –Estate of Julius Mimano (Deceased) (2019) eKLR*** whose dicta I am persuaded to adopt thus:

**The duty to account on those two occasions is imposed by statute. It envisages an account to the court, not even to the beneficiaries. The powers exercised by the personal representative's flow from a court instrument, the court is entitled to know whether those powers have been properly exercised, and whether the duties imposed have been properly discharged. Being a statutory duty to account to the court, the personal representative does not have to wait for a court order directing them to render account, they must render the accounts as a matter of course. The matter of the duty to render accounts is so critical that default to do so is listed in section 76(d)(iii) of the Act as one of the grounds upon which the court may consider revoking a grant.**

Therefore, an administrator appointed by court must file an account within six months from time of the grant. Section 234 (2) (e) is to the effect that where the failure is willful or deliberate, then it constitutes a ground for annulment of the grant. The key words for emphasis are "***willfully and without reasonable cause***". Therefore, the omissions must be intentional and deliberate without any justifiable cause. ***Kazarwe, J in Kaheru Yasin and Anor Vs. Zinomurumi David, Land Civil Suit No. 0049 of 2016, at page 14*** observed that exhibiting an inventory is a mandatory requirement that may lead to revocation of the grant in the event there is no compliance. That the failure to exhibit the inventory as per Section 234 (2) (e), must be willful and without any reasonable excuse. The failure should be deliberate, thus one who alleges that the same was not exhibited in court bears the burden to lead evidence that the same was willful and intentional. (See ***Samuel Kabagambe Ntungwa & 2 others v Florence Kekibuga Ntungwa, Civil Suit No. 46 of 2021***).

It was submitted for the plaintiffs that the letters of administration to the estate (DX7) were granted to the defendants on 30th October 2017 and the inventory was filed on 9th July 2018 after nine (9) months from the date of grant. That an inventory was must be filed within 6 months which the defendants defaulted. It was contended that there was no justifiable reason for the delay. Mr. Kaahwa in reply submitted that the delay was by only three months and it was explained by the defendants. He invited Court to answer the issue in favour of the defendants.

Section 278 (1) of the Succession Act is to the effect that an inventory must be filed within 6 months from the date of the grant or within such further time as may be directed by Court. Where an administrator fails to file an account of the estate within the 6 months, he or she must demonstrate to court that the failure was not willful and deliberate. The plaintiffs claimed in the plaint that the delay was willful and deliberate however no evidence was adduced to that effect. On the other hand, the defendants maintained that the delay was not willful. They all stated that they had to first identify the properties due to the estate, transfer the titles into their names as administrators, and sub-devide the land among the beneficiaries which took some time.

DW3 stated in cross examination that as administrator, they had to identify the properties at Buraika, open boundaries, subdivide the land into 12 portions, identify the existing animals and also identified land at Kyakabale which had been omitted, surveyed the same and later subdivided it among the beneficiaries which took some time. That he was advised by the lawyers that they could file an inventory within

one year. The witness stated that after the subdivision, they went ahead and filed an inventory.

I find the explanation offered by the defendants to account for the delay credible and I do not see any willfulness to file the inventory out of the six months. The defendants indeed went ahead and distributed the estate and filed an inventory in court. Thus the delay by three months is excusable since there is no evidence to prove that the delay was intentional and willful or done maliciously. I therefore resolve this issue in the negative.

**Issue No. 3: Whether the inventory purportedly filed by the defendants is untrue in a material aspect.**

Learned counsel for the plaintiffs contended that the inventory exhibited as PX13 is untrue in material aspects. That the inventory was filed on 9th July 2018 and the letter inviting the family members for a meeting is dated 5/7/2018 (PX8) and the distribution took place on 18/7/2018 after the defendants had received a notice of intention to sue dated 28/6/2018(PX2). It was further contended that the inventory also excluded transfer of land at Baraika and Kanyamakere to the administrators of the estate of the late.

Further that the inventory described land at Kanyamakere as property for Dr. Kasande Julius since it was bequeathed to him by will. That the search shows that the said property was registered in the names of the administrators and it was property under their administration. It was contended that the inventory concealed

the fact that the land at Kanyamakere was under the administration of the defendants. That there had never been any distribution of any money among the beneficiaries and the inventory did not disclose the monies recovered from Uganda Commercial Bank and Post Bank and how much each beneficiary received. That at the time the defendants applied for a grant of letters of administration, the accounts in those banks had money which they did not disclose.

That the swaps mentioned in the inventory were over land that the parties had not actually received. That the burnt home, the grave yard, and construction of houses was not mentioned in the inventory. That the inventory excluded land at Kanyamakere alleging it was bequeathed to Dr. Kasande yet it was under the administration of the defendants per PX4 and PX5 since the will was overtaken by events. That the land at Kanyamakere comprised of the residential holding which by virtue of section 13 of the Succession Amendment Act was to be for the benefit of the lineal descendants of the late which got burnt and instead the defendants allowed the construction of the residential holding limited to those who swapped their respective portions at Baraika they had not received with land allegedly was bequeathed to Kasande Julius.

In response, Counsel for the defendants contended that DW1 to DW4 had stated that whatever was comprised in the estate of the late was clearly documented and listed in the inventory. It was pointed out that for land at Kyakabale, had originally been omitted but it was subsequently brought into the estate and distributed among the beneficiaries. That for monies left on the bank accounts, the same had been long shared by the first administrators and this was explained by DW1. That whatever

had not been listed in the inventory had been overtaken by events. It was pointed out that for land at Kanyamakere, it was bequeathed to DW1 by virtue of the will and showed in the resolution of 22nd August 2015. That under the resolutions made, the family members were free to swap or to sell land to another family member and as such there was no illegality with regard to the exchange and swap of land. That as such this issue should be resolved in favour of the defendants.

The question whether or not the inventory filed by the defendants was untrue in a material aspect is a question of evidence. The inventory was admitted as PX13. In the inventory, the administrators gave a brief history about the estate specifically that the deceased died testate and some properties had been bequeathed by will and recommended that an estate be created for the farm at Buraika but the beneficiaries in the meeting made changes where they willingly agreed that the said land be distributed in 12 equal plots. The administrators went ahead to indicate how the distribution was done.

I have already found that the will of the late Yakobo R.K Mulindwa was still valid and that what the beneficiaries did was to terminate the trust created by the testator. Therefore, any other bequest made by the deceased in the will is still valid. Under clause 3 of the will, the testator bequeathed the house, the kibanja together with the cattle farm situated thereon to his son Julis Kasande Mulindwa provided he does not dispose of the said property or part thereof without the consent of the executors of the will. This means that the said land was bequeathed by the will of the deceased and thus the same belongs to the said Julius Kasande Mulindwa and did not form part of the property to be managed by the defendants. Therefore, the said Kasande

Julius had the liberty to deal with the land as long as long as he complied with the conditions set out in the will.

This therefore means that the powers of the administrators were limited to land which was not bequeathed. The defendants indicated that the land at Baraika had been surveyed and subdivided into 12 plots and each beneficiary was allocated a share. The sketch of the subdivided plots was admitted as DX8 and the minutes where the beneficiaries received their shares as DX9.Therefore, since the estate was distributed and shares showed to each of the beneficiaries, they had a right to exchange the same. In any case, the exchange did not affect the distribution made by the administrators since each of the beneficiaries was catered for. Further, Section 192 of the Succession Act is to the effect that the letters of administration entitle the administrator to all rights of an intestate at the moment of death, the administrators in this case were within their right to cause a transfer of the land at Buraika from the name of the deceased to their names as administrators so as to enable them to cause a transfer to the beneficiaries.

Further for land at Kanyamakere where the house was and the farm thereon, the said land was bequeathed to Julius Kasande Mulindwa who had a right to deal with the same as long it was within the confines of the will. Secondly, the fact that the land at Kanyamakere was registered in the names of the administrators is not a question to concern the plaintiffs who are not beneficiaries of the same. Thirdly, since the said land was bequeathed by will and the beneficiary had taken possession, the provisions of section 13 of the Succession Amendment Act 2020 do not apply to the facts of this case.

For the monies on the accounts and how it was spent, whereas counsel for the defendants asserted that it was distributed by the former administrators, the current administrators in the inventory filed under item 7, indicated that the same had been distributed to John Mutoro Mulindwa, Perusi Bonabana Mulindwa, Julius Kasande Mulindwa and Gerald Karango and the rest used to provide assistance to the members of the family at the time of sickness and other needs. That it was also used for the day to day operations of the estate and justifiable debts and other liabilities of the estate. Although administrators did not give the details of how much was on the accounts, how much was spent or shared and the daily expenses met by the executors, this evidence was not controverted or successfully challenged. I was therefore unsatisfied based on the evidence adduced, that the defendants made untrue statements material to the inventory filed in court. I thus resolve this issue in the negative.

**Issue No. 4: Whether there is just cause for revocation or annulment of the letters of administration granted to the defendants.**

The plaintiffs' call to have the grant revoked was on account that the inventory was not filed within time and that the one filed in court contained untrue statements material to the grant. These have failed. I find no other just cause for revocation or annulment of the letters of administration granted to the defendants. In the result I find that there is no just cause to annul the grant. I therefore resolve this issue in the negative.

**Issue No. 6: Remedies:**

The plaintiffs asked for a number of remedies which they have failed to prove. The suit therefore substantially fails. I grant the following declarations and orders:

1. **That there is no just cause to revoke or annul the letters of administration granted to the defendants and thus the letters of administration vide HCT – CV – MA 119 of 2019 shall remain in force.**
2. **The administrators of the estate of the late Yakobo R.K Mulindwa (defendants) are hereby directed to show the plaintiffs their respective shares and hand over the same within 6 months from date of delivery of this judgment.**
3. **That the administrators (defendants) are hereby directed to distribute the remaining estate described in the inventory filed in court as a residue within 6 months from the date of delivery of this judgment and thereafter file an account with court to that effect within the said 6 months.**
4. **The defendants are further directed to file a detailed account of how much money was on the bank accounts of the deceased at the time they were appointed and how the same was appropriated as part of the account referred to in No. 3 above.**
5. **That for the avoidance of doubt, the defendants shall complete the distribution and management of the estate within 6 months from the date of delivery of this judgment and shall distribute all remaining properties of the deceased among the beneficiaries and file an account**



**to that effect within 6 months from the date of delivery of this judgment .**

6. **Each party shall bear their own costs.**

**It is so ordered.**

Vincent Wagona

**High Judge**

**FORTPORTAL**

**DATE: 13/11/2023**