

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
CIVIL SUIT NO. 002 OF 2019**

**JUSTINE BAZANYA ::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**ONGWEN MEDARD FREDRICK ::::::::::::::::::::::::::::::::::: DEFENDANT**

**JUDGMENT**

**Background**

The Plaintiff brought this suit against the Defendant in her capacity as a sister of late Cissy Bazanya (hereinafter referred to as the “Deceased”) and one of the beneficiaries of the estate of late sister. The Deceased is stated to have died on 10<sup>th</sup> Dec 2018 at Mild May hospital in Kampala. She died intestate. She was not survived by any children, as it is stated that she was childless. Upon the demise of the deceased, the Defendant processed a death certificate for the deceased. The Plaintiff, as one of the surviving sisters of the Deceased commenced the process of applying for a grant of Letters of Administration by applying for a certificate of no objection from the office of the Administrator General, a process stalled by the Defendant, who claimed to be entitled to administration of the estate, in his capacity as the husband of the Deceased. The Defendant further petitioned for the grant of letters of administration vide; Administration Cause No.98 of 2019.

It is further stated that the Deceased had during her lifetime acquired properties in her name, which she owned as such. These included Plot 78 Main Street, Jinja, constituting commercial rented premises and Plot 32 Mvule Crescent, Jinja Town, which constituted the Deceased’s residence. These constitute the suit properties herein. The Plaintiff’s contention is that the Defendant was not legally married to the deceased, but a mere driver of the deceased and therefore, not the lawful person entitled to obtain a grant of letters of administration of the Deceased’s estate, neither is he a beneficiary of the estate. The Plaintiff contends that the Defendant has no beneficial interest in the suit property forming part of the estate of the Late Cissy Bazanya and is illegally occupying the property. The Plaintiff further contended that the acts of the Defendant of applying for Letters of Administration and taking possession of the estate land are tainted with fraud and constitute trespass on land.





The Plaintiff sought a permanent injunction; general damages for trespass to land, a declaration that the estate of late Bazanya Cissy is the lawful and rightful owner of the suit land, an order directing the Defendant to surrender the original copy of the death certificate for Cissy Bazanya, a declaration that the Motor Vehicle Registration No. UAN 857B Toyota Land Cruiser Prado VZJ belongs to the estate of late Cissy Bazanya, and a declaration that the marriage certificate dated March 5, 1995 is a nullity. The Plaintiff prayed for costs of the suit.

In his WSD, the Defendant denied the Plaintiff's claim and contended that he was married to the late Cissy Bazanya and did not forge the marriage certificate, denied alienating the suit properties and stated that they were jointly acquired and denied the allegations that he was a mere driver of the deceased. He contended that the death certificate was rightfully obtained by him as the husband of the deceased. He prayed for dismissal of the suit with costs.

Before commencement of the trial, it transpired that there was a dispute over who is entitled to collect rent from the suit property. On the application of the Plaintiff, this Court granted an order that the rent be collected by a court appointed bailiff and be deposited in Court with monthly accountability.

When the matter was called for scheduling, learned counsel for the respective parties informed court that they had filed a Joint Scheduling Memorandum, which they sought to be admitted and adopted by the court. The same was adopted. The parties framed six issues for this court's determination to wit;

- i. Whether the Defendant was married to the late Cissy Bazanya.*
- ii. Whether the Plaintiff has the locus standi to file the suit.*
- iii. Whether the suit discloses, a cause of action against the Defendant.*
- iv. Whether the Defendant's occupation of the estate property is unlawful.*
- v. Whether the Defendant's acts are tainted by fraud.*
- vi. Remedies available to the parties.*

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At trial the Plaintiff testified and further called 3 witnesses, to wit; **Slyvia Chelangat (PW2), Ruth Bywekwaso Bazanya (PW3) and Balyogera Patrick (PW4)** Save for PW4 who gave viva voce evidence, the rest of the witnesses filed witness statements and were cross examined and re-examined on the same. The Defendant equally testified as **DW1** and also called one other witness being **Pastor Egau John (DW2)**

### **Representation.**

At the hearing, the Plaintiff was represented by learned counsel **Mr. Kenneth Kajeke** while the Defendant was represented by counsel **Asodio Jordan**. Both counsel filed written submissions, which court has taken into account in rendering its decision.

### **Court's Consideration**

I agree with the observation by learned counsel for the Defendant that issues (ii) and (iii) are preliminary in nature and merit consideration before court can delve into the other issues. By the said issues, the Defendant questioned the locus standi of the Plaintiff to file the instant suit. He further contended that the suit discloses no cause of action against the Defendant. In my view, the said issues if resolved in favour of the Defendant, are capable of disposing the suit. It is therefore pertinent to consider and resolve them first and the same shall be resolved beginning with the issue of locus standi followed by the issue as to whether the suit discloses a cause of action against the Defendant.

I further note that rather than raise and argue the said issues as preliminary points of law under Order 6 Rule 29 of the Civil Procedure Rules, the parties opted to reserve the said issues for determination by court, upon consideration of the evidence adduced on record. This could have been as a result of the fact that the fair and effectual determination of the said issues necessarily required consideration of evidence. Therefore, in the determination of the said issues, I am inclined to consider both the pleadings and the evidence on record.

Under issues (ii) the Defendant questioned locus standi of the Plaintiff to sue and obtain the remedies sought as against the Defendant. Learned counsel





for the Defendant contended that the Plaintiff is not a beneficiary of the estate of the deceased within the meaning of the law and cannot therefore sustain any action as such against the Defendant. The Plaintiff's counsel on the other hand submitted that the Plaintiff brought the suit as a sister of the deceased, one of the surviving relatives of the deceased entitled to a beneficial interest in the suit land, which the Plaintiff contended was hitherto acquired and owned by the Deceased and upon her demise formed part of her estate.

I have carefully studied the pleadings, the evidence on record and the submissions and authorities cited by learned counsel for the parties on this issue. I agree with the submission of learned counsel for the Defendant that the issue of locus standi is a very crucial point and goes to the root of the competence of the entire suit. Indeed, in Fenekansi **Kiwanuka vs. Malkit Singh Sondo HCMA No. 163 of 2004**, it was held that locus standi determines who should have access to justice, and that it is illegal for a Plaintiff to institute a suit in court against another person without locus standi. Court further emphasized that where a plaintiff has no locus standi, he or she has no remedy under the law.

The issue of what amounts to locus standi and what is to be considered by the court in determining whether the Plaintiff, claiming under an estate of a deceased person has locus standi, was extensively examined by my senior learned brother Judge, Hon. Justice Andrew Bashaija in *Fakrudin & Anor v Kampala District Land Board & Anor (Civil Suit No. 570 of 2015)* where his Lordship held thus;

*"It is emphasized that the unfailing requirement is that locus standi to institute a suit, by whatever mode prescribed, must be established at the time the suit is filed. This is done by expressly pleading facts that give the Plaintiff the legal standing to institute the suit. It should not be left to the court to guess where a Plaintiff derives the locus standi to file the suit. It must be expressly clear on the facts pleaded; particularly those that give rise to the cause of action in the plaint or counterclaim. The locus standi in such circumstances is only legally conferred on the beneficiaries or the Administrators/Executors of the estate of the deceased, and these categories of persons can bring a suit in their respective capacities."*



I find the above authority very instructive on the instant matter. According to the averments in the Complaint, the Plaintiff brought the instant suit in her capacity as one of the surviving sisters of the late Cissy Bazanya. She further averred that she is a beneficiary of the estate of her late sister and that part of the property forming part of her sister's estate is the suit property alleged to be illegally occupied by the Defendant. She contended that the Defendant was not legally married to the Deceased and therefore has no interest in the suit property, which forms part of the estate. I note that the fact that the Plaintiff is a sister of the Deceased was not denied by the Defendant whether in his pleadings nor in his evidence at the trial. It was also not disputed that the Deceased did not bear any children during her lifetime and that both the deceased's parents had died.

The disagreed fact contested by the Defendant is that, despite being a sister of the deceased, she was not a dependent relative of the Deceased and therefore does not qualify as a beneficiary within the provisions of the Succession Act Cap 162 as amended. The Defendant contended that, in any case, the interests of the Defendant as the surviving spouse of the deceased supercede those of the Plaintiff.

It appears to be settled law that locus standi in such circumstances, where a person has died testate or intestate, is only legally conferred on the beneficiaries or the Administrators/Executors of the estate of the deceased. It is these categories of persons that can bring a suit in their respective capacities to assert and protect their beneficial interest in the property forming part of the Deceased's estate. In *Dima Dominic Poro Vs Inyani & Anor Civil Appeal No. 17 of 2016 [2017] UGHCCD 154* it was held that, the term locus standi literally means a place of standing. It means a right to appear in court and that conversely, to say that a person has no locus standi means the person cannot be heard, even where he has a case worth listening to. The court further emphasized that, for any person to otherwise have locus standi, such a person must have "sufficient interest" not merely a technical one in the subject matter of the suit. The interest must not be too far removed (or remote), the interest must be actual, not abstract or academic and the interest must be current not hypothetical. The requirement of sufficient interest is an important safe guard to prevent having busybodies in litigation with misguided or trivial complaints. If the requirement did not



exist, the courts would be flooded and persons would be harassed by irresponsible suits. This decision in view sets the threshold for locus standi being that the Plaintiff must by their pleadings and or evidence demonstrate that they have a sufficient interest in the subject matter of the suit

In the instant matter, the question for determination is whether the Plaintiff, as the surviving sister of the Deceased, falls within the category of persons entitled to a beneficial interest in the property forming part of the Deceased's estate. The principle legislation that governs matters of succession is the *Succession Act Cap 162 as amended by the Succession (Amendment) Act, 2022*. The Act does not define the term beneficiary but prescribes the categories. *Section 22 of the Principal Act* provides for persons held for purposes of succession to be similarly related to the Deceased as including persons related to the deceased by full blood and those who are related to the deceased by half blood. *Section 11 of the Succession Amendment Act* amended section 22 by inserting another category under subsection (c) *being male or female relatives of the Deceased person*. *Section 27 of the Principal Act* was substituted by *section 14 (1) (a) of the Succession Amendment Act* and it provides for distribution of estate of a person who dies intestate and among the persons listed as entitled to 75 % thereof are lineal descendants. Under section 14 (1) (b)(i) of the said Amendment, it is provided that where the intestate leaves no surviving spouse or dependent relative, the lineal descendants are entitled to 99% of the property of the deceased. My understanding of the said provisions is that the persons categorized as lineal descendants are those prescribed in section 22 as persons related to the deceased, who pursuant to section 11 of the Succession Amendment Act include male and female relatives of the deceased person. This is quite clear from the definition of a lineal descendant under Section 1 (ma) of the Succession (Amendment) Act, which defines a lineal descendant to mean a person who is descended in a direct line from the deceased and includes a child, a grandchild of the deceased and any person related to the deceased in a direct desceding line up to six degrees down wards. The Plaintiff must prove that she is one of the nearest relatives of the deceased. *Michael Mulyanti & Anor v Jackeline Batalingaya & 3 Ors (Civil Suit No. 434 of 2008) [2009]*

Guided by the aforecited provisions, I am inclined to find that a sister of a person who has died intestate falls within the realm of lineal descendants of the deceased, is one of the persons entitled to a beneficial interest in the estate of the deceased and is therefore a beneficiary of the estate. The Plaintiff pleaded that she is a sister to the deceased who was childless in her lifetime. This fact was not controverted. She further pleaded that the deceased owned the suit



properties alluded herein above, a fact that was equally not disputed. It was also not disputed that the suit properties form part of the deceased's estate. The evidence led by the Plaintiff at the trial further confirmed the said facts. The Plaintiff's evidence was corroborated by the evidence of **Ruth Bywekwaso Bazanya (PW3)**. Further evidence was led to prove that the Defendant applied for letters of administration of the estate much to the exclusion of the Plaintiff and the other siblings of the deceased and asserted rights in the estate property. I am therefore satisfied that the on the pleadings and evidence on record, the Plaintiff is a beneficiary of the estate of the Deceased, and therefore proved a sufficient interest in the suit properties, which clothed her with the locus to file the suit to protect her beneficial interest and prevent the suit property from being alienated. I am fortified by the Supreme Court decision in *Israel Kabwa Versus Banoba Musinga SCCA No. 52 of 1995*. The Plaintiff clearly has locus standi to sue and to seek the remedies sought in the Plaint. The position of the law is that a person who has interest in an estate may take steps to protect the estate even before the grant of letters of administration. That is the position stated in *David and Mutoto Moses Bagali Abdu and Tukei Anthony H.C. Application No. 27 of 2009 arising from Mbale Civil Suit No. 33 of 2008*. The Plaintiff as a person with a beneficial interest in the estate of her Deceased sister was entitled to file the suit to assert her beneficial interest and protect the estate. I so find.

As to whether the Plaint disclosed any cause of action, the Defendant contended that the Plaint did not disclose any cause of action against him. On the other hand, the Plaintiff strongly contended that the plaint disclosed a cause of action against the Defendant. I must note that the finding on the above issue of locus standi has a bearing on the issue of cause of action, especially to the extent to which the Plaintiff claims to derive the right to estate property as a beneficiary of the estate of the deceased. The law on cause of action is set out under *Order 7 Rule 1 and 11 (a) of the CPR* which requires that a Plaintiff must in the plaint plead facts that give rise to a cause of action, otherwise the court is empowered to reject the plaint. I agree with the submission by learned counsel for the Plaintiff that in order to determine whether a plaint discloses a cause of action, the Court is entitled to look at the plaint only with its annexures and ascertain if the plaint pleads facts that demonstrate that Plaintiff has a right, that the right has been violated and that the defendant is liable as held in *Auto Garage Vs Motokov No. 3 [1971] E.A 514*. Once it is established that a plaint shows that the Plaintiff enjoyed a right and that, the right has been violated and that the Defendant is liable, that is sufficient.





I have carefully perused the plaint. The Plaintiff claims that she is a sister to the deceased and therefore a beneficiary of the estate. She derives her capacity and right of action from being a beneficiary with a beneficial interest in the estate of her late sister. That is the capacity in which she sued the Defendant. She further asserts that the deceased was not survived by any children but had during her lifetime acquired properties that constitute the estate property, which is also the suit property. She claims a beneficial interest in the said suit property. She avers that the defendant, who was not married to the deceased but a mere driver of the deceased, took advantage of the death of the deceased, obtained the death certificate and applied for letters of administration claiming benefit in the estate as a spouse, whereas not. She further avers that the Defendant is illegally in occupation the premises formerly constituting the residence of the deceased, has no beneficial interest therein and is a trespasser thereon. She seeks declarations that; the defendant illegally obtained and withheld the death certificate and that, the defendant was not lawfully married to the deceased and has no claim or interest in the suit property. It is on that basis that she seeks the various orders against the Defendant.

It is quite apparent that from the facts as pleaded in the plaint, the Plaintiff has established that she has a right of action grounded in her being a sister of the deceased and a beneficiary of the estate, claims a beneficial interest in the suit property, which she claims formed part of the estate, in which she claims a beneficial interest and further that her right or beneficial interest has been violated by the defendant who, has applied for letters of administration claiming to be a spouse, whereas not, is in illegal occupation of the suit property and is a trespasser thereon. I am satisfied that the plaint discloses a clear cause of action and passes the threshold set by law. Whether or not the Plaintiff is able to adduce cogent evidence in support of the averments is an irrelevant consideration at this stage. That, in my view, is a matter to be determined upon evaluation of the evidence on record. I therefore find and hold that plaint discloses a cause of action.

**Issue No. 1 framed as whether the Defendant was married to the late Cissy Bazanya and issue No. 4 framed as whether the Defendant's occupation of the estate property is unlawful shall be resolved together.** This is so because the defendant asserts that he is in lawful occupation of the suit property as the surviving spouse of the deceased, with a beneficial interest superior to any claims by the Plaintiff. Indeed, if the court finds that the Defendant is the surviving spouse of the deceased, then under section 27 of the Succession Act as amended, the Defendant would be in lawful possession or occupation of the



suit property as the law grants a beneficial interest and protection in favour of a surviving spouse of the deceased. In my view therefore, the determination of the issue of marriage will ultimately determine whether the defendant's occupation of the suit property is lawful. Further, the resolution of the nature of relationship that the Deceased had with the Defendant is key in resolving the matters in controversy in this suit.

The question for consideration is whether the Defendant was legally married to the deceased and is therefore a widower or surviving spouse of the deceased within the meaning and import of the Succession Act as amended. Section 1 (p) of the Succession Amendment Act defines a spouse as meaning a husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country recognized in Uganda as a valid marriage. Marriage in Uganda is a creation of law and not a question of mere sentiment or mere fact that the person asserting such marriage was residing with the deceased or looking after the deceased to the point of the death of the said deceased person. *Michael Mulyanti & Anor v Jackeline Batalingaya & 3 Ors (Civil Suit No. 434 of 2008) [2009]*.

This being a civil claim, the general position of the law regarding the burden of proof is that the burden lies on the party who asserts the affirmative of the issue or question in dispute. See section 101-103 of the Evidence Act. ***Stephen Mubiru J in Premier Commodities (U) Ltd Vs. Kiir for Services & Construction Co. Limited HCCS No. 0126 of 2019 at page 5.*** In the instant case, since it is the Defendant who asserts the affirmative that he was legally married to the deceased, the burden would ordinarily lie upon him to adduce evidence of a valid subsisting marriage between him and the deceased as at the time of the death of the deceased. However, I note that the Plaintiff contested the marriage and seeks a declaration that the defendant was not legally married to the deceased. That is what prompted the Defendant in his defence to assert that he was legally married to the deceased. Therefore, it is incumbent upon the Plaintiff to adduce evidence sufficient to raise a presumption that what she asserts is true, and upon adducing such evidence, her allegation would be presumed to be true unless the defendant adduces evidence to rebut the presumption. The standard of proof is on the balance of probabilities, which means that in so far as either party would wish the court to believe in the existence of particular fact, the burden of proof lies on them to prove that fact. I am fortified by the decision in ***Takiya Kashwahiri & Anor Vs. Kajungu Dennis CACA No. 85 of 2011 at Page 11.***

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In the instant case, the impugned marriage is alleged to have been a church marriage apparently celebrated under the Seventh Day Adventist Church. It is therefore a marriage whose validity is governed by the Marriage Act CAP 251. Valid marriages recognized under **Section 34(2) (a)** of the Marriage Act include wedded couples in a licensed place of worship. This position was re-iterated in the case of *Zeresire Tereza v Rwakasenyi (Civil Appeal No. 50 of 2017)*. In discharging her burden, the Plaintiff testified that the marriage certificate relied upon by the defendant was not authentic as the signature thereon attributed to the deceased was not hers.

Further, that there was never any customary ceremony where the Defendant was ever recognized as a husband of the deceased. The Plaintiff led evidence to prove that the deceased was not married and died unmarried. She testified that at no time was the Defendant ever introduced to their home by the deceased as her husband. That the defendant was a mere driver of the deceased, and that the defendant used to stay in the boy's quarters at the deceased's residence. The plaintiff's evidence was corroborated by PW3 who is her sibling. PW2 the forensic examiner testified that she examined the signature on the impugned marriage certificate attributed to the deceased with that on the undisputed documents executed by the deceased and came to the conclusion that the signature on the said marriage certificate was not that of the deceased. Her testimony, findings and conclusion were not assailed during cross examination and no alternative forensic expert report was adduced by the defendant to controvert the expert opinion of PW2. PW4 being the Church clerk of SDA Jinja Central Church where the alleged marriage is indicated to have been solemnized also led evidence to prove that there was no record of any marriage allegedly celebrated between the Defendant and the deceased and that the certificate or marriage presented by the defendant was not indicated in the records of the church as having been issued by the Church.

In my view, the plaintiff having adduced such evidence creating doubt as to whether there was ever any marriage celebrated between the defendant and the deceased, the burden of proof shifted to the defendant to rebut the evidence by adducing evidence that he contracted a valid marriage with the deceased. He bore the burden to discharge the evidential burden. The defendant's evidence was tainted with grave contradictions. The defendant adduced evidence and relied on documents, showing that the marriage was celebrated in 1982 and others showing that the marriage was celebrated in 1995. It is inconceivable that the defendant could have married the deceased twice in a church marriage. The defendant did not adduce any evidence to rebut the evidence of PW2, Sylvia



Chelangat to the effect that the signature on the marriage certificate relied upon by the Defendant was that of the deceased. The defendant conceded that he did not have any photograph of himself and the deceased in a marriage ceremony. The Defendant and DW2 failed to confirm the exact church where the alleged marriage was celebrated, whether Suumbe or Butembe or Jinja SDA and if such a church was licensed to conduct marriages at the time. These grave contradictions rendered the evidence adduced by the defendant and DW2 unbelievable.

I am satisfied on the balance of probabilities that no valid marriage was contracted between the defendant and the deceased. No valid marriage certificate was tendered in evidence. The one relied upon by the defendant was destroyed by the plaintiff and forensic examiner who proved that the signature thereon attributed to the deceased was not hers. No witnesses to the marriage were produced. Not a single photograph was adduced as evidence. The said marriage had no documentary evidence to support it. The mere fact that the defendant used to go to church with the deceased or they used to reside at the same premises is not evidence of a marriage. The mere fact that the defendant could have been travelling with the deceased to China and other places or that the defendant cared for the deceased up to the point of her death is equally no proof of a valid marriage. There is no presumption of marriage in Uganda. Marriage must be proved by documentary or other permissible evidence. The evidence adduced by the Defendant and DW2 was greatly assailed during cross examination and was rendered evidentially worthless. The fact that when applying for a loan to acquire one of the assets, the defendant was allegedly required to give spousal consent is not proof of a subsisting marriage. Further, the submission that when the deceased was applying for the issuance of National ID, she filled in the Defendant's name as her spouse is not proof of marriage. Marriage must be **actual** not by presumption. The defendant therefore failed to discharge the evidential burden to rebut the Plaintiff's evidence that there was no valid marriage. There is no presumption of marriage in Uganda.

It is important to establish the legal relationship between the deceased, and the Plaintiff and the defendant who are claiming a share in her estate, as an entitlement, including the right to apply for and be granted Letters of Administration. The right to share in the estate of a deceased or to be granted Letters of Administration ordinarily depends on the legal relationship between the claimants and the deceased. *Nalumansi v Kasande & 2 Ors (Civil Appeal No. 10 of 2015) [2017] UGSC 21*. I have already found that there is no evidence to prove that the Defendant was legally married to the deceased. The



defendant's claim that the residence of the deceased constitutes their matrimonial home is thus devoid of any legal or factual merit. The defendant's allegation that he occupies the suit premises as a surviving spouse is equally legally untenable. He is neither a lineal descendant of the deceased nor a surviving spouse. Therefore, he has no beneficial interest in the property forming part of the estate.

The Defendant also claimed that he contributed to the acquisition of the suit properties comprised in Plot 78 Main Street Jinja and Plot 32 Mvule Crescent Road. He thus asserted an alternative equitable interest in the suit properties. However, he did not adduce any evidence of any joint sale agreement or other documentary proof in form of a certificate of title reflecting him as a co-registered proprietor of any of the suit properties. The mere fact that the Defendant was a witness in some of the transactions did not bestow upon any legal or equitable interest in the suit properties. The allegation that he and the deceased used to carry on joint business was not proved. Court also visited of locus in quo the suit properties on the 24<sup>th</sup> day of October 2023 at 12:30pm. Court observed that the property comprised in Plot 78 Main Street Jinja is basically commercial premises. Court observed that there were two structures that comprised this property. There is an old structure at the front adjacent to the main road and fairly new structure at the back of the suit property. The Defendant informed court that the lower structure was constructed between 2016 and 2017 and that this was before the demise of Cissy Bazanya in 2018. He informed Court that the property had 20 shops in total and the rent for the premises is being deposited in court by a court appointed bailiff.

For Plot 32 Mvule Crescent Road, Court observed that the said premises were purely for residential purposes where the deceased was residing and this is where the Defendant is currently residing.

It is also quite inconceivable that the Defendant, who claims an equitable interest in the suit properties could apply to administer the same properties as properties wholly forming part of the estate of the deceased. Counsel for the defendant submitted that the Defendant's claim was as the surviving spouse of the late Cissy Bazanya and that it is on that basis, that the defendant had a right to occupy estate property. The submission is inconsistent with a claim of an equitable interest in the suit property. By petitioning for letters of administration to administer the estate of the deceased and including the suit properties as properties hitherto owned by the deceased and forming part of her



estate, the Defendant re-affirmed the fact that the properties were wholly owned by the deceased and therefore formed part of her estate. The Defendant cannot on the one hand assert that the properties formed part of the estate of the deceased and at the same time claim that he was an equitable owner thereof. That offends the principle of approbation and reprobation. He cannot be allowed to blow hot and cold. On the strength of the evidence on record that the defendant was not legally married to the deceased and that the defendant had no equitable interest in the suit properties, his occupation of the suit premises upon the demise of the deceased is illegal and amounts to trespass. I so find.

As regards the issue of whether the Defendant's acts are tainted by fraud, it was pleaded that the acts of the defendant of forging a marriage certificate, stealthily obtaining a death certificate claiming to be the surviving spouse of the deceased, petitioning for letters of administration as the surviving spouse and claiming interest in the estate properties allegedly as the surviving husband were tainted with fraud. In *Senkungu & 4 Ors v Mukasa (Civil Appeal No. 17 of 2014) [2017]*, in defining fraud, the Supreme Court held that;

*"Fraud has been defined in a numerous legal authority. Kerr on the Law of Fraud and Mistake 5th edition part 1 page 1: states that civil courts of justice have always avoided hampering themselves by defining or laying down as a general proposition what constitutes fraud. Fraud is infinite in variety with the ever-dynamic operations of mankind. Thus, Kerr defined fraud in the contemplation of a civil court of justice to include all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientiously advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to. The court citing the American authority of Husky International Electronics, Inc vs. Ritz No. 15-145 of 2016 the Supreme Court of United States of America expanded the meaning of actual fraud as encompassing fraudulent conveyance schemes that can be affected without a false representation. Such fraudulent conveyances typically involve a transfer to a close relative, a secret transfer, a transfer of title without transfer of possession or grossly inadequate consideration. The court noted that what is required is for the court trying the matter to investigate the circumstances under which the title was acquired".*

The question is whether the acts complained by the Plaintiff constitute fraud on the part of the Defendant. The evidence on record as already evaluated has



showed that the purported marriage certificate paraded by the Defendant as the basis of his claim that he was lawfully married to the deceased was a forgery. The signature attributed to the deceased was proved not to be hers. Forgery falls in the realm of fraud. It is the defendant who represented that the certificate was signed by the deceased and was obtained from the church where the marriage was apparently celebrated from. This turned out to be false. The defendant further provided other documents that showed that the marriage was celebrated in 1982 and in 1995. This again turned out to be false. The records presented by PW4 further showed that no such marriage between the defendant and the deceased was ever registered or recognized by the church.

Further, the defendant could not tell with the alleged certificate the exact church where the marriage was allegedly celebrated. The Defendant was clearly taking advantage of the death of the deceased to put up false claims and to concoct false documentation to support his assertion of being the surviving spouse so as to lay a beneficial claim to the estate property. In my view, the said actions falls within "all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientiously advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to" and therefore falling within the above definition of fraud. I therefore find that the said acts of the defendant highlighted herein above were tainted with fraud.

Remedies available to the parties.

In conclusion I hereby make the following declarations and orders;

- a) A declaration that there was no subsisting marriage between the late Cissy Bazanya and the Defendant and the marriage certificate held by the Defendant is a forgery.
- b) A declaration that the Defendant is not a widower or a beneficiary under the estate of the Late Cissy Bazanya.
- c) An order directing the Defendant to surrender the original death certificate of the late Cissy Bazanya to this court by 22<sup>nd</sup> of November, 2023 which will be handed over to the Plaintiff by court.
- d) A declaration that the land comprised in Plot 32 Mvule Crescent Road and Plot 78 Main Street Jinja forms property belonging to the





estate of the late Cissy Bazanya and the Defendant has no scintilla of right or claim in the said properties.

- e) A permanent injunction is hereby issued restraining the Defendant his agents, servants or any person deriving authority from him from continuing to intermeddle in the Estate of the Late Cissy Bazanya.
- f) The rent collected from Plot 78 Main Street, Jinja by the Court appointed Bailiff under M.A 78 of 2019 be maintained until such a time when Letters of Administration will be granted by court.
- g) General damages of UGX 20,000,000 (Twenty million shillings) awarded to the plaintiff.
- h) Costs of the suit be borne by the Defendant.

I so order.

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**JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI**  
**Judgment delivered on 17<sup>th</sup> November 2023.**