

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-CA-0007-2019
(ARISING FROM CIVIL SUIT NO. 24 OF 2017)

**KOLE
CLEMENT:.....APPELLANT**

VERSUS

**NABUTONO ADRABA
JANET:.....RESPONDENT**

Succession Dispute/Land Appeal-

Held: All Grounds of Appeal Succeed. The judgement and orders of the learned trial Magistrate Grade 1 are quashed and set aside and are replaced by the Judgement and Orders of this Honourable Court. The Appellant is awarded costs of this appeal in the High Court and the Court below.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE
JUDGMENT ON APPEAL

The Appellant being dissatisfied with the Judgment and Decree of Her Worship Happy Ann Kyomugisha Grade One Magistrate delivered on 20th day of December 2018, appealed against the said Judgment and Decree on the 11th of October 2019, on seven grounds that: -

1. The trial Magistrate erred in law and in fact when she failed to evaluate the evidence on court record thereby occasioning miscarriage of justice.
2. The trial Magistrate erred in law and in fact when she failed to hold that the suit property belongs to the estate of the late Sindani Eria.
3. The Trial Magistrate erred in law and in fact when she failed to consider the interests of the other beneficiaries to the said estate of the late Sindani Eria.

He prayed that;

1. The Appeal be allowed.
2. The Judgment and Decree of the trial Magistrate be set aside.

3. The Respondent pays costs of the appeal and in the lower court.

REPRESENTATION

When this matter came before me for hearing, the Appellant was represented by learned Counsel Mr. Esarait Robert of M/S. Esarait, Adikin & Co. Advocates, while the Respondent was absent but represented by learned counsel Mr. Hategeka M/S. Tuyiringire & Co. Advocates. Both sides were directed by Court to file Written Submissions and they each complied.

BACKGROUND

It was submitted by learned counsels for the Respondent that they were served with submissions on the 19th May 2021, and as such breached the timelines within which to file their submissions (**see Annexure "A" being the received page of the Appellant's submissions**). They sought the indulgence court to entertain their submissions albeit out of time since the default is out of no fault of the Respondent or her counsel.

That the Plaintiff filed a **Civil Suit No. 24 of 2017** seeking Orders of: a declaration of ownership of 8 acres of land, eviction order, general damages, mesne profits, a permanent injunction and costs arising from trespass to the property at Kakira Town Council, Jinja District. **See paragraph 3 and the orders sought from (a)-(f) of the Plaintiff.**

The issues for determination were;

- (1) Who is the rightful owner of the suit land?
- (2) Whether the defendant is a trespasser?
- (3) Remedies available to the parties.

The brief facts according to learned counsel for the Appellant is that the parties are biological siblings whose father the late Akim Peter was the only son to the late Sindani Eria, their grandfather formerly of Kagogwa village, Kakira Town Council in Jinja District. That the Late Sindani Eria owned land situate at Kagogwa in Kakira Town Council measuring approximately 8 acres which is bordering Madhvani Group of Companies and other people.

That upon the death of his only son (the late Akim Peter), and at the funeral, the late Sindani Eria declared in the presence of locals that his grandsons to wit: Jonubi George and Cole Clement (Plaintiff) would be his heir and inherit his entire land and an Agreement was executed to that effect with the help of the L.C.1 Chairman, however, after the burial of the late Akim Peter, the

Plaintiff and his brother Jonubi George went mad whereupon they were taken to a traditional healer in Bunya, but unfortunately the brother died.

From my own analysis, the parties are biological siblings with a common grandfather late Sindani Eria who owned land at Kagogwa in Kakira Town Council measuring about 8 acres. It is alleged that Sindani Eria their grandfather donated the land to his two grandsons, i.e. Jonubi George and Kole Clement (Plaintiff). That the 2nd grandsons suffered insanity and were taken for treatment in Bunya, Jonubi died, however, Plaintiff recovered. That after the death of Jonubi (Plaintiff's brother) and the Plaintiff's father passing on, the land was left to the Plaintiff, but the Plaintiff's grandfather who continued using the suit land until 1999 when he died.

That around year 2000, the Defendant and other siblings stayed on this land and the Defendant decided to own it; he planted sugarcanes and rented it out to the deprivation of the Plaintiff of about 4.5 acres.

The Appellant/Plaintiff sought a declaration that the Plaintiff is the rightful owner of the suit property, vacant possession and Eviction Orders General damages, miscellaneous profits and costs.

I have critically examined this record but I did not find the Written Statement of Defence of the Defendant. The proceedings of my predecessor show that she protested the hearing claiming that the case has been heard and determined by L.C Courts in her favour. She was overruled and the case proceeded though as earlier said, there is no Written Statement of Defence on file.

My presumption is that it existed since the evidence on record since she testified and brought witnesses and I shall therefore proceed to reevaluate

THE LAW

It is now settled law that it is the duty of the plaintiff to prove his or her case on the balance of probabilities. In relation to the onus of proof in civil matters, the burden of proof lies on he who alleges a fact and the standard is on the balance of probabilities, and not beyond reasonable doubt as in criminal case. It is provided for in **Sections 101, 102, and 104 Evidence Act** and is discharged on the balance of probabilities. The standard of proof is made if the preposition is more likely to be true than not true.

The standard of proof is satisfied if there is greater than 50% that the preposition is true and not 100%. As per Lord Denning in **Miller v Minister**

of Pension [1947] ALLER 373; he simply described it as ‘*more probable than not.*’ This means that errors, omission and irregularities that do not occasion a miscarriage of justice are too minor to prompt the appellate court to overturn a lower court decision. See **Festo Androa & Anor vs Uganda SCCA 1/1998.**

It is also the position of the law that in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act and Section 33 Evidence Act.** A fact under evidence Act means and includes: -

- (i) Anything, state of thing, or relation of thing capable of being perceived by senses as per **section 2 1(e) (i) Evidence Act.**

On the duty of the 1st Appellant Court, learned counsel for the Appellant submitted that the first appellate Court is mandated to subject the proceedings and Judgment of the lower Court to fresh scrutiny and if necessary make its own findings. He relied on **Bogere Charles vs Uganda, Criminal Appeal No. 10 of 1996,** where Supreme Court held that “*The appellant is entitled to have the first appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to rehear the case and reconsider the materials before the trial Judge. Thereafter, the first appellate Court must make its own conclusion, but bearing in mind the fact that it did not see the witnesses. If the question turns on demeanor and manner of witnesses the first appellate Court must be guided by the trial Judge's impression.*”

He prayed that this being the first appellant court, it is duty bound to evaluate evidence and arrive on its own conclusion, bearing in mind that it did not have benefit of the observing the demeanor of the witnesses.

In reply, learned counsel for the respondent conceded that the duties of the 1st appellate court have long been settled and with gratitude adopted the submissions of his learned colleague and authority of **Bogere Charles vs Uganda, Criminal Appeal No 1 of 1996,** in respect to the duties of this court in this appeal.

I entirely agree with the above stated position of the law and only wish to add that the duty of the first appellate court is to re-evaluate, assess and scrutinize the evidence on the record. This duty was well stated in **Selle vs.**

Associated Motor Boat Co. [1968] E.A 123 and followed in ***SanyuLwangaMusoke vs. Galiwango, S.C Civ. Appeal No.48 of 1995; Banco ArabeEspañol vs. Bank of Uganda S.C.C. Appeal No.8 of 1998.***

A failure to re-evaluate the evidence of the lower court record is an error in law. The appellate court has a duty to re-evaluate the evidence as a whole and subject to a fresh scrutiny and reach its own conclusion. ***See Muwonge Peter vs Musonge Moses Musa CACA 77; Charles Bitwire vs Uganda SCCA 23/95; Kifamunte Henry vs Uganda SCCA NO. 10/1997.***

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where misdirection to law or fact or an error by the lower court goes to the root of the matter and occasioned a miscarriage of justice. ***See Kifamunte Henry vs Uganda SCCA NO. 10/1997.***

Having satisfied myself and taken due recognition of the Law and rules of evidence applicable to a first appellate court, I will now turn to the substantive matters as raised in the Memorandum of Appeal and proceed to re-evaluate the evidence on record.

RESOLUTION OF THE GROUNDS OF APPEAL

Learned counsel for the Appellant argued all the 3 grounds jointly. I will also do the same for coherence.

Ground 1: The learned trial Magistrate erred in law and fact when she failed to evaluate the evidence on court record thereby occasioning a miscarriage of justice.

Ground 2. The learned trial Magistrate erred in law and fact when she failed to hold that the suit property belongs to the estate of the late Sindani Eria.

Ground 3. The learned trial Magistrate erred in law and fact when she failed to consider the interests of other beneficiaries to the said estate of the late Sindani Eria.

It was submitted by learned counsel for the Appellant that the trial Magistrate rightfully found out that the land does not belong to both the

plaintiff/appellant and the defendant/respondent, but the same belongs to the estate of the late Sindani Eria. (Paragraph 6 of 5 of the judgment of the lower court).

That the Trial Magistrate also rightly found out that the appellant is in possession of Letters of Administration for the estate of the late Sindani, however, the trial Magistrate erroneously held that the "*since these are 2 beneficiaries of their grandfather, I see no reason to interfere with their Current occupation and usage of the land*". (Page 5 last paragraph of the judgment).

She continued to state that "*it is just and equitable that either party owns and occupies the part on which they are currently holding. I therefore hold that each party owns and utilizes the part on which they are in occupation of currently*". (Paragraphs 1 and 2 of page 6 of the Judgment.

Further, that it is not true that the 2 are the only beneficiaries to the estate since there are other grandchildren of the deceased who are equally beneficiaries. The appellant who testified as **PW4** at page 8 of the record of proceedings told court that "*the 2 acres are the only ones that I occupy and my mother (step) with her children*".

Further, that **PW3 Basalaki Jane Ntabingwa** stated "*that the plaintiff is my son, he is a son to my husband and the defendant is also my daughter, daughter to my husband. My husband Akim peter, he died in in 1997...*" (Paragraph 1 page 7 of the record of proceedings). At cross examination she states that the suit land was for Sindani Eria and not for the husband Akim Peter. (Last paragraph at page 7 of the record of proceedings). She continued to state that "Akim Peter had no land. It was his father's land and he died before his father". (Page 8 of the record of proceedings). The Appellants added that from the record it is a fact that the appellant and the respondent both fathered by Akim Peter and Sindani Eria is their grandfather whose estate the suit land belongs to.

They therefore submitted that all the children of the late Akim Peter being siblings of the respondent and appellant equally are entitled to their grandfather's estate since their father had no land.

They argued that the Judgment of the Trial magistrate renders the grant to the appellant useless and ratifies the action of intermeddling with the estate of the

deceased by the respondent. The respondent acted without authority to deal with the suit land by hiring part of it out to **Bafakulela Batulumayo DW3**. (Pages 18 20 of the record of proceedings) and 2nd last paragraph, page 5 of the judgment. They cited the case of **Civil Suit No. 926 of 1998, Joseph M. Nviri vs. Palma Joan OLwoc & 2 others** court held that *"The general position the law as per Section 191 of Succession Act (supra) is that; "Except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction."*

They submitted that clearly, this provision would render any acts of a person or persons in relation to the estate of the deceased person illegal, null and void if that person has not obtained Letters of Administration, because it only by the grant that a person or persons are clothed with the legal authority to deal with the estate or any part of the estate of the deceased.

That it needs no emphasis that being customary heir is a cultural function which does not bestow legal authority on a person to deal with property of deceased, but is essentially meant for someone to *"step into the shoes of the deceased, as it were, solely for cultural functions. However, when it comes to the deceased's property and its administration the customary heir must first obtain the legal authority even if he or she may be a beneficiary; in absence of which he or she invariably becomes an intermeddler in the estate of the deceased. (Civil Case No. 107 of 2003, Rev. Onesifolo Ngaaga & Robinah S. Ngaanga vs Moses Matovu & James Mulumba Musisi).*

They prayed that this court finds that the decision of the lower court is unjust to the extent that other beneficiaries are left out including the widow of Akim Peter which is a miscarriage of justice. The same decision also upholds the unlawful acts of intermeddling by the respondent though she is a beneficiary she has no Letters of Administration, thus no authority to rent out part of the estate land. As such they pray that the appeal be allowed with costs.

In reply, it was submitted by learned Counsel for the Respondents the appellant raised three grounds of appeal and they addressed issue 1 separately and issues 2 and 3 jointly.

In respect of Ground 1, they submitted that the issues for determination were that, the Plaintiff filed **Civil Suit No.24 of 2017** seeking Orders of: a declaration of ownership of 8 acres of land, eviction order, general damages, mesne profits, a permanent injunction and costs arising from trespass to the property at Kakira Town Council, Jinja District. See paragraph 3 and the orders sought from (a)-(i) of the Plaintiff.

- (1) Who is the rightful owner of the suit land?
- (2) Whether the defendant is a trespasser?
- (3) Remedies available to the parties

They argued that in resolution of issue 1, the learned trial Magistrate extensively referred to the evidence of **Sekandi Benjamin PW1** who testified that the father to the parties had died, that he had made a declaration that his 2 sons, Jonubi George and Kole Clement should be the people to inherit his land and other domestic properties. The declaration was oral.

That the said testimony was further given credence by **PW2 Byansi Peter's** testimony. There was no written gift deed or donation and none was tendered in evidences Court in its evaluation indeed considered **PW3** and **PW4's** testimony. Court however made a finding that there being no gift deed or donation in writing, then plaintiff did not prove that the land was given to him as a donation. The trial magistrate went ahead to make a finding that the land was estate property and ordered that the parties should utilize the parts they are using at the time of the Judgment.

That as of trite, the law does not recognize a verbal gift of land. **(See the case of Nassozi & Anor vs. Kalule George William Civil Appeal No.os of 2012 annexed hereto and marked "B")**.

They therefore submitted that this was a Judgment on the strength of the evidence on record and the learned trial Magistrate cannot be faulted for her findings; and invited court to answer this issue in the negative.

In respect of Grounds 2 and 3, learned counsel for the Respondents submitted that the above issues were quite tenuous. That it is settled law that parties are bound by their pleadings and that court cannot grant orders not sought. A party cannot be granted reliefs which it has not claimed in the plaint or claim. This was the central ratio decidendi of the majority in **Fang Min vs. Belex Tours & Travels Ltd Civil Appeal No.06 of 2013**.

That to make findings in respect to estate matters which were never pleaded would have gone against the principle of pleadings and a long settled position of the law. They argued that the trial Magistrate found that the parties were utilizing the suit land and made appropriate orders and essentially ordering the parties to occupy their parts of the suit land they were using.

Further, that the learned senior colleague submits that all the late Akim Peter's children are entitled to their grandfather's estate since their father had no land; and with the greatest respect, the argument is without merit in view off the law on pleadings as submitted above.

They reiterated that the Judgment was on the basis of the evidence on record and pleadings. If Counsel had wanted to drag the entire estate into the suit, he ought to have amended the claim; withdraw the suit as filed or better yet filed a separate suit in which the appellant would plead the facts consistent with children/siblings of the respondent among others as led. estate property; the That the trial magistrate cannot be faulted for restricting herself to the pleadings and evidence they reiterate that these matters were never pleaded, and cannot be raised on appeal.

In addition, that learned Counsel for the appellant also extensively submits on the law on distribution of property of an estate and cited the case of ***Joseph M. Nviri vs Palma Joen Olwe as well as Rev. Onesifolo Ngaaga & Anor vs. Moses Matovu & Anor Civil case No.107 of 2003***, am afraid these authorities are quoted out of context.

That this learned colleague fails to appreciate that the reliefs sought are not in respect to the estate, but are in respect to the plaintiff's (now appellant's) ownership of the suit property and the defendant's trespass; and the trial Magistrate could only make the orders in respect to the 2 parties and rightly so restricted herself to the pleadings and evidence. The Appellant is at liberty to file a suit and plead matters relating to the estate.

They prayed that the entire Appeal is without merit and it ought to be dismissed with costs to the respondent.

In rejoinder, learned counsel for the Appellant submitted that the Respondent's counsel rightly agrees with them that the trial Magistrate

found that the suit land does not belong to any of the parties but to the estate of the late Eria Sindani their grandfather and the appellant is the administrator of the said estate with Letters of Administration tendered in court as per the record.

That Court having found that the land belonged to the estate of the deceased

Eria Sindani and not either of the parties. It ought to have made appropriate orders to avert the illegalities that were being perpetuated by the respondent in intermeddling with the estate.

In addition, that it is erroneous to argue that the trial court could only make orders in respect to the 2 parties. They cited Section **98 of the Civil Procedure Act** which provides that:-

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

They added that under the above section, the trial court was clothed with power to make appropriate orders after finding that the suit land was estate property.

That dealing with the estate of the deceased without letters of administration is intermeddling thus an illegality, *"once an illegality is brought to the attention of court, it overrides all pleadings including admissions"*, - **Case of Makula International vs. Cardinal Nsubuga [1982] HCB 13.**

They prayed that the appeal be allowed, the decree of the lower court be set aside with costs and orders be made that the appellant being the administrator proceeds to distribute the estate to the beneficiaries including the respondent.

In resolving the three grounds in this Appeal, I have carefully analyzed the evidence on the certified copy of the record as availed to me, the Judgement of the lower court and the submissions of both sides. In the first considered place, I will summarize the said evidence for coherence. Before the lower court, the following were admitted as **Agreed Facts**:-

- Land in issue originally belonged to Sindani Eria the grandfather to both parties.
- Sandani Eria donated the land to his two grandsons i.e. Jonubi George and Kole Clement(Plaintiff).

Disagreed Facts

- Ownership.
- Current possession (both parties claim possession).

The following are the issues that were agreed upon to be resolved in this matter before the lower court:-

1. Who is the rightful owner of the suit land?
2. Whether the Defendant is a trespasser?
3. Whether the parties are entitled to any remedies?

The Plaintiff's 1st witness was ***Sekundusi Benjamin, a male aged 75 years resident of Wabulungu Parish, Bukoli B Village, Magamaga Town, Mayuge District (herein after referred to as PW1)***. In his evidence in chief, he confirmed that he knows the parties; the Plaintiff is a son to his brother and Defendant is a daughter to his brother who was called Akim Peter who died on 25/5/1997. That on the last funeral rites on 28/5/1997, the Defendant had come after they had finished burying her father.

That the land in dispute earlier belonged to their grandfather-Sindani Eria, it did not even belong to Akim. That around 3pm of 28/5/1997, Sindani Eria himself made a declaration before the Bataka of Kagogwa village in Kakira Town Council saying that *"if he passes away, his 2 grandsons i.e. Ginubi George and Kole Clement should be the rightful people to inherit his land and other domestic properties"*.

Later on, that Ginubi George and Kole Clement (Defendant) became mad, unfortunately, Ginubi George passed on in 1998; then Adraba Janet (Defendant) remained on the land when she came to bury her father, so she continued using the land temporary. Then the stepmother of the Defendant (widow) to his father brought the Defendant to come to stay with **PW1** and he recovered from the mental illness in 2011, so he decided to go back to the disputed land and tried to ask about missing things on the land like houses and coffee plantation and some trees from the sister to the Defendant.

That she allegedly told him that the land was given to him by Sindani Eria and conflicts began from there. That **PW1** asked her for evidence, but could not show him. That the conflicts ended at LC1 at Kagogwa, the Chairperson

told them to go and sit as a clan but they could not solve the dispute, so the LC I gave Judgment that the Plaintiff was heir and owner of the land and that his sisters should be beneficiaries on the land. That his sisters are three, the Defendant appealed to LC II Court which gave Judgment which did not satisfy the Plaintiff and he filed a case in Jinja Court.

Later, the Defendant left the land and went back to her marital home in August 2017. The other 2 sisters wanted to come back home since they had difficulties, so Plaintiff decided to erect a house for them on the land and the Defendant complained to Police and Plaintiff was arrested and taken to Court on Criminal Trespass Charges which he denied. The case was eventually dismissed since he constructed on his own land.

During cross-examination by defendant, PW1 answered that he and the Defendant's father have ever gone to the Defendant's marital home to solve their marital conflicts when the husband had cut his hand. That it is Akim Peter who came for him telling him to go and settle misunderstandings between their daughter Janet and her husband and Akim told her husband to pay a fine of 200,000/= and dowry and husband said that if no dowry and fine then Janet should come home and stay until it is all paid; so they did not know where he went until the defendant came after the burial of his father like after 1 day. That **PW1** did not make any agreement of taking his home because it is the defendant's father who had responsibility, he just went as a witness. That they came back and left the defendant in his home.

He maintained that the declaration by Sindani was made orally before residents, but it was reduced into writing and **PW1** was around and so the defendant was there. **PW1** did not know whether the Defendant signed as a witness because of being in sorrow, the witnesses did not sign because they were many and it was broad day light. That Sindani was his stepfather and before the defendant came home, there were 2 people who were taking care of him i.e. Otama Keni and City Otama's wife and when the defendant came for the burial of his father, he stayed there. That the Otamas were not related to Sindani, Akim just brought them to take care of his father Sindani and Akim ever constructed a house for them on the land.

That Akim by that time was working in Jinja town and would go home on weekends and sometimes the grandsons would go and take care of their grandfather.

The Plaintiff's 2nd witness was **Byansi Peter, a male adult aged 65 years resident of Kagogwa village, Maweito Parish Kakira Town Council**

Jinja District. (Hereinafter referred to as PW2). In his evidence in chief he testified that the Plaintiff and Defendant are siblings. That the land in dispute belonged to their grandfather Sindani Eria. On 28/5/ 1997, they were having the last funeral rites of their father Akin Peter and then Sindani told them the 'Bataka' that *"his heir (Akim Peter) had died and that if he dies the grandsons Kole Clement and Ginubi George would be his heirs"*; and the Defendant was present.

Later on, Ginubi and Defendant Clement fell sick and in 1998 Ginubi George passed away. Before this time, Plaintiff was staying with his stepmother and Plaintiff did not come for burial of his brother because he was sick, so Adraba Janet remained with her grandfather. That he only started seeing her when she had come to bury her grandfather and she remained behind and later bought a plot in Kagogwa.

That on their father's land, there were 3 constructed houses, but after some time they were destroyed. She did not know who destroyed the house. She constructed her house on the plot she bought at Kagogwa village; she later sold it and went to unknown place. She later planted sugarcanes on her grandfather's land.

PW2 further stated that later, the Plaintiff and Defendant began conflicting for this land; and according to him, the Plaintiff is the owner of this land. That he was Chairperson LC1 and was the one who wrote the declaration by Sindani at the last funeral rites of his Son Akim Peter.

During cross-examination by defendant, PW2 answered that when he was drafting the document, the defendant was around and his name was stated as witness. The witnesses did not sign because of the funeral rites; they were disorganized and sorrowful so they did not take it serious. He did not know the name of Sindani's declaration that he wrote; and was not lying because even others who were present can come and testify. That for him, he wrote people who were around, and did not know whether the defendant's Charles (*Kojas*) were present.

The Plaintiff's 3rd witness was **Basalaki Jane Ntabingwa, a female adult 55 years, resident of Kagogwa village Kakira Maweito Parish (Hereinafter referred to as PW3).** She testified that the Plaintiff is her son, a son to her husband and Defendant is also her daughter, daughter to her husband. **PW3's** husband was Akim Peter who died in 1997 and they buried him. That when they buried him, the father to her husband Sindani Eria said that *"he thought his son would bury him, but instead it is him who*

had buried him and he said his properties that he wanted to give to his son, he has given them to his grandsons, i.e.; 1) Kinubi George (died) and (2) Kole Clement”.

She asserted that later after one month, the grandsons i.e. Plaintiff and Kinubi went mad when the Defendant came for burial she never went back home and so **PW3** informed her that *“her brothers had gone mad, but she never came to see the brothers until she did treated them and some of my late husband's relatives”.*

Further, that the Defendant later used that chance and sold the big part of this land to Baffa. When they came back from treating the Plaintiff and his brother, they even found 3 houses they left on the land destroyed and there were sugarcanes belonging to Baffa. The land is approximately 5 acres.

PW3 maintained that she was around when Sindani was giving his grandsons this land. It was after the burial of her husband, he said this before the residents of the village. That it is not true that Sindani had given the land to Defendant, she came for burial and never went back. She remained in possessions of this land when she had gone to treat the Plaintiff and his brother who had fallen sick.

That her husband Akim had brought his sister called City or Siti to take care of his father Sindani and had even built for them a house thereon on the land, but when they came back they never found this house on the land instead they found only sugarcanes. That the defendant could not even identify where the graves were put, but now the graves were later identified and put back and Plaintiff has a house thereon.

During cross-examination by defendant, PW3 answered that the original owner of this land was Sindani Eria not her husband Akim Peter. Sindani had only one child Akim Peter her husband. Where there were graves and houses, it is her now using the piece of land. The Plaintiff and a brother fell sick and the defendant remained on the land, taking care of it.

That Akim Peter and his two sons were residing in Jinja Town, but would every weekend go to check on Sindani Eria. When Sindani passed away, she was looking after Plaintiff and his brother and was around. That she had spent 10 years on this land. That Akim Peter had no land, it was his father's land and he died before his father.

The Plaintiff's 4th witness was ***Kole Clement, a male adult 43 years, residents of Kagogwa village, MaweitO Parish, Kakira Town Council***

(herein after referred to as PW4). His Agreement was admitted as **PEX.H.A & B dated 15/11/2005 and exhibit B dated 23/11/2017 respectively.**

PW4 testified that the Defendant is his sister from a different mother; and that in 1997, he was 23 years when Sindani their grandfather gave them his properties (all) at the funeral rites of their father Akim Peter who was the only child to their grandfather Sindani Eria. That he made an oral declaration before the residents.

PW4 later after like 1 month fell sick (mad) and **PW3** took him for treatment at a traditional healer's place in Bunya and by the time we came back in 2000 after the death of his grandfather, he later went to Fort-Portal to work and came back in 2005 and rented to Owino 4 acres and later Defendant altered the agreement he had made with Owino and instead left him with 2 acres in his absence. The 2 acres are the only ones that occupy and his mother (step) with her children. Defendant and **Sekindusi Benjamin (PW1)** clan leaders altered his agreement he had made with Owino who died.

That he came back in 2011 and wanted to use his land and she refused to give me the land and he went to LC I Court and won the case. That he wanted the land (whole) that Sindani left for him. If she wants land she can ask him, but not **PW4** to ask her. That he wanted Baffa to leave his land. It is the Defendant that put him there and he wants costs.

During cross-examination by defendant, PW4 answered that when they buried his grandfather on 28/05/1997, he was in his normal senses. He became mad when they came back to the town like after 1 month. Sinani had died on 25/05/1997, in 2005 when he came back to rent the land to Owino, there was coffee, mango, *mvule* trees, sugarcanes and 3 busses the 3 houses the defendant later destroyed then. That the first sugarcanes were belonging to their father, but when he died and they also became mad and since then the defendant remained on the land after he had come to burry or after, the defendant never went back to his home, the defendant is using 3 acres of land; the defendant said he rented this land to Baffa. That Sandani made an oral declaration and it was reduced into writing in **PW4's** presence, the defendant was also present and residents of the village were also present.

The Plaintiff closed his case.

The Defence case opened with **Adraba Janet, a female adult aged 49 years Resident of Namagera in Mayuge District (herein after referred to as DW1)**. Her Agreement was admitted and marked **DEXH1, PID1 and DID2**.

In her evidence in chief she testified that she was a peasant farmer, knew the Plaintiff as her brother and was here because of land issue. The land in contention is in Kagogwa, it is 4 acres. The land belonged to their grandfather Sindani Eria. Sindani had only one son, who was her father, they have her father with the Plaintiff. That no one has Letters of Administration for their late grandfather. She had not yet got it. There is sugarcane on the land, at first she was the one cultivating but she rented it to someone. She admitted that someone else is using her part. It is not part of but all of it.

Further, that in 1996 she was married and Akim Peter and his friend Benjamin father is called Akim Peter. They found her at her marital home at Namagera, her father told her to come and look after her grandfather he is in critical condition. That Akim told her that they have agreed with her grandfather that she looks after him when he dies she take his land. That she asked my father what about her siblings, they were are 3 and her father told **DW1** her siblings have land at Wakisi, this was in 1996 and she did not remember the month.

That she and her 5 kids with her father proceeded to Kagogwa to their grandfather's place. That when they reached her grandpa's home, he was very happy and welcomed her, he had brought the neighbors one woman and 3 men. Her father Akim told her grandfather that he had brought her. Even her grandfather presented her to his neighbors he had called. That her granddad told her to look after him when he dies she takes the land. That she stayed at Kagogwa and started looking after her granddad. My Pap Akim Peter went back to his place in Jinja. Her father unfortunately died in 1997.

That she stayed looking after her granddad with her kids, the situation worsened for about 2½ years. In that situation she got a husband, her granddad died in 1998 towards the end. The neighbors assisted her bury her granddad. After the death of her father in the village her colleagues left and never came back. After her grandfather's death, she stayed on the land. In 1999 she started using the land. There was nothing on the land before, apart from coffee on the side of the trees.

That in 1999, she started planting sugarcane, requested to plant sugarcane and planted on 2 acres she went to Madvani and in 2005 that when she saw her brother coming with the Chairman they asked her to lead her to the garden. They brought the document and asked her to sign on it that her brother has rented the whole land because they were in the middle of the sugarcane plantation, she feared and signed on the document.

DW1 further stated that when she left, she informed the (*Nabakyala*) women representative on the LC committee about what happened. That the *Nabakyala* told her to report the people with authority like LC II and above, she went to her father's friend Benjamin and they called the Plaintiff to LC I Chairman and he refused to come. That the Plaintiff was living with Benjamin in the same home, she left 2 acres for the Plaintiff, he is using it up to now and he was rented it to one tenant who left it in 2016.

That now there is sugarcane he has constructed a house in 2016. That in 2011, he sued her at LCI Court he wanted her off the whole land. He tried to bring a Will claiming granddad wrote it. The Chairman LC I decided the case in the Plaintiff's favour and she was not contented; and she appealed to LC II Court Chairman LC II came to the land they found they are all using the land. That he tried to bring his Will but it was found that it was forged. It was found they were both relatives and it was decided that let everybody remain where he/she is utilizing. That this decision was on 05/05/2012 and she had a copy of this Judgment.

DW1 further stated that when her brother started disturbing her bringing her legal documents from different places, she was not educated and did not know how to read. That she was born by another mother and she and another were produced 2. One passed away. 1) Kole Clement, 2) Ginubi George, 3) Adraba Janet. That they are 3 siblings not five Siblings, even her granddad knew they were 3. Most of the time she stayed with her grandfather, since then she has stayed on this land for 22 years. She wanted Court to help her, her brother is distributing her over that land and that George had no children and no wife.

During cross examination, DW1 confirmed that the land is for her grandfather and that granddad had only Akim Peter. It is not 5 acres, there is also part of it is Government land which belongs to the Railway and she

knows they were 3 children. She also confirmed that her dad died in 1997. That it is not true she arrived when he was already buried, but it is true she was coming from her husband's place that day. She knew Benjamin Sekundusi and he is not a brother to Akim Peter

That she had no grudge with Benjamin, had grudge with Kole Clement's mother, Basalaki Jane; and that Basalaki and Benjamin have never tried to cause her harm. Benjamin was present at Akim's burial. That Benjamin did not participate on the arrangement Sindani Eria was present at the burial and Eria did not on that day gave the land to his brother. That it is not true that she was grieving so much to hear this statement.

She admitted that on the day of her father's burial, she was with her granddad all day. She knew Yotama Kenyi and Citi was his wife; and confirmed that it is true they had a house on her granddad's land; and it is true that Yotama's house was neighboring her granddad's house. This house was not constructed by Akim Peter. That her father was not the one who brought these people Yotama, it is not true that these people were taking care of her granddad and not her and that Benjamin and Basalaki gave evidence in Court.

That it is not true that she reached late for her father's burial, she loved her granddad, would take care of him for free but he is the one who promised her and her father called the neighbors; 1) Emanuell Nsamba, 2) Amazia Ndifabinji; 3) Yotama Kenyi and 4) Saima Duudu. That the giving her of land was not put in writing. That it is true the land was given to her and it is not true the Plaintiff and Ginubi got mental illness after burial of their father. That she was not aware the Letters of Administration were got for her granddad and was not aware of the Letters of Administration were got. **DW1** further stated that it is not true that in 2005 Clement got well and tried to share the land with her.

She tendered her documents for identification and marked PID1 and DID2.

That after that Plaintiff let out his portion to Owino, Kole was aware that they and Benjamin were cancelling his agreement with Owino William; and that it is true when they were cancelling the agreement with Owino, Kole was, not present (Admission).

In re-examination, she responded that her father got her from marriage. That to cancel the agreement between Owino and the Plaintiff came with the LC whom she was not aware when we reached, she could not sign.

In Questions by Court, she responded that that is why she brought her father's friend to give him part of that land and they made another agreement.

The 2nd Defence witness was **Iddi Sali, a female adult aged 55 years Resident of Kabembo village "A" Kakira Town Council, Jinja District (herein after referred to as DW2)**. She knew the Plaintiff and testified that she when the case was reported to LC II, the Parties have the same grandfather Sindani living in a village called Kagogwa, Maweito Parish, Kakira Town Council. That she knows this case when it was brought to LC II, got the LC I file because Defendant came to appeal claiming the Lower Court had made a bad decision and she made summons and called the Plaintiff and LCI organized to get proof on issues.

That she got the file to look at it and found when some of the details were not truthful like; (1) the decision was based on the fact that a female child has no rights on the land talked about, (2) she also realized that the LC I had a Will that looked forged. That the LCI had shared land previously between the parties in the presence of one of the elders and the Clan leader Benjamin Sikundusi and after sharing it, they later said she had no land. That at the time Kole had denied that Defendant was a sister and was claiming he did not even know her.

DW2 further stated that she did further investigations and as a Court after looking at all facts, and the Will that was consented. That during the hearing, the Plaintiff kept lying that they had other siblings who were entitled. They adjourned for many years, Kole failed to have or bring the siblings and they made a decision. That at the end they found the land both people are occupying was for their grandfather Sindani. The parties had with LC I Onega and other elders, and elder Sikundusi Benjamin, Plaintiff was given a portion and Defendant. They went to the scene and there was a boundary, but the Plaintiff wanted to take over the lady's portion and leave her with nothing. That later, Defendant started to be threatened; people would come at night to try to break in and she ran off the village and **DW2** told her to go to Police.

During cross-examination, DW2 answered that she lives at Kabembe village/ Cell. That the Late Sindani was living at Kagogwa, these are 2

different villages. That Akim Peter did not know him but she saw Sindani, he was living at Kagogwa village. That she was not a friend of Sindani, but their villages Kabembe and Kagogwa share boundaries and knew the Defendant before she came to Court; she lived in Sindani's home.

Further, that it is not true that she knew Defendant in the case. It is Kole who did not live in the area/village; and she was not present when Sindani was giving the Defendant land and got facts at LC II Court. That this matter came to her in 2011, she cannot rescind when matter was reported to LC I, but records are there. That the decision was made by the entire LCII Court, she personally did not see Defendant threatened and did not escort Defendant to Police.

The 3rd Defence witness was ***Bafakulela Batulumayo, a male adult aged 41 years Resident of Resident of Polota Kakira Town Council Jinja District (herein after referred to as DW3)***. In his evidence in chief he testified that he was born in Kagogwa, Kakira Town Council, Maweito Parish and knew the Plaintiff and he is a brother to the Defendant; and knew the Defendant who was a resident of Kagogwa and a sister to Clement.

That the issue he knew between these people they have a land conflict. That he is a resident of Kagogwa, was born and grew up in Kagogwa and this land belonged to Sindani and is about 4½ acres, that land has a swamp up to the Railway, the Railway has a curve. On the right there is Amazia Ndifabingi he is deceased, on the corner at the railway after Railway, it is Maduani and on the side of the swamp is bounded by Kasadakawo, those are neighbours of the land.

That the whole land is not for the Plaintiff, the land was initially for late Sindani. Sindani had a son called Akim Peter he was not staying on the village he would come and go away. Sindani had built some houses; he used to stay there with the tenants and time came and they brought Akim's daughter the Defendant to take care of Sindani. That Kole and his brother would come as visitors and go and they used to admire them they were very smart. Peter, son to Sindani died, did not remember, he was first to die and it after some time Akim was sad because he was Sindani's only son. That the Defendant stayed at the home/property. Next they heard Godi who was coming with buried at Kagogwa, they buried him and went. After a short period of time Sindani died, the Defendant was the only one there after the death of Sindani the Plaintiff was not there. After his death the Plaintiff also

died and he was Defendant was there with the children, so she got a husband because of the fear of living in the bush.

That when the Defendant realized it was too bushy she moved from the house and got a Plot she bought. The Plot was from a man called John and after 5 years Kole came back when his grandfather had passed on. That **DW3** was not around that they had shared the land. After Kole shared he rented land to Owino who died but his wives were using the land.

That the wives of Owino left that land. The sugarcane at side of Kole was planted by Owino's wives. That Kakira Sugar works had cultivated for the Plaintiff, the Plaintiff did not agree or was not satisfied with the sharing that in their clan the girl child was not supposed to get land. **DW3** was around in LC I, but at LC II, he was not going there but when he was concluding the case he was there, he came to the village. That it was decided everybody should remain where they were using in their portion.

In addition, that later the Defendant rented to him that land when there was a debt for the Kakira Sugar Works out Growers. That they called the Supervisor of the Company agreed to pay the debt for the Company, he paid the Company 3,900,000/= in 2015 and was using up to today. That she rented to him 16 cuttings and he gave her 20,000,000/= million shillings. That he has cut two cuttings and was even on the 3rd cutting. That every time he goes to that garden the Plaintiff threatens him they abuse him even some part he was told to use Plaintiff is using it forcefully.

During cross-examination, DW3 thought the Defendant's land is 4% each, they each got half. That he is a resident of Polota, Kakira Town Council. That before that, he used to stay at Kagogwa, got married there his first kids are there. That he went to Polota in 2007, used to know Eria Sndani and was born there and they were with the same village. The distance was from here to CPS from his home to his home and even with that distance one would know because it was same village, LC I and the same village leader.

That he would not know what he eats every day, would not know when he leaves the house and all his visitors. That in 1998 he did not know if he was 21, he was born in 1977, did not go to school and used to cut sugarcane. That he got money very early because he did not go to school, had taxi very early even at current rescues are there and was not around when 2nd Defendant came but I saw her after.

That Kole used to come with the brother to see Sindani and he died; he was buried on Sindani's land. The Defendant stayed and got married and in his understanding, he saw Defendant get married after the death of Sindani. The area was bushy that is what he saw. That he was around at Sindani's burial, people were not many. On that day the Defendant was crying, he was not around at burial of Akim Peter, he just heard and was not around when land was shared. That he has never measured the land.

He did not remember the year they went to LC I Court, but they went there, he was not around when Defendant was given the land by Sindani and if he gave it to Defendant they would not have shared the land. That formerly, in respect of land they do not write documents, that he asked the residents in the village and was also a resident before he rented the land LC I and LC 2.

That he got letters allowing him to pay Kakira Company, the Supervisor came, allowed him to pay and were the ones who rented on the other side. He knew him and the Defendant did not give him Letters of Administration, a document from LC II for each to remain where they were using. That he has used the land for about 5 years.

He confirmed that they made an agreement, he did not have the agreement but if asked will bring it. That he did not know the Plaintiff has Letters of Administration, he would have showed them to the LCI and LC II Courts and he did not consult with the Plaintiff because he knew there issues, the Plaintiff was not staying there, it is his fellow tenant staying there.

The 4th Defence witness was ***Kyakange Florence, a female adult aged 52 years resident of Kagogwa village, Kakira Town Council, Jinja District (herein after referred to as DW4)***. She was a house wife and peasant farmer and knew the Plaintiff. She testified that she got to know him when he reported the land case to Committee, at that time she was part of the LC I as the leader of women; and did not remember when this was Kole was reporting the Defendant over the land of their grandfather called Sindani, she has ever seen.

That since they are residents, Sindani's land was in a bush his home was bushy. In her knowledge, James got a hubby while she was looking after her grandfather, after some time Sindani died but **DW4** did not remember the year. After the death, as residents they did not see any other person other than the Defendant and they completed the last funeral rights and left.

That after some time, the Plaintiff came and Defendant introduced him to them as the brother, they shared land but she was not there. The Defendant gave her part of her land, rented on her side and she used it for & years to cultivate yams, because it was a swamp, after some time her brother came while she was digging he just walked around and greeted her.

That after Defendant came to her and told her that her brother is suing her, he wants to take her land and told her this as her friend. That on the side of the Plaintiff he built a house, also sugarcane plantations. She did not know how big the Defendant's land is, used to use the Swampy part only and had nothing much to tell Court.

That she knows their case was completed, in the village, it was decided and the brother said in their culture the woman cannot own land, they were called to negotiate and she not know what followed, but was just called to give evidence in Court.

During cross-examination, DW4 answered that the land is located at Kagogwa, she been on this village for 35 years in marriage and used to see Sindani as a resident of that village, but they were not very near each other. The Defendant as a born again Christian used to pray from behind her house. That the Defendant is her friend and she told her that her father Akim called her to take care of her grandfather.

That before he used to stay there alone, Sindani died when she was around and Defendant was around, she stayed there. Adraba told **DW4** before the grandfather died he told her she had looked after him so he gave her the land. That she never saw visitors come to see Sindani because she was not a nearby neighbor. That there are other persons buried on the land, their father, they went for burial. Their father died first, their brother died he was also buried on this land and she remembered when he died, but she went for burial. These people were buried on Plaintiff's portion of the land and the whole portion of land was for their grandfather.

In Re-examination, she answered that after LC I, they went for LC2 to complain. Next she went to LCII Court.

During Locus in quo, it was found that there was a house of Byansi Peter, **PW2**. 2.5 acres for the Defendant, however **PW1** stated that it was 3 acres. The sugarcane on the land is for the Defendants tenant. All the land belonged to the parties' grandfather, there were graves one for the

grandfather and another for the brother and it was also established that it is the burial grounds for the parties.

I have critically analyzed the circumstances under which the Appellant obtained Letters of Administration for the estate vide **Jinja AC-140 of 2016** marked as **Exhibit PID1** for the Estate of the Late Sindani Eria. It is not in dispute that the whole of the suit land was owned by the Late Sindani Eria. A critical examination of the contents of the document therein corroborates the evidence of **PW1, PW2, PW3 AND PW4** on all fours very well.

It seems to confirm what the above stated witnesses testified to as the intentions and declarations of the Late Sindani Eria the original owner of the suit land before the mourners and Local Council Committee members on the 28th day of May 1997 during the final rights of the Appellant's father, that his grandsons Peter Akim that the Appellant and his deceased brother would be his heirs. It is also not in dispute that the ... the son of the Late Sindani Eria had three children who included Late Peter Akim, Kole Clement and Nabutono Adraba.

The evidence of **PW3 Basalaki Jane** also confirms that the land was the one that the late Eria Sindani owned; and it is the same land that was sold by the Respondent to Bakki in the of the Respondent without Letters of Administration nor being an heir.

The witnesses **PW1, PW2, PW3 and PW4** were all in agreement that they had were present when the Late Sindani Eria make the declaration that to the effect that since his only son had passed away before him, then if he passes away, his 2 grandsons i.e. Ginubi George and Kole Clement should be the rightful people to inherit his land and other domestic properties.

Section 91 of the Evidence Act Cap 6 provides that:-

“When terms of the contract, grant, or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this act.”

And **Section 92 of the Evidence Act Cap 6** is also to the effect that ‘no oral evidence is admissible where there a written document to vary, substitute, add or subtract from its contents’.

From the above, it is clear that the Estate of the late Sindani Eria is comprised of the suit land in this matter and it also confirms that the estate of Sindani Eria, which basically is comprised of the suit land was not legally administered until his grandson Kole Clement the heir. **PW1 in paragraph 12 -16 on page 4 of the record of proceedings** in his Witness Statement was clear that *“Around 3pm of 28/5/1997, Sindani Eria himself made a declaration before the Bataka of Kagogwa village in Kakira Town Council declaring that if he passes away, his two grandsons i.e. Ginubi George and Kole Clement should be the rightful people to inherit his land and other domestic properties.”*

The above is corroborated by **PW2 in paragraph 33-35, PW2, Byansi Peter On page 5-6 of the record of proceedings stated** that ...*“the land in dispute belonged to their grandfather Sindani Eria. on 28/5/1997, we were having the last funeral rites of their father Akim Peter and then Sindani told us the ‘Bataka’ that his heir (Akim Peter) had died and that if he dies the grandsons Kole Clement and Ginubi George would be his heirs and the Defendant was present ”.*

It is also confirmed by **PW4 Kole Clement in paragraphs 11-15 on pg 8 of the record of proceedings.** *“....In 1997 I was 23 years when Sindani our grandfather gave us his properties (all) at the funeral rites of our father Akim Peter who was the only child to our grandfather Sindani Eria”.*

The above was also confirmed by **DW1** in her evidence in chief *“the land belonged to our grandfather Sindani Eria. Sindani had only one son, who was my father, we have the same father with the Plaintiff”.*

It is also confirmed by her witnesses **DW2 and DW3**, that the suit land originally belonged to their grandfather the late Sindani Eria.

The above evidence from both sides is confirmation that both parties agree about the original owner of the suit land being the late Sindani Eria, the grandfather of the parties; and it is clear that they both knew very well that the suit land belonged to their late grandfather exclusively, who chose the heirs to his estate to his grandsons Kole Clement and Ginubi George.

The above uncontested evidence also throws light on the fact that the late Eria Sindani made declarations in respect of his estate as far as it relates to **Kole Clement** and his deceased brother **Junobi George** during his lifetime.

It is also clear from the evidence of both **PW1** and **DW1** that they both are claiming ownership of the land; and that is the major contention in this matter. The evidence also reveals that the Appellant who testified as **PW4** is not willing to sharing a portion of the suit land with the Respondent who is claiming that the whole suit land was given to her by their late grandfather.

Be that as it is, the assertions by the Respondent are not supported by any documentation to that effect. The Respondent has instead taken over the suit land, utilized it for herself and also went ahead and rented parts of it to other users without the consent of the Appellant.

On the other hand, although the Appellant also claims that the suit land was gifted to him and his brother, as per the averments of his evidence and his witnesses **PW2, PW3 and PW4**, the question that court must answer is whether it qualified as a gift *inter vivos* in law.

A gift *inter vivos* is defined in **Black's Law Dictionary 8th Edition at page 710** as a gift of personal property made during the donor's life time and delivered to the donee with the intention of irrevocably surrendering control over the property.

In **Joy Mukobe vs. Willy Wambuwu HCCA No. 55 of 2005** relying on other decided cases, court held that *"for a gift inter vivos to take irrevocable roots, the donor must intend to give the gift, the donor must deliver the property, and the donee must accept the gift"*.

I have had the benefit of analyzing the donation agreement attached on the Plaintiff of the Plaintiff/ Appellant, however, this court cannot rely on it because it was never admitted in evidence at trial by the said Appellant. The claim that the suit land was donated to him by his grandfather remains declarations only made by the witnesses and is not unsupported by any evidence; it therefore cannot stand as such.

It is also not denied that the Respondent started using the late grandfather's land without any grant of Letters of Administration. **Section 191 of the Succession Act** provides;

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

The reading of the above section forestalls any right to claim for property of an intestate estate by any person until the grant of Letters of Administration in respect of his or her estate have been duly granted.

In other words it protects the estate from being wasted or intermeddled with. On the other hand, once a person has obtained Letters of Administration for an intestate estate, then that person has a right to deal with the deceased's estate.

With the above stated findings, it is clear that the Appellant obtained Letters of Administration in respect of their late grandfather's estate which he obtained dated 31st of January 2017 for the estate of the late Sindani Eria. This therefore protects him from claims of persons that have not been established as beneficiaries thereof.

Section 2(r) of the Succession Act Cap 162 (as amended) defines 'a personal representative' to mean "*person appointed by law to administer the estate of a deceased person*".

Further, **Section 180 of the Succession Act Cap 162 (as amended)** provides that "*the executor or administrator as the case may be of a deceased person is his or her legal representative for all purpose and all property of the deceased person vests in him or her as such and in the instant case the appellant is the administrator*".

I have relied on the case of ***Israel Kabwa vs. Martin Banoba Musiga Civil Appeal No.52 of 1995***, the respondent was a customary heir and son to an intestate, and had developments on the land in question. Although he did not possess Letters of Administration at the time, he successfully instituted legal proceedings for the cancellation of the Appellant's title to the suit land on account of fraud. The appellant's first ground of appeal was whether or not the respondent had *locus standi* to institute legal proceedings against him. It was held that:-

"The respondent's locus standi is founded on his being the heir and son of his late father. In terms of section 28(1) (a) and 28(2) of the Succession Act as amended, the respondent could very well be entitled to 76% or more of the estate of his father. He is thus defending his interest. His position as heir has been enhanced by the belated grant of letters of administration in that way. Therefore I think that ground one should fail. It would still fail in my

view even if no letters of administration had been obtained because the respondent's right to the land and his developments thereon do not depend on letters of administration."

The above decision indicates that a son and customary heir to the deceased is a legally recognized beneficiary to his estate by virtue of **Section 27 of the Succession Act**; and it is clear that the respondent in that case had an interest in protecting or preserving the deceased's estate and therefore did have *locus standi* to sue without first obtaining letters of administration.

Relating the above to the instant case, it is not in dispute that the parties to this appeal are siblings and that they both shared a common grandfather named Sindani Eria. Having categorically found that the land in dispute belonged to their late grandfather Sindani Eria, the evidence also confirms that the Appellant was pronounced heir and following up on that, he went ahead and obtained Letters of Administration for the Estate of the late Sindani Eria.

The above uncontroverted evidence proves that the Appellant has proved that the estate of his grandfather the **late Sanduni Eria** is legally administered by himself, as such, the evidence adduced in the lower court as the heir clearly confirms that the Appellant is the most suitable beneficiary of that estate. He being appointed the heir and later appointed by law to administer the estate or any part of the estate of **the Sanduni Eria** who is his grandfather cannot therefore be challenged in law.

The above means that the Respondent cannot deny the Appellant his rights to administer the estate property since it did not belong to her late father Peter Akim for her to inherit in accordance to the succession laws, but was property of their common grandfather **late Sanduni Eria**. This is supported by the evidence of **DW1** and **PW1 Kole Clement**.

Much as there is also ample evidence to prove that the Respondent has been in occupation of the suit land after the death of her late grandfather **Sindano Eria**, long before the Appellant returned to claim his rights, this does not give her a right to deal with the estate property in the manner she did.

It is therefore my finding after critically analyzing all the evidence led before the trial court by both sides that the rightful claimants to the suit property

the Appellant and his deceased brother **the late Ginubi George** who were the only customary heirs, to their late grandfather **the late Sindani Eria**.

I have also found concrete proof that after the death of **the late Sindani Eria**, the Appellant was already declared a customary heir by his grandfather and since the Appellant went ahead and obtained Letters of Administration to legally administer the said estate, this cannot be challenged. It is not in dispute that the said Letters of Administration acquired were in respect of the whole estate of **the late Sindani Eria** inclusive of the rented area occupied by the Respondent and that which she rented out.

From the foregoing, while I agree with the submissions of learned counsel for the Respondent that the suit land is property of the **late Sundusi Eria**, the evidence of both is the whole estate of the late Sundusi Eria. This means that the Respondent does not qualify as a sole beneficiary to this estate under the **Succession Act Cap 162 (as amended)**, but is only entitled to the share that should have accrued to her late father Peter Akim.

My conclusions on the above is that the learned trial Chief Magistrate acted erroneously when in her judgment, she ordered that the Letters of Administration granted to the Appellant were for his father's estate, yet their father Akim Peter died with no property and that the Appellant was holding the property in trust for the Defendant.

Turning to the current occupation and use of the suit land, under S.2 (a) of the Succession Act Cap 162, an Administrator is defined as *"a person appointed by court to administer the estate of the deceased person when there is no executor"*.

In his evidence **DW3**, on page 18 of the record of proceedings testified that in 2015, the Respondent rented him 16 cuttings for a consideration of UGX. 20,000,000. The Letters of Administration were acquired after the Respondent who is also a granddaughter of the late Sindani Eria had rented out part of the suit land.

On the other hand, the evidence led by **PW1** shows that the Respondent / Defendant is currently in occupation of the suit land, although **PW1** is also using a portion thereon which he rented to Owino carry out cultivation of sugarcanes. This was confirmed by **PW4** during cross examination when she responded that *"I want the land (whole) that Sindani left for me. If she wants land she can ask me but not me to ask her. I want Baffa to leave my land. It is the Defendant that put him there."*;

It was also confirmed by **DW2 and DW3, Bafakulela Batulumayo** to whom the Respondent without authority to deal with the suit land by hired the land to and **APW1 Hajjati Sawuya Wanyana**.

It is also undisputed by both sides that the late Peter Akimu, father to the Appellant and Respondent had no property of his own although it is undisputed that **Nabutono Adraba Janet** also lived on the suit land after her marriage had failed and she returned to the suit land in or about 1998. The evidence also reveals that she started selling off a portion of the suit land as per 9-15 on page 14 of the record of proceedings *"it is not true that in 2005 Clement got well and tried to share the land with me. After the Plaintiff let out his portion to Owino. Kole was aware that we and Benjamin were cancelling his agreement with Owino William. It is true that when we were cancelling the agreement with Owino, Kole was not present"*

Currently, it is clear that **DW1, Nabutono Adraba Janet** does not live on the suit land, but rented out the land to out growers to grow sugarcanes. The same was stated by **PW4 Kolw Clement** in **paragraph 7** of his evidence in chief and also during *locus in quo*, it was found that she has rented out 2.5 acres of the land to **DW4**.

The evidence also shows that **DW1** was not only claiming only a portion of the suit land, but wanted to take the whole suit land forcefully claiming that her grandfather had gifted it to her before his death, but I have already pronounced myself that there is no valid gift *inter vivos* in law.

That means much as the Respondent claims of ownership, of the whole estate of the **late Sundusi Eria** where she had stayed for over 22 years, but was aware that the Appellant **Kole Clement** has superior rights to the suit land being the (surviving heir to the late Sundusi Eria) and his late brother who were declared by the **late Sundusi Eria** as his heirs cannot stand.

In the circumstances, my findings are that by taking out Letters of Administration to the estate of his grandfather the **late Sundusi Eria**, the Appellant cannot be faulted. He is therefore entitled to administer the estate of his late grandfather **Sundusi Eria** following the law taking into account the fact that he was mentioned by the late with the late **Ginubi George** as the only customary heirs, to their late grandfather **the late Sindani Eria**.

It is trite law that as per **section 4 of the Administrator General's Act**, Letters of Administration do not confer ownership of land in the holder of the same as that is not the purpose of acquiring them. Instead, they give the holder the right to administer the estate of the deceased and distribute that is to be distributed to the right parties; and I agree with the cases of **Joseph M. Nviri vs. Palma Joan OLwoc & 2 others, Rev. Onesifolo Ngaaga & Robinah S. Ngaaga vs Moses Matovu & James Mulumba Musisi (supra)** relied upon by learned counsel for the Appellant.

The above therefore renders any acts of a person or persons in relation to the estate of the deceased person illegal, null and void if that person has not obtained Letters of Administration, and in this Appeal, when the Appellant applied for and was granted Letters of Administration to the estate of the **late Sundusi Eria**, he did so to fulfil his legal mandate already bestowed onto him by his late grandfather.

The Respondent is found to have intermeddled with the estate especially when instead of protecting the estate, she has taken it as her own and gone ahead to sell and or allocate portions of it to other persons.

The Appellant as holder of the Letters of Administration to the estate of the **late Sundusi Eria** is entitled to administer that estate to all the beneficiaries who include himself, the widow of Akim Peter and the Respondent respectively.

From the foregoing, it is my decision that the three grounds in this Appeal SUCCEED. The Judgment and Orders of the learned Magistrate Grade one is quashed and set aside. They are replaced by the orders in this Judgment.

Finally, it is now well established law that costs generally follow the event **See Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)** and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, the Appellant has succeeded in her Appeal against all the Respondents; and I see no justifiable reasons to deny him costs in this Court

and the Court below; he is therefore awarded full costs in this Honourable Court and in the lower Court.

In the final analysis, it is my decision that:-

- (i) This Appeal is ALLOWED.
- (ii) It is declared that the suit land forms the whole Estate of **the Late Sundusi Eria**.
- (iii) The Appellant as the heir and Administrator of **the Late Sundusi Eria** rightfully acquired the Letters of Administration to administer his estate.
- (iv) The Appellant as holder of the Letters of Administration to the estate of the **late Sundusi Eria** is entitled to administer that estate to all the beneficiaries who include himself, the widow of Akim Peter and the Respondent respectively.
- (v) The Respondent is found to have intermeddled with the estate property for **the Late Sundusi Eria**.
- (vi) The Appellant is awarded full costs in this Honourable Court and in the lower Court.

I SO ORDER

HON. JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/04/2024

This Judgment shall be delivered by the Honorable Magistrate Grade 1 attached to the Chambers of the Senior Resident Judge Jinja who shall also explain the right of appeal against this Judgment to the Court of Appeal of Uganda.

HON. JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/04/2024

