

District measuring approximately 7.5 acres were jointly owned by the 1st Appellant and her late husband, Padda Constant and were therefore not a subject of distribution.

30 The trial Chief Magistrate found for the Respondents ruling that the Letters of Administration were obtained lawfully but went further to redistribute the estate by giving the matrimonial home to the 1st Appellant and redistributing the rest of the land among the children based on the line of their two (2) different mothers.

Duty of this Court

It is the duty of this first Appellate Court to re-consider and analyse all the evidence on record and come up with its own decision. See **Father Nanensio Begumisa & 3 ors Vs Eric Tiberaga SCCA 170 OF 2000;[2004] KALR 236**

Grounds of Appeal.

The appeal is based on the following grounds, namely;

- 40 1. That the learned trial Chief Magistrate erred in law and fact when she failed to find that the 1st Defendant fraudulently acquired Letters of Administration thus occasioning a miscarriage of Justice.
2. That the learned trial Chief Magistrate erred in law and fact when she found that there was no mismanagement of the late Padda Constant's estate by the Respondents contrary to evidence on court record.
3. That the learned trial Chief Magistrate erred in law and in fact when she failed to find that land comprised of a home situate at Magada is matrimonial property thus occasioning a miscarriage of justice.
4. The learned trial Chief Magistrate erred in law and fact when she reached a conclusion that the 1st Appellant was not staying with her husband thus not

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entitled to a share in her husband's estate contrary to the evidence on court record.

5. The learned trial Chief Magistrate erred in law and in fact when she found that the Appellants departed from their pleadings contrary to the Plaintiff and evidence on court record.
6. That the learned trial Chief Magistrate erred in law and in fact when she failed to find that the distribution as per the inventory was illegal and unjust.
7. That the learned trial Chief Magistrate erred in law and in fact when she distributed property jointly acquired by the 1st Appellant and the late Padda Constant thus occasioning a miscarriage of justice.

I note that some of the grounds framed are repetitive in substance albeit disguised under distinct heads thus offending **Order 43 rule 2 of the Civil Procedure Rules S.1- 71**. To that end, I will resolve grounds 1, 2, & 5 separately and combine grounds 3, 4, 6 & 7 together.

My Considered Opinion

Ground One.

That the learned trial Chief Magistrate erred in law and fact when she failed to find that the 1st Defendant fraudulently acquired Letters of Administration thus occasioning a miscarriage of justice.

The Appellants argued that the advert in the monitor newspaper was not sufficient notification within the meaning of effective service to warrant attendance of the family meeting at the office of the Administrator General since not all people read newspaper and that this act proves fraud on the part of the Respondents. In my view, this submission is without merit because Daily Monitor is a newspaper written in the English language that has nation wide circulation capable of being read by the 1st

Appellants' children including the 2nd Appellant since the children informed this court that they understood english. I therefore find that the said advert constituted sufficient notice to the Appellants.

The Appellants further contended that the non disclosure of the existence of a widow, Nabirye Sarafia Babisona Padda by the Respondents was a clear manifestation of fraud and further contended that failure by the Appellants to bring
80 the minute of the family meeting held by the Chief Administrative Officer of Mayuge District (CAO) that recommended that the two families were in conflict and should be separated, to the attention of the Administrator General connotes bad faith, dishonesty and fraud on the part of the Respondents.

In rebuttal, the Respondents submitted that as per the court record and contrary to what was claimed by the Appellants, the CAO as a representative of the Administrator General at the District submitted the minute of the family meeting to the Administrator General, despite the fact that no consensus was reached in choosing the 1st Respondent as the Administrator of the estate of the late Padda Constant.

90 The Respondents further submitted that at all times the Appellants were well aware of the 2nd meeting convened by the Administrator General which passed the resolutions that are being contested but the Appellants simply chose to boycott the same.

I have perused the evidence on record and I find that the Administrator General was right to go ahead and issue a Certificate of No Objection to the 1st Respondent on account that the Appellants for their own reasons deliberately wanted to frustrate the appointment of the Administrator of the estate of the late Padda Constant yet there was no caveat halting the said process.

100 I further note that the non-disclosure of the widow to the Administrator General was remedied by the learned trial Chief Magistrate who rightly found that the 1st Appellant was entitled to the matrimonial home.

It is my finding therefore that the Appellants' claims of fraud have not been proved to the satisfaction of court to warrant revocation of the grant. This ground of appeal fails.

Ground 2

That the learned trial Chief Magistrate erred in law and fact when she found that there was no mismanagement of the late Padda Constant's estate by the Respondents contrary to evidence on court record.

110 The Appellants argued that the 2nd Respondent, Waiswa Paskali Mwanda had taken over the matrimonial house and ejected the 1st Appellant while the 1st Respondent as the Administrator looked on and the attempt by the trial Magistrate to restore the 1st Appellant to the home was on the basis of her children and not in her own right as the widow to the late Padda Constant.

The second justification advanced by the Appellants was that the 1st Respondent as Administrator had proceeded to cut trees which he never accounted for to the detriment of the deceased's estate. Counsel for the Appellants relied on the authority of **Babumba & 13 ors Vs Ssali Babumba Civil Suit No. 78 of 2012.**

120 In rebuttal, the Respondents submitted that there was no mismanagement of the estate because upon the grant of the Letters of Administration on 21/11/2017, the 1st Respondent filed an inventory on 8/05/2018 which was within the stipulated statutory time.

In the Inventory, the 1st Respondent had distributed the land on which the matrimonial property sits to the 1st Appellant and her children and then distributed

the land located at Namakakale village, Imanyiro Sub-county, Mayuge District to a one Nabirye Padda Ruth and her children including the Respondents.

The Respondents further submitted that no evidence was adduced by the Appellants in respect of the allegation of cutting down trees and selling off cows but instead argued in their counter claim at the lower court that upon the death of Padda Constant, the Appellants descended on the trees, cut them and sold the same for
130 their own benefit without accounting to the administrator or other beneficiaries.

I have revisited the evidence on record and I wish to reiterate that the redistribution of the matrimonial home to the 1st Appellant by the learned trial Chief Magistrate remedied the injustice that the widow would have suffered had she not been restored in the matrimonial house. This was evident when this Court conducted a locus visit on 31/ 8/ 2023, the 1st Appellant was occupying the said house.

On the aspect of cutting down trees and selling the same, I find no satisfactory evidence from both the Appellants and the Respondents who made counter accusations to support the allegations made. In the circumstances, am inclined to agree with the learned trial Chief Magistrate on this aspect. This ground of appeal
140 fails.

Before I take leave of this issue, its important to highlight what constitutes mismanagement of an estate. Mismanagement essentially denotes deliberate wasting away of an estate in such a way that its value is diminished contrary to the intentions that its former owner had and desires of development for the person next in succession. In the instant case, the mere occupation of the matrimonial home by the 2nd Respondent to the exclusion of the 1st Appellant does not constitute mismanagement per se in the circumstances. The 1st Appellant was never evicted in the first instance and therefore she should have sought for entry into the matrimonial home upon her return.

150 **Grounds 3, 4, 6 & 7**

Essentially, grounds 3, 4 & 6 of this appeal revolved around the issue of legality of distribution of the estate by the 1st Respondent but more specifically the aspect of the matrimonial property.

I have already found that the decision by the learned trial Chief Magistrate to evict Waiswa Paskali Mwanda, the 2nd Respondent from the matrimonial home and going ahead to redistribute the same to the 1st Appellant proper and lawful. The redistribution by the learned Chief Magistrate is evident enough to show that the lower court recognized the land and the house as matrimonial property. Grounds 3, 4 & 6 fail.

160 The crux of ground 7 in my view is the status of ownership of the 2nd piece of land. It is located at Namakakale village, Manyiro sub-county, Mayuge District (Kabira) measuring approximately 7.5 acres. This is the land that Wakoire Peter Padda as Administrator distributed to his mother, Namumbya Ruth and her children including himself. This is also the land that the 1st Appellant claimed is her personal property and not estate property available for distribution.

The evidence on record shows that the Appellants argued two different versions of acquisition of this particular piece of land. The 1st Appellant testified that she purchased the said land solely through a monetary contribution that was made by her father, a one Lumala Constant but later contradicted her self when she said that
170 she acquired the same jointly with her late husband, Padda Constant.

The Appellants finally submitted that the only property left for distribution is the money in form of pension on the deceased's account and the cows.

In rebuttal, the Respondents argued that the 1st Appellant had failed to prove that her father contributed to the purchase of the suit land or that this land was

purchased by Padda Constant for her sole use. No documentary evidence was tendered in court to prove the allegations of ownership by the 1st Appellant.

I have revisited the evidence on record and come to the conclusion that it neither supports the allegation that the father of the 1st Appellant bought the land for Nabirye Sarafia Babisona Padda, nor does it suggest that her husband, Padda
180 Constant bought it for her exclusive ownership and use. In any case, no documentary evidence was adduced by the 1st Appellant in proof of her claims. I therefore find her claims baseless.

However, this Court technically excludes a one Namumbya Ruth, the mother of the Administrator and other children from taking benefit of this 2nd piece of land because she was not legally married to Padda Constant as a wife and therefore not entitled to a share in the deceased's estate.

By good coincidence, my findings on the ground show that, this Namumbya Ruth no longer stays in the matrimonial home or on this 2nd piece of land. Fortunately, her children led by a one Major Padda have found her room else where out side the
190 estate.

Ideally, all children as beneficiaries should have an equal share in an intestate estate such as this one, however, practically speaking, this is a divided family. Allowing any single child to cross over and benefit from the other piece of land would fuel and propagate serious conflict, sustained animosity, malicious damage to property and threatening violence on a daily basis.

For this Court to hold otherwise would create a breeding ground for continued criminal allegations and counter accusations as has been demonstrated before and after the Judgment of the learned trial Chief Magistrate.

It was on the above basis that this court was forced to call for criminal files from
200 Mayuge to pave way for the hearing of this Appeal. One such file is **Criminal case**

No. 84 of 2023, Uganda v. Wakoire Peter Padda at Mayuge Chief Magistrate Court, wherein one beneficiary called Kawala Jane brought criminal action against the Administrator.

Pursuant to **Article 126 (2) (e) of the Constitution of the Republic of Uganda**, this court will not insist on equal shares to each and every child but rather distribute the estate along two (2) major divisions based on the two (2) different mothers in order to kill out animosity, rebuild peace and family unity, prevent allegations of threatening violence and malicious damage to property.

210 The best remedy for polygamous families such as this one, is for court to give each distinct semi-autonomous estate a limited grant in respect of the land they hold. In this case, two (2) limited grants may be granted if applied for. *See Tereza Nyinabarongo & Anor v. Erina Komunda, H.C.C.S No. 04 of 2002 at Fort Portal*. I remain hopeful that with the passage of time, the wounds of hatred, greed, jealous and ill-will will heal and disappear.

Therefore even if ground 7 has partially failed, it has ably afforded this court latitude to deal succinctly with the question of distributing an estate of a polygamous man whose children and wives stand divided.

Ground 5

220 *The learned trial Chief Magistrate erred in law and in fact when she found that the Appellants departed from their pleadings contrary to the Complaint and evidence on court record.*

I note with concern that the Appellants made particular averments in their Pleadings which they later abandoned during the trial and instead generated new and different claims. One was on the particulars of Fraud. They never pleaded the fact that the 1st Appellant as the widow to the late Padda Constant was never mentioned in the minutes of the 2nd meeting at the office of the Administrator

General. The second was in relation to acquisition of the two pieces of land, in the
Plaint, the Appellants averred that the two pieces of land were acquired jointly by
both the 1st Appellant and her late husband while at trial, the 1st Appellant testified
230 that she had solely acquired both properties.

In the case of **Interfreight Forwarders (U) Ltd Vs East African Development
Bank, SCCA No. 33 of 1992**. Court held;

*That the system of pleading is necessary in litigating. It operates to define and deliver
clarity and precision of the real matters in controversy between the parties upon
which they can prepare and present their respective cases and upon which court will
be called upon to adjudicate between them.*

This departure from pleadings cannot be allowed by this court on appeal. I therefore
uphold the finding of the learned trial Chief Magistrate on this issue.

In the final result, this appeal fails and is accordingly dismissed. This being an estate
240 dispute by the same family, each party shall bear its own costs.

I so order.


BATEMA N.D.A
JUDGE
28/02/2024

