

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CA-0036-2009  
(FROM SIRONKO CLAIM NO. 21/2007)**

**NABAHAMA BENARD** ..... **APPELLANT**  
**VERSUS**  
**TERUSA NABUDUWA** ..... **RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

This is an appeal against the judgment and orders of Her Worship **Julia Acio** Magistrate Grade I Sironko.

The memorandum of appeal listed five grounds of appeal as herebelow.

Ground 1- That the decision of the learned trial Magistrate is tainted with fundamental misdirection and non direction in law and on the facts.

Ground 2- That the learned trial Magistrate did not evaluate evidence properly or at all reaching a decision which cannot be supported.

Ground 3- That the learned trial Magistrate erred in law and fact when she improperly admitted the alleged Will of the late **Mika Wamaye**.

Ground 4- Learned trial Magistrate erred in fact and law when she held that Respondent cannot legally sell any part of the suit land.

Ground 5- Learned trial Magistrate erred when she held that suit land be amicably distributed under supervision of the caretaker and administrator of the estate.

In his submission counsel for appellant abandoned ground 3 and argued all the other grounds together. Respondent's counsel however, chronologically addressed court on all the grounds as listed.

The duty of a first appellate court is to review the evidence afresh and make independent conclusions thereon. This review is however done cautiously aware that the appellate court is disadvantaged having not listened to the witnesses.

The brief facts are that the Respondent sued the appellant in the magistrate's court of Sironko at Sironko vide claim No. 21 of 2007 for vacant possession and eviction from the suit land which they claimed was bequeathed to them vide their late father's Will. From the lower record, the late **Mika Wamaye** was father of Respondent and appellant and had land left in Mbale and Busoga. Appellant holds letters of Administration to the said estate obtained in 2004.

According to the lower court records he has not yet distributed the estate to the beneficiaries, hence the suit in court.

When the matter appeared before the lower court, the trial Magistrate in her judgment found in favour of the respondent, on the two issues she considered to wit;

1. Whether the heir distributed the land to the beneficiaries.
2. Whether Respondent had a right to dispose off the land he sold.

She held that the appellant as administrator of the estate ought to have distributed the property to the beneficiaries who included Respondent. She further held that appellant had no right to sale any part of the said land. (See pages 3 & 4 of judgment). She then ordered that the land be distributed under the supervision of the caretaker in conjunction with the Administrator of the Estate, as per **Mika's** wishes.

In the appeal, appellant argued in submission that the trial Magistrate was wrong and in error to hold as such (Grounds 1, 2, 4 and 5).

However respondent in submission agreed with the findings of court as raised and invited court to disallow the appeal. His main argument was that the appellant as an Administrator of the Estate failed and refused to distribute the estate. He further argued that in the judgment court acted in defence of the estate to protect it from going to waste by appellant, who failed to distribute but went ahead to sale and utilize the proceeds for his own benefits.

According to the lower court proceedings, three witnesses testified for the claimant.

**Terusa Nabuduwa, Joelia Namaganda, and Biritiyo Makongo.** These witnesses all confirm that the land was left to the three beneficiaries of the deceased i.e. plaintiff, respondent and another sister. They confirmed that the respondent has refused to hand over what belongs to the claimant as a fellow beneficiary (see PW.3 **Biritiyo Makongo's** evidence).

In defence Respondent- **Benard Nabahama** stated that he was holding the land as his lawful possession- which was given to him to inherit from his late father. He told court that he holds letters of administration to the estate. He also averred that claimant had no claim to the land.

I have perused the judgment of the trial Magistrate. It is my finding that the judgment carefully put into consideration the issues at stake, and carefully reviewed the evidence and applied the law correctly thereon.

I find as follows on each ground therefore:

### **Grounds 1, 2, 4 and 5**

The governing principle in this case is the law of succession. The fact that appellant holds letters of administration is not a licence for ownership of the property of the deceased. A holder of letters of administration is a mere agent (legal) of the deceased who deals with the estate in accordance with the provisions of the Succession Act. It is a requirement of the law that he:

- i) Follows the law and distributes the estate to beneficiaries.
- ii) Files a return (inventory) within six months of the grant and proceed to distribute/administer the estate.

Both appellant and respondent's counsel are agreed on the role of an Administrator and do address court on this issue in their submissions.

I however do not agree with appellant's counsel's conclusions that the trial Magistrate was wrong to include the heir in the distribution process- as that is mere

semantics. The legal role still falls on the appellant to perform the duties imposed upon him by law and to ensure that the respondent gets her lawful share of the estate.

I therefore agree with the reasoning and findings of the learned trial Magistrate, and find no merit in all arguments raised on appeal under all the grounds as stated. This appeal will therefore fail, as none of the grounds raised has been proved.

The appeal is dismissed with costs to the Respondents. I so order.

**Henry I. Kawesa**

**JUDGE**

**17.12.2014**