

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL SUIT NO. 077 OF 2014

SSEKASIKO CHRISTOPHER MUTAYITWAKO PLAINTIFF

VERSUS

1. EDWARD KASIRYE
2. GORDON WAVAMUNO DEFENDANTS

Before; Hon. Lady Justice Victoria Nakintu Nkwanga Katamba

JUDGMENT

The Plaintiff Ssekasiko Christopher Mutayitwako filed this suit against the Defendants Edward Kasirye and Gordon Wavamuno jointly and severally seeking the following orders and declarations;

- i) An order that the 1st Defendant returns to court, letters of administration granted to him under Admin. Cause No. K 52 of 2010 by the High Court of Uganda at Nakawa;
- ii) An order that the said letters of administration be revoked;
- iii) An order that the 1st Defendant do surrender to court all certificates of title belonging to the estate of the late Kosiya Kasirivu – the deceased;
- iv) An order that the names of the 1st Defendant be cancelled from the said certificates of title;
- v) An order that the names of the 2nd Defendant be cancelled from the certificate of title for land in Ssesse Block 72 Plot 5 measuring 87.3000 hectares at Bunyama and Kabanga, Kalangala District;
- vi) A declaration that the 1st Defendant is not entitled to administer the estate of the late Kosiya Kasirivu;
- vii) A declaration that the 1st Defendant is not a beneficiary of the estate of the late Kosiya Kasirivu;
- viii) General damages for fraud/misrepresentation;

ix) Costs of the suit;

The Plaintiff's claim is that he is one of the surviving children of the late Kosiya Kasirivu who died intestate on the 22/12/1955 and left three other surviving; -Children-Margaret Kinene, Nabasirye Bwanika, Nakabi Babirye, various pieces of land 545.25 acres at Mpunge, Gomba, 285.92 acres at Kasaana Buddu, 413.00 acres at Bunyama, Ssese, 100.00 acres at Bubembe Sese, 4.11 acres at Lungujja Kayadondo, 181.08 acres at Nalugala, Busirio. The estate was distributed on the 1st October 1957 but the Plaintiff has never received his share. The 1st Defendant on the 14/09/2010 made a false report of death to the Administrator General and did not include the Plaintiff among the late Kosiya's surviving children. The 1st Defendant obtained letters of administration without the consent of the beneficiaries and in his petition for letters of administration, he indicated the Plaintiff as deceased. The 1st Defendant appropriated the bulk of the estate to himself whereas he is not a direct beneficiary and he has misappropriated and mismanaged the estate to the prejudice of the Plaintiff and other beneficiaries. The 1st Defendant sold a piece of land in Ssese Block 72 Plot 5 at Bunyama to the 2nd Defendant without consent of the other beneficiaries and the 2nd Defendant purchased the same well knowing that the 1st Defendant was merely trustee for the rightful beneficiaries.

In his Written Statement of Defence, the 1st Defendant denied the Plaintiff's claim and averred that the evidence of distribution of estate adduced by the Plaintiff is false. He stated that he was enthroned as the heir to Sekagya, who was the heir to the late Kosiya Kasirye at a clan meeting which was attended by all beneficiaries except the Plaintiff who adamantly refused to attend. The surviving children both direct and indirect held a family meeting on the 9th day of February, 2011 and consented to the 1st Defendant being granted a certificate of no objection and subsequently letters of administration. The 1st defendant contends that he complied with the necessary legal requirements for the process and that whatever he did was with full knowledge and approval of the beneficiaries of the late Kosiya Kasirivu. He stated that declaring the Plaintiff deceased was a mistake of the author of the Petition which should not be visited of him.

He further averred that the share he received was the part of the estate appropriated to him as earmarked in the clan meeting and that he is willing and ready to give the Plaintiff more of his shares of the estate. That he rightly sold the property in Block 72 Plot 5 to the 2nd Defendant which was used to process, obtain the grant and put the estate in order. The 1st Defendant prayed for the suit to be dismissed with costs.

In his Written Statement of Defense, the 2nd Defendant denied the Plaintiff's claim and averred that prior to purchasing the land, he conducted a search and confirmed that the 1st defendant was the registered owner and the letters of administration were certified by court. He stated that he transacted with the 1st Defendant on the strength of the documents in his possession which were investigated and found to be genuine, and that he is a bona fide purchaser for value without notice of fraud.

The Parties filed a joint scheduling memorandum in which they raised the following issues for the determination of court;

1. Whether the 1st Defendant obtained letters of administration to the estate of the late Kosiya Kasirivu fraudulently;
2. Whether the 1st Defendant mismanaged the estate of the late Kosiya Kasirivu;
3. Whether the letters of administration granted to the 1st Defendant should be revoked;
4. Whether the sale of land to the 2nd Defendant by the 1st defendant was valid;
5. Whether the letters of administration for the estate can be granted to the Plaintiff;
6. What remedies are available to the Parties;

Plaintiff's evidence;

In his evidence admitted in PEX1, the Plaintiff Ssekasiko Christopher stated that he is one of the surviving children of the late Kosiya Kasirye who died intestate on the 23rd day of November, 1955. The deceased's estate was distributed on the 1st day of October 1957. He received 145 acres at Mpunge, 100 acres at Kasana Buddu, 50 acres at Nalugala Busiro, 113 acres at Bunyama Ssesse, 50 acres at Bubembe and 1 acre at Lungujja. The land at Mpunge is under his occupation, land at Kasana has tenants but was fraudulently transferred to the 1st

Defendant as his personal property. He was fraudulently declared dead at the time of obtaining letters and the 1st Defendant is not a lineal descendant of the deceased and as such is not a beneficiary to his father's estate.

He further stated that the 1st Defendant sold the land at Ssesse to the 2nd Defendant without his consent. The Plaintiff was entitled to 113 acres from the land at Buyama Ssesse. He started getting busuulu in 1995 from the land in Bunyama and he only obtained title for the land in Gomba. He first saw the titles in the 1st Defendant's name in 2010. He is the only family member who did not attend the family meeting at the Administrator General's and although the inventory shows that he was given 50 acres in Entebbe, he never received it. He received 145 acres in Mpunge, Gomba, 50 acres in Bubembe, 100 acres in Kasaana but he does not have certificates of title.

That was the Plaintiff's case.

2nd Defendant's evidence:

The 2nd Defendant Gordon Wavamunno (DW2) stated in his witness statement that in May 2016, he received a call from one Col. Bagyenda Frank who informed him of the sale of the land in Block 72 Plot 5 at Bunyama. The 1st Defendant provided a photocopy of the certificate of title and the letters of administration which the 2nd Defendant verified from the land registry and the court. Thereafter, a sale agreement was executed on the 7th day of June 2011 and he transferred the land to his name upon completing payment of the purchase price. He stated in cross examination that he did not recall who the witnesses to the agreement were. That he conducted a search before signing the sale agreement. He relied on his lawyers' report and guidance and does not think it is necessary to have witnesses like beneficiaries once the lawyers have guided you.

DW1 Simon Peter Irima Drayo a surveyor under Terrain Consult Limited stated that he received instructions from the 2nd Defendant to conduct a survey, open boundaries and capture the aerial video on the land in Block 72 Plots 4 & 5. He established that the Plots exist on an island and Plot 4 measures 74.609(184.36) hectares on ground not 80.0 hectares

as reflected on the title; Plot 5 measures 88.132 hectares (217.775 acres) on ground not 87,298 hectares (215.718) acres as on the title. Plot 5 was transferred from Edward Kasirivu (Administrator of the estate of the late Kosiya Kasirivu) to the 2nd Defendant and Plot 4 was transferred to the 2nd Defendant from Robert Mutyaba who had acquired from Sekagya. The entire land is 402 acres.

The 1st Defendant filed a Written Statement of Defence but never appeared and the matter proceeded against him ex parte.

The Plaintiff and 2nd Defendant filed written submissions which I will consider and refer to in my determination of the suit.

Determination of the suit;

Issue one; Whether the 1st Defendant obtained letters of administration to the estate of the late Kosiya Kasirivu fraudulently;

Counsel for the Plaintiff relied on the definition of fraud as stated in the case of *FJK Zaabwe V Orient Bank & 5 others SCCA No.4 of 2006* and submitted while relying on the petition filed in 2010 and the inventory filed on the 2nd day of April 2013 which both show the Plaintiff as deceased, that the author of the two documents who is the 1st Defendant intended to deceive others to act on the belief that the Plaintiff was actually dead. Counsel further submitted that there is no evidence to prove that the 1st Defendant was ever invited to family meeting prior to obtaining the letters of administration by the 1st Defendant and as such the letters were obtained without his consent. Counsel invited this court to find that the letters of administration were obtained fraudulently.

In the case of *Fredrick J. K Zaabwe v. Orient Bank & 5 O'rs, S.C.C.A. No. 4 of 2006 (at page 28 of the lead judgment)* Justice Katureebe JSC, relied on the definition of fraud in *Black's Law Dictionary, (6th Ed) page 660* which states as follows;

“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right...It comprises

all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another... And includes anything calculated to deceive whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech, or by silence by word of mouth or by look or gesture”.

In the case of *Kampala Bottlers Limited v Damanico (U) Ltd (Civil Appeal No. 22 of 1992) [1993] UGSC 1*, Wambuzi C.J. while discussing fraud on page 5 stated among others that fraud ‘... *must be attributed to the transferee. . . it . . . must be attributed either directly or by necessary implication . . .*’

The standard of proof in causes of action involving fraud as per the case of *Ratilal Gordhanbhai Makanji [1957] EA 314* is beyond mere balance of probability required in ordinary civil cases though not beyond reasonable doubt as required in criminal cases.

The particulars of fraud raised against the 1st Defendant by the Plaintiff include failure to obtain the Plaintiff’s consent prior to obtaining the letters of administration, failure to declare the Plaintiff as a surviving son of the deceased, declaring the plaintiff dead, failure to declare the property of the deceased, under declaring the property and appropriating the bulk of the estate to himself.

The Plaintiff adduced evidence of a consent letter to the Administrator General dated 09th/02/2011 in which the family members consented to the 1st Defendant obtaining letters of administration. The Plaintiff is not among the beneficiaries/family members that gave consent as per that document. The Report of death attached to the said from also shows that the Plaintiff wasn’t declared among the deceased’s children. Furthermore, the filed Petition for Administration Cause No. 652 of 2010 a petition by the 1st Defendant for the letters of administration for the estate of the late Kosea Kasirivu shows in paragraph 3 that the Plaintiff was declared to be deceased. This shows that the Plaintiff was not involved in the process for obtaining letters of administration to the estate of his late father Kosea Kasirivu.

However, the Defendant stated in his written statement of defence that declaring the Plaintiff as deceased was a mistake made by the author and that the Plaintiff was invited for the different clan and family meetings but he never appeared despite several appeals to do so by the clan head. There was no evidence adduced to support this claim.

I have however established from the inventory filed on the 2nd day of April 2013 that the Plaintiff was included as a beneficiary as Sekazigo Christopher instead of Sekasiko in the inventory filed by the 1st Defendant. His shares from the estate were stated under the distribution showing that he received 50 acres of the land at Entebbe Nalugala and 50 acres at Ssesse Bubembe. This shows that although he was indicated as deceased on the declaration form, he was given share for the estate an indication of the fact that the 1st defendant knew of the Plaintiff's existence and interest. The Plaintiff in his evidence stated that he received 145 acres in Mpungwe, Gomba, 50 acres in Bubembe, 100 acres in Kasaana but he does not have certificates of title. This was in the distribution by the clan members conducted on 1st October, 1957(*Olukiiko Lw'ekiika*) In both distributions the Plaintiff was recognized as a beneficiary. He got much less in the inventory filed by the 1st defendant than what he was given in the 1st distribution by the 1st Defendant.

Section 101 of the Evidence Act provides the cardinal principle that whosoever desires court to give judgment as to the legal right or liability dependent on the existence of a fact which he or she asserts must prove that fact. The Plaintiff has adduced evidence to prove that he was never involved in the administration process. It is rather concerning how it is only the Plaintiff who did not attend the family and clan meetings among all the beneficiaries.

I strongly believe that the 1st Defendant misrepresented the Plaintiff's death to the Administrator General. He deliberately falsely misrepresented to the administrator general that the plaintiff was deceased. The 1st Defendant being the Plaintiff's nephew as he alleges was well aware of the Plaintiff as a beneficiary and surviving son who should have been consulted and involved in the process for obtaining the letters of administration. It is also strange that an estate that was distributed in 1957 was never closed.

I find that such concealment of the Plaintiff as surviving beneficiary and further declaring him to be deceased was clearly intended by the 1st Defendant to deceive court in order to obtain letters of administration and such acts, omissions or conduct on the part of the 1st Defendant amount to fraud as defined in the **Zaabwe** case, (supra)

I have to observe that the 1st Defendant did not enter appearance in court to defend this case. This, in addition to how he never clarified what his relationship is to the deceased Kosiya Kasirivu which stays unclear as he stated in his declaration to the administrator general that he is a grandnephew to the deceased, and also indicated on the list of beneficiaries that he is a grandson to the deceased. All these inconsistencies coupled by his failure to enter appearance are indicators of fraudulent actions.

The Plaintiff further alluded to fraud against the 1st defendant in particular to his failing to declare the property of the deceased, under declaring the property and appropriating the bulk of the estate to himself.

The Plaintiff did not adduce any evidence as to what property was not declared or which property was under-declared. As for appropriating the bulk of the estate to the 1st defendant, the Plaintiff relied on the inventory (PEXIII) showing the distribution of the estate. As per the inventory, the 1st Defendant received 1393.65 acres of land whereas all the other beneficiaries jointly received 238.6 acres of land.

Notwithstanding that **Section 27 of the Succession Act** was held to be inconsistent with and in contravention of Articles 21 (1,2,3), 31 and 33(6) of the Constitution in the case of **Law Advocacy for Women in Uganda V. A.G Const. Pet. No. 13 of 2005 and 5 of 2006**, the Section gives guidance on priority ranking for obtaining letters of administration in the line of succession, to wit; surviving spouse, children, parents, brothers and sisters, and their lineal descendants, grand parents and their lineal descendants, next of kin.

In the instant case, the 1st Defendant is stated to be a grand-nephew to the deceased. He is described as such in the grant of letters of administration. I really wonder what the relationship between Kosiya Kasirivu and the 1st Defendant is. He is heir to Sekagya who

was Kosiya's son but the 1st Defendant is not Sekagya's son. Grandnephews or what I understand to be great nephews are not provided for in the Table of consanguinity in the First schedule of the Succession Act. *Section 191 of the Succession Act* is to the effect that no right to an intestate's property shall be established unless with letters of administration granted by a competent court.

Section 28 of the Succession Act provides that all lineal descendants, wives and dependent relatives shall be entitled to share their proportion of a deceased intestate's property in equal shares. The Succession Act does not define lineal descendant but defines *lineal consanguinity* to mean that which subsists between two persons, one of whom is descended in a direct line from the other as between man and his father, grandfather, great-grandfather and so upwards in the direct ascending line or downwards in the direct descending line.

No evidence has been adduced as to why the 1st Defendant got 1393.65 acres of land whereas all the other beneficiaries in total received 238.6 acres of land yet the Succession Act under Section 28 is clear that the property shall be distributed equally. There is no evidence of how the distribution was conducted or arrived at. Although the law does not specifically require for it, I find that it is important for an inventory to be accompanied by minutes of the distribution of the estate showing how such distribution was conducted and the minutes should be confirmed by all beneficiaries. No such evidence has been adduced in this case. Needless to say, the 1st Defendant being a great nephew is not a lineal descendant to the deceased and as such is not entitled to benefit from the estate nor have priority to be granted the letters of administration.

I therefore find that the Plaintiff has sufficiently proved that the 1st Defendant obtained the letters of administration fraudulently by declaring the Plaintiff to be deceased and obtaining the letters without his consent as beneficiary.

This issue is resolved in the affirmative.

Issue two; Whether the 1st Defendant mismanaged the estate of the late Kosiya Kasirivu;

Counsel for the Plaintiff argued that the late Kosiya's estate was distributed according to the Buganda Customs at his last funeral rites and as such there was no estate left to distribute. Counsel relied on the case of *Paulo Kawesa Vs Administrator General & 2 others Civil Suit 1993/918 [2012] UGHC 109* where Court made reference to the Local Administration (Performance of functions) Instrument 1967 SI 150 of 1967 which provided for issuance of certificates of succession in relation to estates administered according to Buganda kingdom succession customs. Counsel relied on evidence of PW1 and stated that certificate of succession was not obtained and as such it was proper to obtain letters of administration but upon obtaining the said letters, the 1st Defendant mismanaged the estate by selling of part of the property without consulting the beneficiaries and allocating a bulk of the estate to himself.

Evidence of DW1 is that the land at Bunyama is 402 acres and is currently in the names of the 2nd Defendant. According to the inventory, the 1st defendant received 353 acres of the said land, and three of the other beneficiaries received 60 acres. The fact that the 2nd Defendant occupies land that is more than what the 1st Defendant received under the inventory is suspicious. Even the history of the Plots 4 & 5 of the land at Bunyama shows that Plot 5 was transferred from the 1st defendant as Administrator to the 2nd Defendant, and Plot 4 from one Robert to the 2nd Defendant. There is no mention of the other beneficiaries yet they received shares of that land.

In his evidence PW1 testified that he does not know if the other beneficiaries obtained certificates of title to their respective shares. He also testified that he never received a certificate of title to his shares of the property. The Plaintiff further adduced evidence of a search report dated 7th May, 2014, showing that the 1st Defendant is registered as Administrator on the and comprised in Block 101 Plot 2 at Bubembe and Bukadde measuring 40.5 hectares having been registered on 06.05.11. According to the inventory, the said land was distributed to the Plaintiff and the 1st defendant equally. The duty of an Administrator is to be representative for the beneficiaries, hold the property in trust for them and manage the estate by distributing it and transferring the same to the beneficiaries. The 1st defendant was

registered as administrator in 2011 but to this day, he has not transferred the land to its rightful beneficiaries.

It is important to note that powers of administrators are not to be exercised in perpetuity. Letters of administration do not grant any powers of ownership and the administrator is mandated to exercise his or her duties in reasonable time and file the final inventory with the court.

The Succession Act under Section 278 provides that the administrator shall file a final inventory within one year or such time as court may from time to time appoint showing what assets came into his possession and the manner in which they were disposed of. It further provides that a final inventory should be filed upon completion of the administration of the estate. Such completion does not mean simply identifying which beneficiary is entitled to what share or simply drawing up a list of distribution. Completion of administration would mean that the estate has been distributed and is no longer in the hands of the administrator (the assets have been disposed of to their rightful beneficiaries), and the inventory filed should show the manner in which the assets were distributed which manner is not restricted to numbers but rather details of the distribution process. Therefore, filing a final inventory when the deceased's property is still registered under the administrator is improper as it means that the property has not been disposed of yet as required by law.

Furthermore, an administrator who continuously maintains registration on the certificates of title deprives beneficiaries of their rights to the estate and their interests as interests can only be enforced by evidence of title. The process of administration has to end, it is meant to collect assets, identify beneficiaries, distribute and dispose of by transfer.

In the instant case, the 1st Defendant filed an inventory in court showing the distribution of the estate according to shares given to each beneficiary. It has however been established that the beneficiaries never received certificates of title to the said property. The evidence also shows that the Administrator is still registered on some properties in his capacity as administrator which is prejudicial to the beneficiaries. Furthermore, the administrator sold

the land at Bunyama without consent from the other beneficiaries entitled to the land which was mismanagement of the estate.

The 1st defendant stated in his Written Statement of Defence that he sold the land at Bunyama and the proceeds were used to facilitate the administration process. There is no evidence to prove this fact as the transaction proceeds were not included in the inventory filed in court.

I therefore find that the Plaintiff has adduced evidence to prove that the 1st defendant mismanaged the estate and prejudiced the beneficiaries in the process.

However, I find it important to address the fact that the Plaintiff being a beneficiary of the estate and claiming that he is interested in recovering the estate has not been diligent in protecting his interest. In his evidence, he stated that he followed the distribution made by the clan members in 1957 and occupies part of the land he received under the distribution. It was also his evidence that he has never obtained certificates of title to the said land and neither is he aware whether the other beneficiaries obtained certificates of title.

For him to show up in 2014 after the 1st defendant had obtained letters of administration and dealt in the estate shows that he has been negligent in preserving the estate as a beneficiary, and he was also not diligent. He appears to want to benefit from the estate now that somebody clever has opened his eyes. He stated in his evidence that he has tenants on the suit land bought by the 2nd Defendant but it has been established in evidence that the land is being occupied by the 2nd Defendant. I am convinced that the Plaintiff was never in occupation of the said land and as such, he has not been diligent or vigilant in protecting his interests.

The Distribution of Estates in Buganda according to the Local Administration (Performance of Functions) Instrument 1967 SI 150 of 1967 provided for the issuance of certificates of succession in relation to estates administered according to Buganda Kingdom succession customs. ***Section 3 of the Land Succession Law of Buganda*** provided that the succession certificate will be issued to someone who has been bequeathed land in the will, in the case of intestate succession, it shall be given according to succession matters in Buganda to the Guardian or someone on behalf of the people entitled to the same.

In the instant case, the Plaintiff's father died in 1955 and according to his evidence the estate was distributed in 1957. There is no evidence as to whether he obtained a succession certificate as was the case at the time. At the time of his father's death, the plaintiff was about 07 (seven) years' old. He stated in his evidence that he was sick for a long which is why he never applied for letters of administration time but did not adduce evidence of such sickness. Nevertheless, he had opportunities to obtain letters of administration if he wanted but he did not. He is obviously an indolent party and equity aids the vigilant not the indolent.

Although the 1st Defendant fraudulently obtained the letters of administration, I find that the actions of the Plaintiff enabled this fraud and he is not a diligent client.

Issue three; Whether the letters of administration granted to the 1st Defendant should be revoked;

Section 234 of the Succession Act provides that letters of administration may be revoked or annulled for just cause and just cause is defined to mean where the proceedings to obtain the grant were defective in substance; where the grant was obtained fraudulently by making false suggestion or concealing from the court something material to the case; the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant; the grant has become useless or inoperative or the administrator has willfully and without reasonable cause omitted to file an inventory.

Counsel for the Plaintiff submitted that the 1st Defendant never filed a final account of the estate to indicate what properties came to him and how they were distributed and if they were disposed of, the proceeds therefrom.

I have already resolved that the 1st Defendant obtained the grant of letters of administration fraudulently by concealing that the Plaintiff was a beneficiary to the estate and proceeding to obtain the grant without the Plaintiff's consent. The 1st Defendant mismanaged the estate by failing to consult the beneficiaries in the transactions and further failing to file a proper final account and inventory. The administrator is a representative of the beneficiaries and every act done while dealing with the estate should be done with the consent of the beneficiaries.

I therefore find that there is just cause warranting the revocation of the grant of letters of administration to the 1st Defendant.

This issue is also resolved in the affirmative.

Issue four; Whether the sale of land to the 2nd Defendant by the 1st Defendant was valid;

The 2nd Defendant stated in his Written Statement of Defence and further in his evidence that he purchased the land in Block 72 Plot 5 following investigations to confirm the letters of administration and certificate of title, and that he is a bona fide purchaser for value without notice of fraud.

Counsel for the Plaintiff cited *Sections 59, 176 and 181 of the Registration of Titles Act; and the cases of David Sekajja V. Rebessa Musoke CA No. 12 of 1985, & John Katarikawe V. William Katwiremu & Anor [1977] HCB 187* regarding the indefeasibility of title and the principle of bona fide purchaser for value without notice.

The particulars of fraud raised to challenge the sale are;

- i) Selling the land without consent of the beneficiaries;
- ii) purchasing the land with full knowledge that the 1st Defendant was a mere trustee for the rightful beneficiaries;

I will restrict myself to the above particulars without considering the new particulars of fraud raised by Counsel in the submissions as this amounts to giving evidence from the bar and a departure from the pleadings.

Counsel for the Plaintiff argued that the 2nd Defendant was well aware that he purchased from an administrator, that the certificate of title did not have an instrument number, the beneficiaries were not involved in the transaction and the valuation of the land was under-declared. Counsel relied on these instances to challenge the claim that the 2nd Defendant is a bona fide purchaser for value without notice of the fraud. It is also Counsel's submission that failing to seek consent of the beneficiaries, under declaring the value of the land and

discrepancies in the date and acreage on the transfer documents is consistent with fraud and as such the 2nd Defendant has failed to establish that he is a bona fide purchaser for value without notice of fraud.

Counsel for the 2nd Defendant objected to the allegation of fraud regarding the irregularities in the certificate as it was a departure from the Plaintiff's pleadings and contrary to ***Order 6 Rule 7 Civil Procedure Rules***. Counsel further argued that in the absence of facts showing that the 1st defendant obtained registration by fraud, no irregularity or informality can be used to impeach his title.

Counsel cited that case of David Sekajja(supra) on the burden of proving bona fide purchaser for value and the case of ***Haji Nasser Katende V. Vithalidas Halidas & Co. Ltd CACA No. 84 of 2003*** on the elements of a bona fide purchaser for value. Counsel argued that the 2nd Defendant successfully transferred the land and registered himself on the certificate of title, he paid valuable consideration for the same and the alleged fraud against the 1st defendant cannot be imputed on the 2nd Defendant.

While relying on ***Section 270 of the Succession Act*** which is to the effect that an administrator has power to dispose of the property of the deceased in such a manner as he or she may think fit, Counsel argued that the 1st Defendant was clothed with capacity to enter into and execute a sales agreement as he did without seeking consent of the beneficiaries. Counsel further argued that the Plaintiff has not linked the 2nd Defendant to the undervaluation of the land and that the 2nd Defendant had no knowledge of the 1st defendant's fraud if any and he transacted with the 1st defendant on trust that he was accountable to the beneficiaries.

Section 25 of the Succession Act is to the effect that property of the intestate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property.

Section 180 of the Succession Act provides that an administrator is a legal representative for all purposes and all property of the deceased person vests in him or her as such.

In the case of *Maureen Tumusiime v Macario & Anor*. [2006] 1 HCB court declared that ownership of property of the deceased vests in the one being appointed administrator or executor, through a grant of letters of Administration or probate.

Under *Sections 192 and 193 of the Succession Act*, letters of administration vest in the administrator all rights and interests belonging to the intestate as effectively as if administration had been granted at the moment after his death. (*Khalid Walusimbi v Jamil Kaaya & Anor (1993) 1 KALR 20*).

Beneficiaries hold a beneficial interest in the estate and the administrator's role is simply to distribute the estate to the rightful beneficiaries as agreed upon by the family members.

A *bonafide purchaser* is defined in *Black's law Dictionary, 8th Edition, Page 1291* as;

"One who buys something for value without notice of another claim to the property and whether actual or constructive notice of any defect or informality claims or equities against the seller's title, one who was in good faith paid valuable consideration for property without notice of prior adverse claim.

Under *Section 181 of the Registration of Titles Act Cap 230*, title of a bonafide purchaser for value cannot be impeached on account of fraud since good title would have passed as long as he/she was not party to the fraud.

For a purchaser to successfully rely on the bonafide doctrine, he/she must prove that;

- he holds a certificate of title
- he purchased the property in good faith
- he had no knowledge of the fraud
- he purchased for valuable consideration
- the vendors had apparent title
- he purchased without notice of any fraud

- he was not party to the fraud – *see Hannington Njuki vs. William Nyanzi H.C.C.S NO. 434 /1996.*

The 2nd Defendant's evidence is that he conducted a search at the land registry and the court to confirm the legitimacy of the certificate of title and letters of administration prior to the purchase. I find that this was sufficient due diligence on the 2nd Defendant's part. The land was sold in June 2011 before the distribution of the estate and the 1st Defendant stated that the transaction was to facilitate the distribution process. The grant of administration was issued by the Court on 29th April, 2011 and the sale to the 2nd defendant on 7th June, 2011.

Under *Section 270 of the Succession Act*, the Administrator has power to dispose of part of the estate as he deems fit and under Section 192, the grant of letters of administration give the Administrator the same rights as those of the intestate.

I therefore find that in the circumstances and since distribution had not been conducted and the sale was intended to facilitate the administration process which evidence was not controverted, the 2nd Defendant conducted sufficient due diligence and acted in good faith.

Although beneficiaries hold a proprietary interest in the estate held by the Administrator as their legal representative, that proprietary interest is enforceable to protect their interests in the estate property against anyone but the holder of the property as a purchaser for value of the legal interest without notice.

In the instant case, I find that the Plaintiff has failed to prove that the 2nd Defendant was involved in the fraud attributable to the 1st Defendant and the evidence of the 2nd Defendant of the search he conducted prior to the transaction is sufficient to prove that he was not part of the fraud. There is therefore no fraud attributed to him as the transferee and as such, he is a bon fide purchaser for value without notice of fraud.

Issue five; Whether the letters of administration for the estate can be granted to the Plaintiff;

Section 5(1) of the Administrator General's Act provides;

'No grant shall be made to any person, except an executor appointed by the will of the deceased or the widower or widow of the deceased, or his or her attorney duly authorized in writing, authorizing that person to administer the estate of a deceased person, until the applicant has produced to the court proof that the Administrator-General or his or her agent has declined to administer the estate or proof of having given to the Administrator-General fourteen clear days' definite notice in writing of his or her intention to apply for the grant.'

For a person to be granted letters of administration, they have to be approved by the Administrator General and given a certificate of no objection if they are not a spouse to the deceased. Therefore, for the Plaintiff to be granted Letters of Administration, he must have been vetted by the Administrator-General and approved by the family members. This has not been done and as such, the Plaintiff cannot be granted letters of administration by this court without following due process.

Issue six; What remedies are available to the Parties;

Having found that the 2nd Defendant is a bonafide purchaser for value without notice of fraud for the land comprised in Ssesse Block 72 Plot 5 measuring 87.3000 hectares at Bunyama and Kabanga, Kalangala District, the 2nd Defendant is therefore the rightful owner of the same and he shall keep possession and ownership of the said land.

Having found that the 1st Defendant obtained the grant of letters of administration fraudulently and that he is not a lineal descendant of the late Kosiya Kasirivu, it is hereby declared that the 1st Defendant is not entitled to benefit from or administer the estate and as such should only receive part of the estate that he is entitled to as heir to the late Sekagya.

The beneficiaries of the estate are at liberty to appoint an administrator for the estate and distribute the same either according to the early clan distribution or make fresh distribution as they please having followed the right procedures under the supervision of the Administrator General.

The 1st Defendant is hereby ordered to surrender the certificates of title in his possession belonging to the estate of the late Kosiya Kasirivu, to the Plaintiff together with the other surviving children of the late Kosiya Kasirivu within 10 (ten) days from the date of this order.

Regarding the Plaintiffs' prayer for general damages, the settled position stated in *James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003* per Tuhaise J, is that the award of general damages is at the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. In *Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992*, it was also held that a Plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong.

The case of *Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305*, gave court guidance on how to assess the quantum of damages. The position is that consideration should mainly be to the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered.

In the instant case, the Plaintiff benefitted from the estate according to the initial distribution by the clan head and it was his evidence that he is currently occupying the land he received. It was my observation that the Plaintiff did not apply for letters of administration earlier as he should have to preserve and protect his interest as a beneficiary which was negligent on his part. I have also observed that the Plaintiff was not utilizing the land that was sold to the 2nd Defendant. Counsel for the Plaintiff argued that the Plaintiff is frail and of advanced age and that he has suffered inconvenience but did not adduce evidence as to such inconvenience.

However, since the 1st Defendant was fraudulent and misrepresented to gain advantage from the estate at the expense of the beneficiaries who are entitled to it, I find that it is sufficient to award general damages to the Plaintiff.

The orders of the court are as follows;

1. The letters of administration granted to the 1st Defendant under Admin. Cause No. K 52 of 2010 by the High Court of Uganda at Nakawa are hereby revoked;
2. The 1st Defendant is hereby ordered to return to court, letters of administration granted to him under Admin. Cause No. K 52 of 2010 by the High Court of Uganda at Nakawa;
3. The 1st Defendant is hereby ordered to surrender to the Plaintiff and the other surviving beneficiaries all certificates of title belonging to the estate of the late Kosiya Kasirivu – the deceased in his possession, save for the certificate of title for land comprised in Block 72 Plot 5 at Bunyama which belongs to the 2nd Defendant as a bonafide purchaser for value without notice of fraud;
4. An order for the cancellation of the 1st Defendant's names from the certificates of title belonging to the estate of the late Kosiya Kasirivu which he holds as administrator and as beneficiary save for the 2nd Defendant's certificate of title;
5. It is hereby declared that the 1st Defendant was and is not entitled to administer the estate of the late Kosiya Kasirivu and he is also not a beneficiary of the estate of the late Kosiya Kasirivu;
6. General damages of Ugx. 10,000,000/= to be paid by the 1st Defendant;
7. Costs of the suit to be paid by the 1st Defendant to the Plaintiff;

I so order.

Dated at Masaka this 22nd day of October, 2021

Signed;



VICTORIA NAKINTU NKWANGA KATAMBA

JUDGE