

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
CIVIL SUIT NO. 0450 OF 2016

1. OLOKA PETER

2. AKOTH

GRACE:.....PLAIN
TIFFS

VERSUS

NAMUSISI ROBINAH:.....
DEFENDANT

BEFORE: HON. JUSTICE SUSAN OKALANY
JUDGMENT

INTRODUCTION

1) The plaintiffs instituted this suit against defendant for:

1. A declaration that the defendant has intermeddled with the estate of the late Owor James situated at Kalina Zone, Namasuba;
2. A declaration and order that the defendant's actions and dealings on the suit land amount to fraud;
3. An order that the registration of the defendant as owner of the suit land, without first obtaining letters of administration is illegal and amounts to fraud;
4. An order of a permanent injunction, restraining the defendant from any further intermeddling with the estate of the late Owor James;

5. An order that the plaintiffs be given a share of their deceased father's estate;
6. General and aggravated damages with interest; and
7. Costs of the suit.

BACKGROUND

- 2) The 1st plaintiff is one of the sons of the late James Owor (hereinafter referred to as the deceased). The 2nd plaintiff is the wife of the late John Sande Odoi who was also the late James Owor's son. The defendant is the wife of the late James Owor. Initially, the 1st plaintiff had sued the defendant and the Buganda Land Board. He subsequently amended the plaint by adding the 2nd plaintiff Akoth Grace. Later on, both plaintiffs entered a consent settlement with Buganda Land Board (2nd defendant), relinquishing any claims against it. The said consent was endorsed by the court on 23rd August 2018.
- 3) The plaintiffs in their amended plaint averred that the deceased had died intestate, leaving behind property situate at Kalina zone Namasuba. That on 14/6/2016, the plaintiffs were surprised to receive a letter authored by the defendant's lawyers, claiming that the deceased had died testate. The plaintiffs accused the defendant of fraudulently causing the registration of the estate of the late James Owor in her name, without having obtained letters of administration or probate. They alleged that she had also constructed several rental units and was collecting rent from the estate of the deceased for her own selfish interest, while utilizing the remaining premises with her children, to the exclusion of the plaintiffs and other beneficiaries.

- 4) The plaintiffs state that the purported will of the deceased is a forgery and that the 1st plaintiff reported a case of forgery against the defendant to Katwe police station, vide SD 46/30/08/2016.
- 5) The defendant in her written statement of defence denied the allegations, stating that at the time of her husband's death, the 1st plaintiff was not a dependent of the deceased and accordingly, is not entitled to benefit from the deceased's estate. She asserted that long before the demise of the deceased, he had given the 1st plaintiff and the 2nd plaintiff's husband - the late John Sande Odoi, their shares of kibanja land, which they sold off during her husband's life time to the late Ochieng and his wife Grace Adikini. That after the selling of the land, the 2nd plaintiff went away and bought herself a piece of land in Kyabazala in Mukono District, where she settled with her children. She averred that in 1986, the 1st plaintiff voluntarily vacated a room (the garage) that he had been occupying in the estate and opted to rent accommodation in the neighborhood. In 2004, he was forcefully evicted from his rented accommodation for failure to pay rent and as a good gesture and being his parent, the defendant contributed 200,000/= towards the 1st plaintiffs' acquisition of a new rental room.
- 6) She denied the allegations of intermeddling with the estate of the deceased, stating that she was instead managing the estate with the knowledge of the Administrator General, pending the issuance of letters of administration to her.
- 7) She averred that the deceased left a will, which has never been declared null and void by any competent court.
- 8) According to her, she was customarily married to the deceased on 6/8/1975 at the home of her parents in Kateete, Kigogoola village, Kasawo subcounty in Mukono District, which marriage is according to her, is recognized under the laws of Uganda.
- 9) The parties filed a joint scheduling memorandum raising the following issues for determination:

1. Whether the dealings and actions of the defendant with regard to the estate of the late Owor James amounts to intermeddling;
2. Whether the plaintiffs are beneficiaries of the estate of the late Owor;
3. Whether or not the last will of the late Owor James is valid and legally binding and should therefore be executed;
4. Whether the defendant was legally married to the deceased;
5. What remedies are available?

REPRESENTATION

- 10) Mr. Robinson Nkwasiwe represented the plaintiffs, while Mr. Joseph Byanju appeared for the defendant. The parties proceeded by way of written statements.

THE PLAINTIFFS EVIDENCE

- 11) The plaintiffs called five witnesses, namely: Akoth Grace (PW1), Oloka Peter (PW2), Nampala Mensi (PW3), Opendi Joseph (PW4) and Nassuna Joyce (PW5). PW1 testified that at the time of his death, the deceased left behind a matrimonial home, 25 rental units and a burial ground. She was staying with her children in a rented house in Kalina zone. When her husband (John Sande Odoi) died, the deceased allocated two rental units to her to occupy with her children. She stated that the defendant objected to her living there. She decided to leave for the home of her parents in Kyabazala.
- 12) She declared that she had never received a share of what her late husband should have obtained from his father's estate. That instead, after her father in law's death, the defendant claimed that the deceased had bequeathed the suit property to her and to her children, through a will. It was also her testimony that the deceased never left any will behind and the estate has not been distributed to-date.

- 13) In cross-examination, Akoth testified that she was customarily married to the late Odoi Sande. She further testified that she owned land at Namasuba Kalina zone, which her late husband and herself acquired from her father in law. That after the death of her husband, her father in law gave her rental rooms for the benefit of her children. That the land in Kyabazala is her paternal ancestral land. She maintained that her husband never obtained a share from the suit property.
- 14) The first plaintiff (PW2) in his evidence is of the same effect as the testimony of PW1. Additionally, he testified about the boundaries of the suit property, stating that it borders Nakamate and Nakaye on the right; Naava on the left, Luyima on the upper side and Lwanyaga on the lower side. He stated further that his late father was lawfully married to Mariam Kantono and begot 6 children of which he (PW2) was the only surviving child.
- 15) According to him, the defendant has continuously collected rent from the deceased's estate and gone ahead to register the suit property with Buganda Land Board, purporting to be its owner. That he protested her actions and notified the Buganda Land Board that the defendant did not have the requisite letters of administration to manage the estate of the deceased. According to the witness, as the oldest surviving son of the deceased, he could not stand seeing the defendant continuously intermeddling with the estate. He went to the office of the Administrator General in 2016 to start processing for letters of administration, only to find out that the defendant had opened a file there in sometime in 2002. He is surprised that neither the defendant nor the purported executors in the will have acquired letters of administration or probate to administer the estate and maintained that as a beneficiary of the estate he has never been allotted any share of the estate as alleged by the defendant.

- 16) It was the evidence of PW2 during cross-examination that at the time of his father's death, he was renting somewhere in Namasuba. He admitted being one of the people who had signed a letter, authorizing the defendant to collect or sign for money that was due to the estate of the deceased. He stated that he had lodged a complaint to police, claiming for a share of his father's estate, but that he could not wait for feedback from the police, since they were taking long to conclude their investigations, he chose instead to file this suit. He maintained that his father died intestate and the will presented by the defendant is a forgery. He also denied attending any family meeting on 28/4/2002. He confirmed that it was the defendant whom he called his stepmother, who was administering the estate.
- 17) His testimony in reexamination was that he did not get any of the money that he authorized the defendant in a letter dated 28/4/2002 to receive from the Administrator General. He insisted that he had not obtained any share of his father's estate. He maintained that his father had died intestate and the will in issue was a forged one, since it was not read to the family members at the time of his father's death.
- 18) Nampala Mensi (PW3) testified that the deceased was well known to her as her immediate neighbor. The deceased's children; Odoi Sande, Oloka Peter and Jane were tenants of Nzera Nakaya - her grandfather. Their home was adjacent to the suit land. The deceased gave birth to all his children while living on the disputed property. She stated that the late Odoi Sande fell sick and failed to pay rent. It was her grandmother who advised the deceased to care and plan for his children. The deceased then gave the 2nd plaintiff a room within the estate to occupy with her children, but the defendant prevented her from entering the allotted room. The 2nd plaintiff decided to move to her parents' home in Mukono.

- 19) According to the witness, the 1st plaintiff failed to pay rent and a good Samaritan gave him a place to stay in Namasuba. When the Buganda Land Board Officials started a mass registration exercise for the occupants of the Kabaka's land, the defendant registered herself and her biological children as owners of the land, excluding the plaintiffs. She further testified that the property in dispute was acquired by the deceased from her family years back.
- 20) Her testimony during cross-examination was that she found Odoi Sande renting one of her grandmother's houses in 1995, the same year he died. She further testified that the deceased was alive when he (the late Odoi Sande) was a tenant of her grandmother. She admitted that it was PW1, who told her that the deceased had given her - PW1, a room to stay with her children. She testified that the deceased was still alive when the defendant refused PW1 to stay in the said room.
- 21) Opendi Joseph (PW4) testified that he was the deceased's nephew. According to him, the defendant was not legally married to the deceased, but that it was his aunty Gertrude Nanyonga who took the defendant to the home of the deceased. When the deceased passed on, he travelled with several relatives from their ancestral home in Budama, Tororo district, to Namasuba for burial. At the burial, there was no will read. After a period of about two years, the last funeral rites of the deceased were celebrated at the home of the deceased, where the defendant and Dr. Okongo James, one of the purported executors were present, but made no mention of the will. He maintained that the deceased died intestate and his estate has never been distributed.
- 22) During cross-examination, PW4 testified that he was familiar with the kiganda culture to an extent. That the common marriages solemnized in Buganda are church marriages and customary marriages (kwanjula). He stated that he knew about wills and identified the

handwriting of James Owor (deceased) also known, as James Brown as his father's brother on the will. Subsequently, he denied that his late uncle had signed the will. PW4 further stated that Nabiryo Florence and Seguya (witnesses to the will) were unknown to him since he hails from Kyabazala. He insisted that his is uncle left no will.

23) In reexamination, he maintained that at the burial, he never heard that his uncle had left a will behind. That even when the family celebrated the deceased's last funeral rites two years later, the subject of the will never arose. He testified that he only learnt about an alleged will after this matter was filled in court.

24) PW5 - Nassuna Joyce, the biological sister of the deceased, testified that she knew the defendant as the woman who had cohabited with her late brother, long after his wife's death. She thus corroborated the evidence of PW4 that the defendant had not been legally married to the deceased. That the deceased and his late wife produced 6 children namely; Kantono James (deceased), Ochieng Charles (deceased), Sande Odoi (deceased) Oloka Peter the only surviving son and another unnamed child who also died. It was her statement that the deceased died intestate. She participated in his burial ceremony as well as in his last funeral rites celebrations, but no will was ever brought to the attention of the deceased's relatives. She insisted that the deceased never distributed his estate.

25) Her testimony during cross-examination was inter alia that the defendant was brought to look after the children of the deceased after he lost his wife. According to the witness, the defendant was not married to the deceased either through custom or in church. It was further her testimony that the deceased died suddenly and did not leave behind any will. According to her, she later heard that a will was made by her late brother, who appointed a girl as his heir, something that was not permitted by their customs.

26) The following exhibits of the plaintiffs were admitted in evidence by consent:

- PEX1 - letter written by the LC1 executive of Kalina zone, dated 19/11/2015 confirming that the defendant owns the suit property.
- PEX2 - completed forms of the Buganda Land Board showing the defendant inter alia as the registered owners of the suit property.
- PEX3 - Letter to the Administration General by M/S Sabiiti & Co. Advocates dated 14/6/2016, on behalf of the defendant.

THE DEFENDANT'S EVIDENCE

27) The defendant called 7 witnesses namely: Owor Julius (DW1), herself as DW2, Walugembe George William (DW3), Kafifi Micah (DW4), Oloka Kefa Jackson (DW5), Owori Moses (DW6) and Anyango Susan (DW7). Owor Julius testified as DW1, stating that he was a close friend of the deceased, He was the secretary and witness to the deceased's will. He testified that on 24/6/2000, the deceased called him to the former's home in Namasuba, Kalina zone, and requested him to record his last will; he did so in the presence of the late Pascal Seguya who also witnessed the signing of the will. After documenting the will, the deceased read it and confirmed the contents of his will. He stated that the deceased sent for Nabirye Florence and asked her to witness the will. That subsequently, when the deceased fell critically ill, he called DW1 and handed over to him, an envelope and the keys of his bedroom, before the deceased was taken to a nearby clinic for treatment and died not long after.

28) During cross examination, DW1 maintained the fact that it was he who drafted the will of the late Owor James, and that Nabirye Florence, Pascal Seguya and himself, attested to the will of the deceased. He further testified that he did not have the original copy of the will in court, because he had submitted it to Katwe police station in

2016, when the 1st plaintiff filed a case of forgery against him, vide case number as 46/30/2016.

- 29) He confirmed that the will was made on 24/6/2000. He left the will with the deceased and got it back by 9th March 2002, a day before the passing away of the deceased. He insisted that when the deceased called for him, he handed over the keys of his bedroom and the said will to DW1. The witness informed the court that he attended the deceased's burial. He stated that the deceased died two years after making the will in issue. He did not read the after the burial, since there were disagreements amongst the sisters of the deceased including the plaintiffs over many things. That because of hostility of the relatives of the deceased who demanded to know what the deceased had left behind and who doubted the fact that the deceased had died a natural death, since his death was sudden, he feared to read the will.
- 30) He asserted that the same year of the deceased's death, he was called by the family to a meeting attended by the plaintiffs and defendant and asked to produce the will. There was no hostility in that meeting. The family needed the will, in order to proceed to the office of the Administrator General. He kept the original will and gave a photocopy to them. Upon the return of Okongo, one of the executors of the will, DW1 informed him about the existence of the will, Okongo being the mukuza.
- 31) DW1 did not know if Okongo was performing his duties of mukuza. He was not aware if any letters of administration/probate had been obtained in respect of the estate, because he was not among the persons who went to the office of Administrator General to deal with the matters of the estate. He claimed that according to the deceased, the plaintiffs were not entitled to benefit from the suit property, because he had already given them their shares.

- 32) Namusisi Robinah, the defendant, testified as DW2, stating that she got married to the deceased customarily on 6th August 1975, at the home of her parents in Kateete village, Kigogoola Parish, Kasawo subcounty in Mukono District. The deceased had four children when they got married, namely: Oloka Peter, Odoi John Sande, Jane Andera and Charles Stanley Okoth. During the subsistence of their marriage, they produced seven children namely; Okemi Steven, Ngero Faith, Meeme Alice, Awor Lydia, Kyoyita Peninah, the late Miriam Kantono and late Sam Olweny. At the time of her marriage to the deceased, the 1st plaintiff was in Primary 7, studying in a school in Nsambya. The deceased was employed with Uganda Railway Corporation and they were living in Nsambya Railway quarters.
- 33) The deceased bought land in Namasuba, where they (herself and the deceased) subsequently built a house and shifted to it with their children, while the 1st plaintiff and the late Sande Odoi, being adults, left home to live in rented premises. It was her statement to the court that she had lived well with her husband until his death in 2002. That a few days after his burial, Owor Julius (DW1) brought the will and read it to family members who rejected it, saying that in her husband's culture, girls could be heirs or successors of their fathers.
- 34) Consequently, she went to the Administrator General's office to seek guidance on the right thing to do in those circumstances. The Administrator General wrote a letter to the family members on 3/4/2002, explaining to them the law on testate estates. On 28/4/2002, the beneficiaries of the deceased sat and agreed to authorise DW2 to sign for money that was due to in respect of the deceased's estate. According to the witness, all the children, including PW2, signed the letter authorizing her to sign for the said monies.
- 35) It was further her testimony that she pays ground rent in respect to the suit property to the Buganda Land Board, through Kabaka's officials. That when the mass registration exercise of all the tenants

sitting on the Kabaka's land started, she filed registration forms, after consulting the 1st plaintiff, who did not object to her being registered on the certificate of title that was to be issued by the Buganda Land Board.

- 36) In 2016, when she went to the Administrator General to process letters of administration that were required by the Buganda Land board, she discovered that Olweny Julius, the son of the late Odoi Sande John, had already started the process of applying for letters of administration. The Administrator General advised her and the rest of the family members to consolidate their applications for letters of administration, which advice led to the current dispute.
- 37) During cross-examination, the defendant maintained that all the deceased's children had authorised her to collect money from the Administrator General. She collected it and used it to pay school fees, to renovate the buildings on the suit land and to construct a channel, protecting the suit property from soil erosion. Also, she gave the plaintiff 200,000/= for food and another 500,000/= for rent payments and has continued to support him financially from time to time, whenever he has asked her for help.
- 38) Concerning her marriage to the deceased, it was her testimony in cross-examination that two elders from the deceased's family attended it. The plaintiffs did not attend it. She confirmed that at time the deceased married her, he had already acquired the suit land, in which they built their home.
- 39) Furthermore, it was her testimony that when she obtained the money in question from the office of the Administrator General, Sande Odoi had already passed on and his wife (2nd plaintiff) had already left the area with her children. It is the reason that the 2nd plaintiff did not receive any money from her. The defendant additionally testified that DW3 read the will three days after the deceased's burial, in the

presence inter alia of the following family members: Steven, Alice Faith, Peter, Peninah, and Lydia.

- 40) It was also her testimony that officials from the Buganda Land Board had surveyed the suit land, but because she did not have money, she has not processed a certificate of title, but still pays Busulu and Envugyo to the said board. She clarified that although she opened up a file with the Administrator General's office in 2002, she had not obtained letters of administration/probate, due to sickness.
- 41) Furthermore, it was also DW2's testimony that she had not seen the agreements that were made by the 1st plaintiff and the late Sande Odoi, with the late Othieno. She confirmed that the deceased and herself did not witness the said sale of the kibanja by her step sons. She also testified that the children of the Othieno, namely Susan Anyango Irene Sarah and Obbo are the current occupants of that kibanja. She estimated the suit property where the deceased and herself built their home to be about an acre in measurement.
- 42) In reexamination, she maintained that she had never sold any piece of land. That together with the deceased, she had bought a piece of land, which was measuring about 1 and ½ acres, which land the deceased divided into two parts. A portion of it was sold to someone, now deceased, who was known to her Sabakristu, while the other portion, about an acre, was the part that was given to the deceased Sande Odoi and the 1st plaintiff, by the deceased, which the two sold before their father's death to a one James Othieno.
- 43) The defendant testified at locus in quo, showing the court the main house in which she lived, the boy's quarters which contained 8 rental rooms plus semipermanent structures, some of which she had constructed on her own after the death of her husband, to earn rent from tenants for her sustenance. She showed the court the part of their compound containing the graves of her deceased husband, her grandson Steven, Kantono Miriam, Sande Odoi, Sam and Jane.

According to the witness, the remains of the said deceased persons will eventually be exhumed and transported to Tororo District. She also showed the court the trench that she had constructed to drain away rainwater. She led the court to the 2nd piece of land, which according to her, was the kibanja that her late husband had subdivided and given part of it to the 1st plaintiff and late Sande Odoi.

44) DW3 was Walugembe George William, the former LC1 chairperson of the area who retired in 2017. He testified that the deceased had two grown up sons at the time he got married the defendant. The two of them (the 1st plaintiff and the late John Sande Odoi), were given a kibanja as their share. The deceased said to him that he had given the boys their share and the rest of his property belonged his wife and her children. He knew the kibanja that was given to the 1st plaintiff and the late John Sande Odoi, which they later sold off.

45) He further testified that the Buganda Land Board announced mass registration of all the people staying on Kabaka's land. He mobilized people, including the defendant, to register their interests in the land. During the registration exercise, he approached the 1st plaintiff to establish if he had any objections to the registration of the widow and her children on the certificate of title as owners of the property. The 1st plaintiff informed him that he had no objections. Later on, he was surprised to discover that the said plaintiff was objecting to the registration of the property in the names of the defendant and her children. he maintained that the deceased had left a will to guide those still alive, on how to manage the property that he left behind.

46) It was the testimony of Walugembe George during cross-examination that the deceased gave him the copy of the will in 2000. He attended the deceased's burial but was not present when the will was read to the family. He was present when the deceased gave the 1st plaintiff and Sande Odoi the piece of kibanja land, which they later

sold. He did not know the size of the said kibanja but knew its boundaries. It boarded the late Semakula on the upper part, Nakamya Christine (deceased) on the lower part, the road on one side and Mubiru husband of Teopista Kigongo the other side. According to DW3, it was the deceased who informed him that his sons had sold the kibanja that he had given to them to Ochieng James. That when he subsequently met Ochieng, he confirmed the said fact to DW3.

- 47) He additionally testified that the will was not read at the burial, but that he read it to the family members in confidence, because of the dispute that had erupted between family members on the day of the burial, regarding the place where the deceased was to be buried, which the will had specified.
- 48) While at locus in quo, George Walugembe confirmed that on the date of the deceased's burial, he read to the family members in the courtyard, only the part of the will concerning the desire of the deceased to be buried on the suit land. After reading the will, chaos erupted, due to the claim by the deceased's relatives that the widow (the defendant) had killed the deceased. He maintained that he only had a photocopy of the will and had not witnessed the will.
- 49) Kafifi Micah the brother to the defendant testified as DW4. He stated that in 1975, his sister got married to the deceased. An introduction ceremony was held at Kateete village in Mukono District. The deceased was accompanied by a delegation of 17 persons, most of whom were his workmates. The deceased paid 75,000/= as dowry, which was then equivalent to 2 cows and 2 goats and also took many other things that were required for the marriage. He was directed by their late father Serwano Onyango to write a letter admitted in evidence as DEXH3 on behalf of his family, confirming that the marriage function had occurred. In the said letter, the other items that were acknowledged as received from the deceased were kiganda local

brew, a basket of meat, a jerrycan of paraffin, two dozens of match boxes, two kanzus two gomesi, six bars of washing soap and a cock.

50) His testimony in cross-examination was that he wrote DE3 after the introduction ceremony. The late Sande Odoi accompanied the deceased to the introduction ceremony. The other people who attended the traditional ceremony included their relatives and neighbors from Kateete.

51) DW5 was Oloka Kefa Jackson. It was his evidence that he witnessed the introduction ceremony held 1975 in the home of the late Serwano where his daughter Namusisi introduced her husband Owor. That the said Owor went there with other persons and paid 75,000/=, the equivalent of 2 cows and 2 goats. The family of the late Serwano Onyango accepted and received the dowry. The deceased promised in his speech that he would wed in the defendant in church.

52) He testified in cross-examination that he was not related to the defendant but that her late father Serwano Onyango, was his friend. He attended the introduction ceremony in person and was given the dowry assessment. The deceased went to the ceremony in a Volkswagen van accompanied by a young man - the late Sande. It was also his statement that some people arrived later on, although he did not know if they were part of the deceased's group. Strangely, he stated that the said people did not attend the introduction ceremony. That the deceased was asked to pay 75,000/= (2 cows and 2 goats), which he paid in cash.

53) DW6 - Owor Moses, testified that he was the eldest child of the late Odoi Sande and is the defendant's grandson. He stated that in 1993, his grandfather gave a piece of land (a kibanja) to his father Sande Odoi and the 1st plaintiff for personal use and occupation. It was also his testimony that in 1994, when his father was bed ridden he (DW6) and the 1st plaintiff resolved to sell the said kibanja in Kalina zone to Ochieng James and his wife Grace Adikini (both deceased), in

order to pay for his father's treatment. The proceeds from the said sale of the kibanja were shared between his father and the 1st plaintiff as owners of the land. Akoth Grace received a part of the purchase price paid to his late father and purchased a kibanja in Kyabazala in Mukono District, where she has settled with her children.

54) During cross-examination, it was the evidence of DW6 that at the time his grandfather died, he (Owor) had constructed a semi-permanent house on a portion of the disputed property, that was given to him by his said grandfather. He confirmed that the 1st plaintiff and his late father had sold their shares of the deceased's estate. He admitted that he was not present during the said sale. It was his father who informed him about it. He had never seen the agreement of sale of the said kibanja; he only heard about its existence from his father. Also, he admitted the fact that he was not present when the proceeds of the said sale were shared between his father and the 1st plaintiff.

55) Anyango Susan was DW7. It was her evidence that her father (Ochieng John James) informed her that the 1st plaintiff sold to him a share of land that he had got from his father. She also testified that her late father had earlier purchased land from the deceased that was neighboring the land of the late Semakula, owner of Kitebi Baptist High School.

56) Her testimony during cross-examination was that the land in issue, that was purchased by her parents, was sold to them by the 1st plaintiff and Sande Odoi in 1995. She was present during the signing of the agreement together with her brother Robert Ochieng and young sister Hellen Awor but did not sign it. Semakula was the neighbor on the upper part of the kibanja, mama Nankya was on the southern side, another piece of land belonging to her father was on the western side and the road was on another side. She confirmed that her late father bought two pieces of land: one piece purchased from the deceased; and the second one was bought from the 1st plaintiff and his late

brother in about 1995. It was her statement that her brother Ochieng Robert who was away, had the land purchase agreements in issue.

57) While at locus in quo, the witness showed court the land in which their home was constructed, which the 1st plaintiff and the late Sande Odoi sold to her father. She showed the court a part of their compound where she said he late Sande Odoi had constructed the foundation of his house which been eroded by rain. It was her evidence the land measured approximately 50 x 40 ft and that she was 18 years old when the said land sale transaction happened.

58) The defendant's exhibits are:

- DEX1 - copies of receipts for ground rent issued to the defendant to Buganda land board to the defendant, dated 1/4/2008, 2/3/2011 and 9/4/2011
- DEX1A - copy of the last will of the late Owor James dated 24/6/2000
- DEX2 - letter addressed to the administrator General by family/beneficiaries of the late James Owor James 28/4/2002
- DEX3 - a letter acknowledging receipt of bride price, authored by DW4, dated 6/8/1975

SUBMISSIONS OF COUNSEL FOR THE PLAINTIFFS

Issue No. 1:

Whether the dealings and actions of the defendant with regard to the estate of the late Owori James amount to intermeddling

59) Mr. Nkwasiwe averred inter alia that after the death of Owori James, the defendant fraudulently caused registration of the estate with the Buganda Land Board into her personal capacity as owner and not as an administrator of his estate. That the testimonies of PW1 and PW2 confirm that during the mass registration of the sitting tenants on Kabaka's land, the defendant registered herself and her children as the owners of the land whereas not. Counsel further averred that

intermeddling with the estate of the deceased includes assuming authority when that person does not have such authority. The defendant did not have letters of administration/probate but went ahead to register the estate in her own name. Counsel referred to the testimony of DW2, where she admitted receiving money from the Office of the Administrator General as benefits of her late husband who had worked with the Uganda Railway Corporation. According to him, she had failed to give a proper accountability for that money. Counsel prayed for this court finds that the actions of the defendant amount to intermeddling with the estate of the deceased.

Issues No. 2 No. 3:

Whether the plaintiffs are beneficiaries of the estate of the late Owori James and Whether or not the last will of the late Owori James was valid and legally binding and therefore should be executed.

- 60) Referring to the decision in ***Israel Kabwa vs Martin Banoba Musiga SCCA No. 52 of 1995***, counsel submitted that the 1st plaintiff who was the biological son of the deceased and the 2nd plaintiff who was the wife of the late Sande, the son of the deceased, qualify as beneficiaries and are therefore entitled to benefit from the deceased's estate.
- 61) In respect of the validity of the will, Counsel Nkwasiwe argued that the evidence of PW1, PW2, PW4 and PW5 is that the deceased died intestate and therefore living his estate undistributed. He pointed out that the evidence of DW1 is that he kept the will from 2000 to 2016. That if the will really existed, why was it not read at the burial or even during the last funeral rites of the deceased. Why did it take so long for the will to be declared?

62) Counsel also submitted that whereas a will establishes the wishes of the testator at the time of his death, the court should be inclined to interfere with the testator's wishes in circumstances where equity and justice require, such interference, citing case of ***Beatrice Asire Malinga vs Jonathan Obukunyang Malinga HCCS No. 13/2013***, in support of his submission. According to him, the contested will raises questions concerning the description of the property and its boundaries as well as the fact that the name of the testator appears different from his well-known names, with no explanation given. Additionally, that the will was not declared to the entire.

Issue No. 4: Whether the defendant was customarily married.

63) Counsel asserted that the burden to prove her marriage was on the defendant. He cited the case of ***Uganda Vs Kato Peter and another (1976) HCB 204*** in which it was held that in determining whether a marriage was under customary law, it was important to ascertain whether the union was treated as marriage by the customs, race or sect to the parties belong. According to counsel, the evidence of DW4 and DW5 watered down the testimony of DW2 that a traditional marriage was celebrated in her parents' home on 6/8/1975. That DW4 - Kafifi Micah testified that the deceased was accompanied by a delegation of about 17 people, dowry was paid and DW4 was directed to write a letter acknowledging the fact that the marriage and been celebrated. However, that during cross examination, DW4 contradicted himself when he said that the deceased was accompanied by Sande Odoi and that he did not know the other people at the ceremony, having seen them for the first time.

64) According to counsel, on the other hand, DW5 in cross-examination had testified that the deceased was accompanied by a young man to the ceremony but the other people who went to the

venue, did not attend the ceremony. Counsel also wondered why the parents of the parties were not mentioned anywhere.

- 65) Additionally, counsel submitted that the testimony of PW5, the biological sister of the deceased was that the defendant was employed as a helper of the deceased when the deceased's wife died and that their stay together resulted into cohabitation and producing of their children. That therefore, the two were never married, there being no evidence that any negotiations took place in respect of dowry and there being no formal introduction ceremony conducted between the parties. According to Mr. Nkwasiwe, there was no blessing of the marriage by the respective families that would have approved the marriage.

Issue 5: What remedies are available to the parties.

- 66) Counsel prayed for this court to declare that the actions of the defendant of collecting rent, registering the suit land in her name and in the name of her children without letters of administration, amount to fraud and intermeddling with the estate of the late Owori James. He prayed for an order that the estate of the deceased be equally distributed to its rightful beneficiaries, for an order of a permanent injunction restraining the defendant and her agents from further intermeddling with the estate until the court appoints an administrator to manage the estate and for and general damages for the suffering caused to the plaintiffs, as well as for the costs of the suit.

SUBMISSIONS OF COUNSEL FOR THE DEFENDANT

- 67) In response the 1st issue, Mr. Joseph Byanju averred that the evidence of defendant clearly shows that she did not in any way intermeddle with the estate of the deceased, but rather, that she had managed it the same way she had did before the demise of her husband, but that this time, she was doing it with the knowledge of the

Administrator General. That in addition, on 28/4/2002, the family members, including the plaintiffs, gave written authority to the defendant to collect and or sign for money due in respect of the deceased's estate.

- 68) That the defendant had explained that the monies received had been utilized to pay fees for the children, as well as for feeding, renovation of the family house and for the construction of a trench to channel rainwater out of the property.
- 69) In respect of the fact of registration the suit land with the Buganda Land Board in the defendant's name as its owner, counsel argued that the defendant was only complying with the requirements of the massive exercise of registration of all sitting tenants on Kabaka's land. She had consulted PW2, who did not object to the registration. According to counsel, DW2 has properly managed the estate and provided accountability to the family members whenever called upon to do so and no part of the estate has been wasted. Counsel prayed for this issue be resolved in the defendant's favour.
- 70) Concerning of the 2nd issue, Counsel Byanju averred that the evidence adduced by DW2, DW3, and DW7, indicates that the plaintiffs were no longer beneficiaries of the estate, because the deceased had during his life time, given his sons the 1st plaintiff and Sande Odoi their shares of his property. That sadly, they sold their shares to Ochieng James and therefore, are not entitled to any more benefit from the estate of the deceased.
- 71) Concerning the validity of the will, counsel cited **Sections 49 and 50 of the Succession Act** stating that section 49 provides for the form of a will, while Section 50 provides that a will must be in writing, signed by the testator attested to by two or more competent witnesses, who must see the testator sign or affix his or her mark on the will. According to him, the contested will satisfies the requirements of a valid will and the testimony of DW3 confirms the fact that the will

was read before the burial, to the family members to show that it was the wish of the deceased that he is buried in Namasuba, which wish was in fact respected.

72) On the question of the legality of the deceased and defendant's marriage, Counsel cited inter alia. The case of ***Namukasa Joweria Vs Kakondere Livingstone, Divorce Cause No. 30/2010***, provides for the proposition that in our courts, the payment of the full bride price requested for by the bride's family is proof that a customary marriage has been celebrated between two parties. He submitted that DW2 had confirmed in her testimony that she was customarily married to the deceased on 6/8/1975. That the testimonies of DW4 and DW5 supported her evidence. In addition, bride price of 75,000/=, equivalent to 2 cows and 2 goats and other items had been paid. That in recognition of the fact of solemnization of the said marriage, DW4 was directed by the defendant's father to write a letter in recognition of the function, which was a requirement in the culture of Badama, (which the parties belong to), to show that the family members had accepted the bride price that was paid by the deceased.

73) Regarding the remedies prayed for by the plaintiffs, Counsel averred that the plaintiffs were not entitled to any reliefs sought, because they had already benefited from the estate. That the defendant had in fact taken good care of the children left behind and educated one of them to become a teacher, while the other had become a nurse. That she had renovated the buildings on the property, constructed a trench on it and maintained the estate.

74) Counsel prayed that the defendant be allowed to apply for letters of administration or probate in her capacity as widow of the late Owor James and distribute the estate to those children who did not get any share of their father's estate.

DECISION OF COURT

75) I have considered the evidence, the submissions of counsel and the law applicable. Save for the issue concerning damages, which I will determine last, the rest of the issues raised by both counsel for determination will be dealt with in reverse order.

WHETHER THE DEFENDANT WAS LEGALLY MARRIED TO THE DECEASED

76) The plaintiffs maintain that the defendant was not legally married to the deceased. The testimonies of PW2, PW4 and PW5 were to the effect that the defendant was hired to look after the children left behind by Kantono, the wife of the deceased, upon her demise. That the defendant in the process, ended up cohabiting with the deceased, leading to the two of them giving birth to children.

77) The defendant testified that she was married to the deceased customarily on 6/8/1975 at her parents' home in Kateete in Mukono. That the deceased paid bride price of 75,000/=, which was then equivalent of 2 cows and 2 goats. Her evidence was corroborated by her brother DW4 who stated that he was directed by their father (the late Serwano Onyango) to draft a letter on behalf of his family, addressed to the late James Owor as an acknowledgement that he had paid bride price. Similarly, DW5 confirmed that bride price of 75,000/= was paid in cash as dowry. The same was accepted and received by the family.

78) Counsel for the plaintiffs pointed out the inconsistencies in the testimonies of DW4 and DW5 concerning the number of people who attended the said marriage ceremony. Also, he pointed out that DW4 - Kafifi Micah the author of DEXH3, contradicted his evidence in chief when he testified that the deceased went to their home for the

marriage ceremony with a young man called Sande and that he did not know the other people who attended the function. According to counsel, this was a contradiction, since the witness had stated in his testimony in chief that the deceased was accompanied by 17 persons for the occasion. The law relating to contradictions and inconsistencies is well settled. In **Constantino Okwel Magendo vs Uganda, No.12 of 1990**. The supreme court held:

“In assessing the evidence of a witness his consistency or inconsistency, unless satisfactorily explained, will usually, but not necessarily, result in the evidence of a witness being rejected, minor inconsistencies will not usually have the same effect, unless the trial Judge thinks they point to deliberate untruthfulness. Moreover, it is open to a trial judge to find out that a witness has been substantially truthful even though he lied in some particular respect”.

79) In paragraph 8 of his statement, DW4 stated:

“That I also do recall that the late James Owor was accompanied by a delegation of about 17 people, most of whom were his workmates and he was accepted in our family.”

80) In cross-examination, DW4 testified:

The late Sande was the relative who came with James Owor from the side of the Bako. It was only the deceased Owor, his son Sande and the defendant who came. Others in attendance were neighbors from Kaseete Kigogoola”.

81) As for DW5 Oloka Kefa Jackson, his evidence in chief, in paragraph 5 of his statement was follows:

“The said late James Owor in company of other people brought to the late Serwano Onyango dowry in the form of cash, UGX 75,000/= which was the equivalent of two (2) cows and two (2) goats and brought other things accompanying the dowry as per customs”.

82) In cross-examination, he stated:

“...He came with a young man and the defendant in a Volkswagen van. Some other people came later but I do not know if they were part of the group. They did not attend the introduction ceremony.

83) While I do agree with counsel for the plaintiffs that the evidence of DW4 and DW5 is contradictory in respect of the number of persons who accompanied the impugned introduction ceremony. I do note that the said witnesses are consistent concerning the fact that the late Sande Odoi, and the deceased were the only family members who attended on the deceased’s side. They are also consistent about the fact that the dowry that was paid and acknowledged by the defendant’s family was seventy-five thousand shillings (75,000/=). DEXH3, the letter that was authored by DW4 who produced the original document for the inspection of court as proof of the customary marriage ceremony was admitted without contest by the plaintiff counsel.

84) Having looked at the original document produced by DW4, I formed the view that it is a genuine document. In my opinion therefore, the stated contradictions, in the totality of the circumstances of this case are explainable on account of passage of time. The said witnesses gave their evidence in court after over 40 years had passed since the said ceremony took place. The statement

of DW4 above captioned, is a recollection of the events of that day, meaning that he was depending on his memory of an event which happened 40 years back. I find therefore that the inconsistencies pointed out are minor and result from time lapse.

85) Customary marriages are recognized as lawful marriages in Uganda. **Section 1(b) of Customary Marriages (Registration) Act** defines a customary marriage to mean “*a marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community, or any marriage celebrated under Part III of this Act*”. Ssekandi J as he was then, in the case of **Uganda Vs Kato and 3 others (1976) HCB 204**, held that, the test of determining what a marriage is under customary law is whether the union is treated as a marriage by the laws or customs of a nation, race and sect to which the parties belong. Payment of bride price in full is a requirement for a customary marriage to be valid. See **Mifumi (U) Ltd & Another vs Attorney General & Another Constitutional Appeal No. 2 of 2014**.

86) In the case before me, although, as observed by plaintiff’s counsel, the deceased was not accompanied by his parents to the contested ceremony, it is my belief that the said occasion, which apparently lacked the pomp that accompanies traditional marriages these days, and appeared to be summarily conducted, was in fact a marriage ceremony. The evidence of payment of bride price by the deceased to the father of the defendant – the late Sserwano Onyango - DEXH3, which lists the bride price items as hard cash shillings 75,000/=, equivalent to 2 cows and 2 goats, kiganda local brew, a basket of meat, a jerrycan of paraffin, two dozens of match boxes, two kanzus two gomesi, six bars of washing soap and a cock, stands unchallenged. According to DW4, the bride price of two cows was a requirement for the Jopathola. DW5 confirmed that the deceased paid,

the 75,000/= that same day he was given the dowry assessment, implying that the deceased accepted to pay the dowry that was demanded by the defendant's family. Persuaded by the holding of the Hon. Eva Luswata in ***Namukasa Joweria's*** case supra, I find that the deceased and the defendant were legally married.

WHETHER OR NOT THE LAST WILL OF THE LATE OWOR JAMES IS VALID AND LEGALLY BINDING AND THEREFORE SHOULD BE EXECUTED

87) For a will to be valid, **Section 50 of the Succession Act** provides that it must be in writing, signed by the testator, attested to by two or more competent witnesses who must see the testator write, sign or affix his or her mark on the will. The substance of the testimonies of PW1 PW2, PW4 and PW5 is that the contested will, (DEX1A) is a forgery. According to them, the deceased died intestate because his death was sudden. They assert that since the will was never read in their presence, it was never in existence in the first place. It was the statement of PW4 that he learnt about the will when this suit was filed.

88) On the other hand, DW1- Owor Julius, the author and witness to the challenged will testified that on 24/6/2000, the deceased summoned him (DW1) to his home in Namasuba, Kalina zone and requested him to record his last will. He did this in the presence of late Pascal Seguya, who also witnessed the signing of the will. That after writing the will, the deceased read it and confirmed its contents. It was additionally his evidence that Nabirye Florence, also witnessed the said will. DW3 - George William Walugembe was according to his testimony, given a copy of the will to keep. He read out to the family members, the part of the will that was expressing, the deceased's wish to be buried in Namasuba, Kalina zone and that is why he was buried there.

89) I have perused the photocopy of the will admitted in evidence as (DEX1A) and dated 24/6/2000. DW1 testified that the original will was surrendered by him to the police when a case of forgery was reported against him by the 1st plaintiff. It is my finding that it prima facie, satisfies the requirements of a valid will. Although the plaintiffs alleged that, the will was forged, no evidence was adduced by them to prove that fact, other than claiming that the deceased's alleged signature on it is not genuine. **Section 101(1) of the Evidence Act** provides:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

90) A report of a handwriting expert or the production of other document(s) signed by the deceased for comparison by the court with the alleged signature forged signature attributed to the deceased on the will would have provided this court with more information upon which to make up its mind about whether the will is a forgery or not. In fact, there was no evidence given even orally, to demonstrate how the signature on the will is different from the deceased's signature. A mere allegation that the said signature was forged does not make it a forgery.

91) The unchallenged evidence of DW1 is that Katwe police station had retained the original copy of the will, when the 1st plaintiff filed charges of forgery against him. The 1st plaintiff confirmed in his cross-examination that he had reported a case to Katwe police station but claimed that it was a claim for his father's estate which the police are still investigating. According to him, he abandoned the charges, because the police were delaying in their investigations, preferring instead to pursue this matter. It is thus unclear from his evidence what the exact nature of his report to Katwe police was.

92) It is noteworthy that the defendant in paragraph 17 of her evidence in chief testified that Dr. Okong Martin one of the executors

of the will and Julius Olweny, son of John Sande Odoi were directed by the Administrator General to confirm from Uganda Railway Corporation if the signature on the will was or was not in fact the signature of the deceased. That the said name and signature were verified and found to be true and correct according to the records of the deceased's employer. She further asserted that having not succeeded with the administrator general, the plaintiff and others reported KT/SD/46/30/08/2016, challenging the deceased's signature on the will. That evidence stands against the plaintiffs' claims, since it was never challenged by the plaintiffs' counsel in cross-examination.

93) In any case, the plaintiffs' failure to have the doubted signature on the will examined by a handwriting expert, or to produce other cogent proof of forgery of the said will, leads me to the irresistible conclusion that the plaintiffs have failed to establish that fact alleged on the of the balance of probabilities.

94) Also, apart from the defendant's testimony highlighted above, there is the testimony of Owor Julius (DW1) who drafted the said will, and whose testimony in court was not dented by cross-examination. Additionally, the testimony of DW3 (Walugembe George William) to the effect that he was given a copy of the will, which he read only in part to the deceased's family members, concerning the burial wishes of the deceased, since he could not read it in public due to the conflicts that arose at the deceased's funeral dispels the claim that the will was kept a secret, and supports the defendant's evidence on the matter. It is my considered view that the defendants have established to the required standard that the contested will is a valid will.

WHETHER THE PLAINTIFFS ARE BENEFICIARIES OF THE ESTATE OF THE LATE OWOR

95) It is not in dispute that Oloka Peter and Sande Odoi were biological sons of the late Owor James. What is in dispute is that they ceased being beneficiaries of the estate of the late Owori James. From the evidence of both parties it is clear that the 1st plaintiff and the 2nd plaintiff's deceased husband were adults living in their own homes at the time of the deceased's demise. They did not leave in the suit property. The evidence of the 2nd plaintiff PW1 is that when her husband died in 1995, the deceased allocated to her, two rental units to collect rent, to enable her raise her five children, but the defendant objected, upon which, she relocated to the home of her parents in Kyabazala, Mukono. The testimony of PW3 - Nampala Mensi in that regard is that in the 1990's when the 2nd plaintiff's husband died, the 2nd plaintiff was given one room by the deceased in one of his houses, but that soon thereafter, the 2nd plaintiff returned to the witness's grandmother Nzera Nakaya complaining that the defendant had refused her to stay in the said room. It supports PW1's evidence in respect of the assertion that the 2nd defendant was denied access to the property given to her by the deceased. It however contradicts her evidence by implying that she was given only one room to reside in. What baffles my mind is why, if these things happened during the deceased's life time, he never intervened to protect the interests of the second defendant and her children (who were said to depend on him for survival), but watched on as the 2nd defendant migrated to her parents' home with her children. I think that the plaintiffs evidence falls short of establishing the fact that they were dependents of the deceased.

96) Be that as it may, the testimonies of DW2, DW3, DW7 show that the 1st plaintiff and his brother the late John Sande Odoi were given land, which they sold off in the lifetime of the deceased. Counsel Nkwasiabwe submitted that DW7, the daughter of the late Ochieng

James had lied to court when she testified that she and her siblings witnessed the sale transaction between the 1st plaintiff and Sande Odoi on one hand and her late father on the other hand, since they were minors at the time of the transaction. Counsel labored to explain that when DW7 used the word “witnessed”, she meant that she had signed the land sale agreement, which ultimately implies that she signed the agreement and yet she was a child. Also, counsel contended that the defendant and her witnesses had contradicted themselves and the challenged will, regarding the neighbors of the alleged plot that was given to the plaintiffs.

97) I have examined the testimony in cross-examination of DW7 – Susan Anyango whose family house stands on the said piece of land. Nowhere does state that she signed the sale agreement. She categorically stated:

“I witnessed the sale. I did not sign the agreement, although I was present...”.

98) Clearly, when the witness stated that she witnessed the sale, she was referring to being present and not attesting to a document.

99) Concerning boundaries, at locus in quo, the defendant showed the court the piece of land that she said was given to the 1st plaintiff and the late Sande Odoi by the deceased. She stated that the neighbors of the said plot were: Tolifa Constant; a man whose name she could not recall but who was known to her as Sabakristu; a road; and the plot she had sold to Nakamya, which she believes that Nakamya had also sold off to someone else. On her part, DW7 testified that the land borders: a road; the land of Semakula on the upper part; Mama Nankya on the southern side; and her father’s plot on the western side. At locus in quo, the 1st plaintiff admitted that the piece of

land shown to the court by DW2, DW3 and DW7 originally belonged to his father. He denied having any knowledge about who had sold it and who its current occupants are.

100) Because of that admission by the 1st plaintiff that the piece of land in issue belonged to his father, I do not consider the unexplained inconsistencies pointed out by the plaintiffs' counsel, regarding the names of the neighbors to that land to be going into the root of the matter. The fact is that DW2, DW7 and the 1st plaintiff were referring to same piece of land which the 1st plaintiff confirmed to have originally belonged to his father. The conflict is regarding whether the land in issue (that I established to be measuring about 50ft x 80ft) was given to the plaintiffs by the deceased. From my assessment of the evidence of the witnesses concerning this issue, and taking into account the fact that the will of the deceased, which I have found to be valid, for the reasons I have stated above, which mentions that the 1st plaintiff and the late John Sande Odoi were given the land in issue by the deceased, and also names the defendant and her children as the beneficiaries of the suit property, it is my finding that the plaintiffs are not beneficiaries of the deceased and therefore are not entitled to anything from the estate of the late Owori James.

WHETHER THE DEALINGS AND ACTIONS OF THE DEFENDANT WITH REGARD TO THE ESTATE OF THE LATE OWOR JAMES AMOUNT TO INTERMEDDLING

101) **Section 268 of the Succession Act** defines an intermeddler. It provides as follows:

A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence,

thereby makes himself or herself an executor of his or her own wrong; except that—

(a) intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property; or

(b) dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his or her own wrong”.

102) The plaintiff's in their testimonies accused the defendant of continuously collecting rent from the suit property and registering it with Buganda Land Board, as its owner when she did not have letters of administration to manage the estate of the deceased. PW2 went to the office of the Administrator General in 2016 to start processing for letters of administration, when he could no longer stand the defendant's intermeddling with his father's estate, only to be told that the defendant had opened a file there in 2002.

103) The defendant on the other hand admitted that she had registered the suit property with the Buganda Land Board, although she had failed to find resources to process the land title, because it was a mandatory requirement by the said land board, which issued announcements to all sitting tenants to register their interests with it. That before doing so, she consulted the 1st defendant who gave her his consent to register it in her name and in the name of her children. Also, that it had been bequeathed to her and her children by the deceased.

104) Concerning the money that was due to the deceased, it was the defendant's testimony during cross-examination, that the deceased's children including the 1st defendant authorised her to collect money from the Administrator General. She collected it and used it to pay school fees, to renovate the houses on the suit land and to construct

the channel preventing soil erosion on the suit property. That she gave the plaintiff 200,000/= for food and another 500,000/= for rent and continued to support him with money from time to time, whenever he asked her for help.

105) During cross-examination, the 1st plaintiff admitted that he knew about and was among the family members who signed the letter that authorized the defendant to collect or sign for money from the Administrator General, that was due to the estate of the deceased. In reexamination, he denied that he had ever received any of that money, which he among others had authorised the defendant to sign for.

106) PEX1 is a letter dated 19/11/2015, written by the LC1 Chairperson, the defence secretary and the youth secretary of Kalina village council namely: G.W. Walugembe, Mugerwa Fred and Kazibwe Sam respectively, confirming the ownership of suit land by Namusis Robinah (defendant) and her children, to wit; Meeme Alice, Steven Okenyi, Ngero Faith, Kyoyita Peninah and Awori Lydia. PEX2 is a registration form issued by the Buganda Land Board, containing the names of the defendant and her children as owners of the suit land.

107) PEX1 and PEX2 were not contested in any way by the defendant. In her evidence, she explained that she had registered the land with the Buganda Land Board because it was a requirement by the said board for all sitting tenants on the Kabaka's land to do so and with the full knowledge of the 1st plaintiff. I do find that her actions particularly with regard to that registration of the land in issue, fall within the ambit of the law under the exception in Section 268(a) of the succession Act. It was necessary for her to do so to preserve the property in issue, although she did not have letters of administration. The substance of the plaintiffs' complaint is that the defendant registered her name and the names of her children as owners of the estate of the deceased to the exclusion of the other beneficiaries.

- 108) Having found that the plaintiffs are not the deceased's beneficiaries, it is my esteemed view that their contentions regarding their exclusion by the defendant, while registering the property are unfounded. In any case the will of the deceased which I have pronounced to be valid, excludes them from being beneficiaries of the suit property. Additionally, at locus in quo, I established that the suit property is the home in which the defendant and the deceased lived. It was roughly about 150 ft by 100 ft in measurement. Its development was unplanned. It contains a main house where the defendant lives, rental units constructed as servant's quarters of the main house surrounded by semi-permanent structures.
- 109) The plaintiffs have never lived on that property. They now want the court to believe that they are entitled to a slice of it, just because the deceased was their father and father in law respectively. According to the defendant, she contributed to the construction of their home and personally constructed the semipermanent structures on the land, including the water trench, after the demise of her husband, except for the structure belonging to DW6 - Owor Moses, the son of John Sande Odoi, which he constructed with the permission of the deceased.
- 110) Notably, the defendant's evidence generally and particularly at locus in quo, concerning her claims of participating in the construction of the buildings on the suit land remains unshaken. It is my finding, from the evidence as a whole and persuaded by the decision in ***Herbert Kolya Vs Ekiriya Mawemuko Kolya (Civil Suit No 150/2016)***, that the suit property is matrimonial property, and since Article 31(1) of the Constitution provides for equal rights in marriage, during marriage and at its dissolution, upon the death of the deceased, the suit property exclusively belongs to the defendant and no one else. I think that by including the suit property in his will, the deceased was only trying to protect the constitutional rights of the defendant who still had young children to raise. Clearly, the defendant owns the suit

property, which devolved to her upon the death of the deceased. She was thus entitled to dealing with it as she so pleased. She dealt with it by constructing semipermanent structures for rent and applied the rent proceeds to educate her then school going children and for sustenance. I consequently find that the defendant's actions complained of, do not amount to intermeddling.

- 111) As for the complaint that the defendant mismanaged the money that she received through the Administrator General, it was her testimony that when the conflict about the validity of the will erupted, she went to the Administrator General seeking guidance on the right thing to do. The Administrator General wrote to the family members on 3/4/2002, recognizing the fact that the deceased had died testate living a will that had to be respected. On 28/4/2002, DEX2, a letter addressed to the Administrator General by the deceased's family members, giving authority to the defendant to collect or sign for money that was due in respect of the deceased's estate. The deceased's children, including the PW2 signed the said letter. The 1st plaintiff admitted in his testimony that he signed that letter, although he denied attending the meeting that generated that letter and further denied the claim that he had received some of the money that he had authorized the defendant to receive on behalf of the estate.
- 112) On the face of it, by signing for, applying and distributing the monies which form part of the deceased's estate, the defendant intermeddled with that part of the estate of the deceased. That can also be said about the authors of DEX2 who include the 1st defendant, as well as the Administrator General himself, since none of them are grantees of probate or letters of administration in regard to the deceased's estate. Nonetheless, the Administrator General, from the facts adduced, was responsible for the payment of the said monies to the defendant. Her actions were authorised by the Administrator General who paid to her undisclosed sums of money due to the deceased's estate, without proof

that she had the legal authority to distribute it. Both the 1st plaintiff and the defendant in their testimonies allude to the fact that there was a pending dispute at the Office of the Administrator General concerning who the right applicant for letters of administration or probate would be. The 1st plaintiff claims that when he went to the Administrator General, the defendant had already started the process of obtaining letters of administration, while the defendant on the other hand claims that Olweny Julius, the son to the late John Sande Odoi, had already initiated the process of obtaining letters for the deceased's estate when she tried to apply for the same, causing the Administrator General to advise the parties to consolidate their application for letters of administration, which advice sparked off this conflict.

113) The circumstances under which the Administrator General came to receive the said monies remain unclear to the court, since he was not sued and no evidence was adduced from his office. I think that the responsibility for the alleged intermeddling does not fall on the defendant's head alone. It falls mostly on the Administrator General. The 1st plaintiff too, as one of the authors of DEX2, which permitted the defendant to sign for money on behalf of the deceased's family is complicit in it. Regardless, I have already pronounced that from the evidence presented, the plaintiffs are not beneficiaries of the deceased. They are not therefore entitled to bringing any claim as beneficiaries.

WHAT REMEDIES ARE AVAILABLE TO THE PARTIES

114) In view of the findings above, the plaintiffs are not entitled to the remedies sought. This suit is dismissed with costs to the defendant.

I so order.

Susan Okalany
JUDGE
11/3/2021