

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA (FAMILY DIVISION)
CIVIL SUIT NO. 94 OF 2016**

1. **DICKIE BIKWASIZEHI**
2. **MUHUMUZA TOM**
3. **GRACE KUSHEMERERWA**

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VERSUS

KEBIRUNGI HARRIET:.....
DEFENDANT

BEFORE: HON. JUSTICE SUSAN OKALANY

JUDGMENT

- [1] The plaintiffs brought this suit against the defendant seeking for orders that:
- a) The caveat lodged by the defendant against the grant of letters of administration to the plaintiffs be vacated;
 - b) Letters of administration for the estate of the late Bikwasizehi Duesdedit be granted to the plaintiffs;
 - c) A permanent injunction be issued restraining the defendant, her agents and/or persons claiming under them from interfering with the plaintiffs' administration of the estate of the late Bikwasizehi Duesdedit;
 - d) General Damages be awarded to the plaintiffs;
 - e) Interest on the said general damages be granted from the date of judgement till payment in full;
 - f) Costs of the suit be awarded to the plaintiffs; and
 - g) Any other relief that the court deems fit be granted.

BACKGROUND

- [2] The plaintiffs' case is that their father the late Bikwasizehi Duesdedit hereinafter referred to as the deceased, died intestate on 7th November 2013. A family meeting, attended by the defendant, was subsequently held, where it was decided that the plaintiffs would apply for letters of administration of the estate of the deceased. The plaintiffs subsequently applied for a certificate of no objection from the office of the Administrator-General, which they were granted. However, when they applied for letters of administration of the estate vide Administration Cause No. 50 of 2014, they were surprised to learn that the defendant had lodged a caveat challenging their application for the grant of the said letters, claiming that she is the best-placed person to administer the estate, being the deceased's widow.
- [3] As a result of the said caveat, another meeting was held amongst the parties in which they entered into a consent agreement where the defendant agreed to withdraw the caveat among other things. However, the defendant later rejected the consent agreement and applied for a grant of letters of administration of the deceased's estate vide Administration Cause No.830 of 2015. The plaintiffs in return also lodged a caveat against the grant of letters of administration to the defendant in the said application. According to them, the defendant is not the deceased's widow, because the purported customary marriage between the defendant and the deceased was never concluded and the two of them did not live together as husband and wife.
- [4] They assert that the deceased was living with his children in Wandegeya, while the defendant lived with their stepbrother a

one, Samuel Musinguzi (hereinafter referred to as the child) in Kiira - Namugongo. The plaintiffs insist that if there was a customary marriage between the defendant and the deceased, it was void, because the defendant was still in a subsisting marriage with a one, Bernard Bigombe whom she got married to on 11th September 1993.

- [5] According to the plaintiffs, the defendant is unsuitable to administer the estate of the deceased because of her hostility towards them, which has resulted in her denying them access to the child. They also accuse her of not declaring several properties that she jointly acquired with the deceased, with the intention of depriving them of their share in the said properties. They maintain that the defendant does not have the deceased's family's best interests at heart and is thus unsuitable to administer the deceased's estate.
- [6] On the other hand, the defendant denies being in a subsisting marital relationship with Bernard Bigombe. She states that she legally divorced Bigombe vide Divorce Cause No.13 of 2003 at the Chief Magistrates Court of Nakawa. She states that she was customarily married to the deceased from 25th June 2005 until his demise. She declared that the child who is aged 11 years, is the son she and the deceased had and therefore, the said child and herself are beneficiaries of the deceased's estate.
- [7] She denies having been invited to attend the family meetings that subsequently led to the issuance of a certificate of no objection to the plaintiffs and maintains that she was side-lined by the plaintiffs in their application for letters of administration of the estate when she was not included as a beneficiary of the estate in their petition for grant of letters of administration, despite her interest in the estate as the deceased's widow.

- [8] She avers that the plaintiffs have refused to provide for upkeep and school fees for the child. She lodged a caveat against the plaintiffs' application so as to protect her interests as well as the interests of the child in the estate of the deceased.
- [9] According to the defendant, she proposed to the plaintiffs that she jointly administers the estate with one of them, but her proposal was rejected by the plaintiffs who have refused to acknowledge the fact that she is the deceased's widow. She asserts that the plaintiffs want herself and the child to be at their mercy each time she experiences a financial need. She additionally asserts that since she is the deceased's widow and is the mother to the youngest beneficiary, she is entitled to have the largest percentage of the deceased's estate and is therefore best-suited to administer the estate. In the alternative, she states that she is willing to co-administer the estate with the plaintiffs.
- [10] The defendant maintains that she individually owns some properties, which do not form part of the estate in issue. The said properties clearly have her name on the titles thereof, showing that they were not jointly owned with the deceased. She prays that this court dismisses the plaintiffs' case and awards her costs.
- [11] In a joint scheduling memorandum, the parties raised the following issues for determination:
1. Whether the defendant is a widow to the deceased;
 2. Who of the parties is best suited to administer the estate of the late Bikwasizehi Duesdedit; and
 3. What remedies are available to the parties.

THE EVIDENCE

[12] When the matter came up for hearing, Tom Muhumuza testified as PW1, Kwesiga Anne Rose testified as PW2 and Dickie Bikwasizehi testified as PW3, while the defendant testified as DW1.

[13] Tom Muhumuza (PW1) stated *inter alia* that he is one of the sons of the deceased. Around the year 2003, he found out about the deceased's relationship with the defendant. During that time, the family had two homes; one in Mbarara (Ruharo cell) and a condominium in Wandegeya, hereinafter referred to as the flat, where the deceased, who was then a member of parliament, stayed whenever he came to Kampala to attend parliamentary sessions. According to him, the deceased visited the defendant's family in 2005 to inform them of his intention to marry her, although he did not eventually do so. The defendant was still married to one, Bernard Bigombe whom she wedded on 11th September 1993, at St James Cathedral, Ruharo in Mbarara Municipality.

[14] It was his further testimony that by the time he joined Makerere University in 2006, the deceased and the defendant were living separately. The deceased stayed at Buhweju and in the flat, while the defendant stayed in Bukoto, near Trinity Primary School. The deceased and the defendant had sired the child. Subsequently, the deceased constructed a house for the defendant in Kiira, on Plot 4045, Block 185 Kyadondo in Namugongo, since he wished for the child to be raised in a dignified home.

[15] Surprisingly, the defendant registered the said land in her name just before the deceased's demise in 2013. The witness also testified that the deceased had disclosed to him that he had sold part of his land in Mbarara to complete the construction of the

said house. PW1 declared that there was no subsisting relationship between the deceased and the defendant at the time and he was aware of it since he used to accompany the deceased to the defendant's house to visit the child. In his absence, the deceased would be accompanied there by PW3.

[16] According to PW1, before the deceased's demise, he was asked by the deceased to look after the child and also to take care of his sisters, whom the deceased wished would continue staying in the condominium. The deceased also asked that his children treat a one John Tibaijuka as their own brother.

[17] After the deceased's demise, a family meeting was held, which was attended by the defendant and her sister. It was resolved that PW3 and Grace Esther Kushemererwa would apply for letters of administration of the deceased's estate. To the surprise of family members, the defendant lodged a caveat against their application for letters of administration without informing them. Nonetheless, the parties negotiated amongst themselves and a consensus was reached. A consent agreement was drawn and signed by them. When the parties appeared before the registrar, the defendant refused to acknowledge the said consent agreement, claiming that she had been coerced to agree to it.

[18] According to the PW1, after the death of the deceased, the plaintiffs started taking care of the child's school fees and other scholastic needs for the year 2014, until the defendant made it impossible for them to meet the child. She told them not to visit their stepbrother and deprived them of the chance to spend the Christmas season of 2014 with him. The witness still made an effort to trace for the said child at school but he stopped

reaching out to the child when he felt that he was stressing the child.

[19] Additionally, PW1 testified that since the demise of the deceased, he alongside his siblings PW2, PW3 and Judith Kukunda, have struggled to maintain the estate of the deceased. They have tried to pay off the debts incurred by the deceased, but have met challenges as they lack letters of administration of the estate, that would grant them the requisite authority to effectively administer the estate. He maintained that the reason the plaintiffs have not been able to support the child is the defendant's own conduct of keeping him away from them.

[20] PW1 criticised the defendant for her unwillingness to include properties that she had acquired together with the deceased as estate property, which are the house constructed for her by the deceased in Namugongo at Kyadondo Plot 4045, Block 185 and a piece of land named Plot 558, Block 121 at Kyadondo, Nangabo.

[21] He testified that while the plaintiffs are willing to share with the child, the properties acquired by both their late parents, the defendant is unwilling to share with the plaintiffs the properties that she had acquired after the deceased's demise, which properties include Plots 8904, 8905 and 8907 of Block 185, at Namugongo, Kiira in Wakiso District, at Bwerenga - Busiro Plot 2228 of Block 413 Bwerenga -Busiro in Wakiso and Plot 228 Busiro in Wakiso District.

[22] It was PW1's further testimony that the deceased left behind a home in Nsiika Town Council in Buhweju District, a piece of land in Nsiika Town Council, which contains a forest and another piece of land in the same area which has a banana plantation. The piece of land with the banana plantation is neighboured by the late Mr Matsiko's home and the road that leads to

Nyakishogwa. It was bought in 1994 and there is a sale agreement to that effect, which was signed by both the deceased and the plaintiff's late mother (Eva Bikwasizehi). This land located in Nsiika Town Council was acquired by his parents before his birth. That piece of land is the only estate land in Buhweju that the witness discovered documents of acquisition in the deceased's briefcase.

[23] The deceased also had properties in Ruharo in Mbarara, which are a piece of land with a house and below it, another piece of land containing a banana plantation, as well as a third piece of land which the deceased sold before he passed on. The land containing a banana plantation was bought on 3rd October 2005 from Dorcus Kiwanuka and Ruth Mponye and there is a sale agreement to that effect, which agreement PW1 witnessed. Payment of the last instalment for the said land was made on 15th November 2005.

[24] The deceased moved to the flat in 2001 when he was elected Member of Parliament. He bought the flat in 2007 after obtaining a mortgage from Housing Finance Bank. The defendant moved to the flat in 2003. At that time, the witness was still based in Mbarara but would visit the deceased and find the defendant in the flat.

[25] The plaintiffs' mother passed away in 1998. As a student of Makerere University in 2006, PW1 was accommodated in a hostel except that during holidays, he would reside in the flat with the deceased. By 2008, the defendant was no longer living with the deceased in the flat. The deceased lived in the said flat with the witness and his siblings and would also stay with the defendant in Bukoto and in the other places that she later moved to.

[26] The witness told the court that he found the following documents in the deceased's suit case in 2015, after his demise: a letter from National Housing and Construction Company Ltd dated 15th January 2007, addressed to the deceased, enclosing a sale agreement dated 6th January 2007, signed by the Chief Executive of National Housing and Construction Company Ltd and witnessed by the company secretary, the deceased and himself; a letter dated 10th October 2007 addressed to the deceased, enclosing an amended agreement in respect of the flat; an amended sale agreement between the deceased and National Housing and Construction Company Ltd and dated 28th August 2007; a letter addressed to the deceased and dated 18th June 2007, containing an offer from Housing Finance Company of Uganda Limited and addressed to the deceased, offering him Plot 410-411 Unit 9, Flat B2, Makerere; an acceptance note dated 22nd June 2007, signed by the deceased and addressed to Housing Finance Company (U) Limited; and the mortgage deed made between Housing Finance Company of (U) Limited and the deceased, signed by the deceased on 25th May 2007.

[27] It is PW1's prayer that the court grants the plaintiffs rights to interact with the child and gives them administrative powers to manage the deceased's estate and share the deceased's property equally amongst themselves, once the child becomes an adult. He further prayed that this court directs the defendant to open an account in which the plaintiffs would render all the necessary support needed by the child so that the defendant can give proper accountability on her utilization of the said funds dispensed in support of the child.

[28] During his cross-examination, PW1 reiterated his evidence in chief and admitted that he did not know the details about the

nature of the deceased's visit to the defendant's family because he was not part of the entourage that accompanied the deceased to the defendant's family in 2005. He named the 1st plaintiff (PW3) as the person who accompanied the deceased on that visit.

[29] He also testified that a one Hillary Kabubi who is a relative of the defendant was the person who informed him about the defendant's marriage to Bigombe, before the dispute between the parties came to court. He later verified the fact that the defendant was married to the said Bigombe when he went to Ruharo church in Mbarara. He did not establish if the said marriage was later dissolved. He got to know that the defendant resided in Bukoto when he accompanied the deceased to the defendant's house, something he subsequently did frequently.

[30] Regarding his knowledge about the house that the deceased built in Kiira-Namugongo, the witness stated that the deceased took him to the construction site when the house was still under construction and informed him that he had to sell one of his pieces of land in Mbarara in order to finish constructing the said Kiira-Namugongo House. Despite the deceased's said contribution, he was surprised to see a copy of the certificate of title of the Kiira- Namugongo land in the defendant's name as sole registered proprietor.

[31] He maintained in cross-examination that there was no matrimonial relationship between the deceased and the defendant who had stopped cohabiting at the time of the deceased's death.

[32] He also maintained that after the deceased's demise, he paid the school fees of the child and made plans to pick him up for Christmas shopping, but the defendant kept postponing the

dates on which he could collect the child. He admitted not providing help for the child when the defendant's lawyers wrote to the plaintiffs, insisting that his failure never meant that the plaintiffs had refused to provide for their said stepbrother.

[33] Concerning the meeting held after the deceased's burial, he testified that the defendant only attended it in her capacity as the mother of the child.

[34] The witness explained that the reason he believed that he was stressing the child when he contacted him at school is that he perceived that the child was uncomfortable speaking to him whenever he tried to call him through his teachers. As a result, he stopped calling the child.

[35] PW1 believed that some of the property owned by the defendant was bought by the deceased for the benefit of the child and that is why the plaintiffs wanted it included as part of the estate property. When asked to explain why the properties purchased by the defendant after the deceased's death should be included in the deceased's estate as per his evidence in chief, the witness testified that he believed that the deceased could have set up an income-generating project that the plaintiffs were unaware of, which project might have aided the defendant in purchasing the properties that she had acquired after the deceased's death.

[36] He could not understand why the defendant was unwilling to share properties that she had obtained after the deceased's death with the plaintiffs, while at the same time showing interest in partaking in the properties owned by the deceased, under the guise that she is the deceased's widow.

[37] He stated in further cross-examination that some estate properties generate income, which is used to run the tea business and the estate at large. The estate is collectively being

run by himself, PW3, Grace Esther Tushemererwa and Judith Kukunda. The witness declared that he is not opposed to the distribution of the deceased's estate.

[38] Regarding the estate property jointly acquired by the deceased and his late mother, PW1 testified that most of the documents signed by his late mother were shown to him by the deceased. He later found those documents in the deceased's suitcase in 2015.

[39] It was also his testimony that he met the defendant in 2003 when she visited their home in Mbarara. However, he was not aware that the defendant had contributed to the purchase of the house in Ruharo as shown in PEX24.

[40] He testified further that he found a mortgage deed dated 25th May 2007, for the flat, which deed was signed by the deceased and witnessed by a one, Francesca Nakagwa. However, no one had signed the part for spousal consent. Also, he was surprised to discover that no representative of the bank that granted the mortgage had signed the said mortgage deed.

[41] In re-examination, PW1 testified that he was running the estate's tea estate alongside his siblings, to prevent it from being run down completely. The flat and the tea plantation were part of the deceased's estate. The income-generating projects of the estate are the tea plantation and the rented house in Mbarara. He stated that sometimes, the plaintiffs contribute their own funds to help run the tea business and the proceeds of rent from the Mbarara house, assist in the effective running of the deceased's estate. The 1st plaintiff (PW3) took over the mantle of running the tea estate alongside his siblings, when he was made the heir of the deceased.

[42] When the plaintiffs attempted to reach a consensus with the defendant, they received a letter from her lawyers with quotations attached thereto of the costs of their stepbrother's needs. The plaintiffs failed to meet the said costs because they were exorbitant.

[43] The witness confirmed the fact that the defendant was registered on the certificate of title of the land at Namugongo on the 21st day of October 2013.

[44] He maintained that the defendant had already left the flat by 2007 and moved to Bukoto and that subsequently, she migrated to Najjera and then finally to Kiira-Namugongo. The deceased lived with the defendant in Bukoto and Najjera but only visited the defendant and the child when she moved to Kiira. He last saw the child in the year 2014.

[45] Judith Kukunda (PW2) is one of the deceased's daughters. In her testimony, she corroborated PW1's evidence and further testified that the deceased moved to Wandegeya with his family after purchasing a goodwill proprietary interest in the flat that was owned by the National Housing and Construction Company in Makerere-Kivulu, Kawempe Division. The deceased visited the defendant's home to meet her family and to possibly plan for a wedding during the time they briefly cohabited in the flat. It was during the said cohabitation that the child was conceived. After the said visit, the deceased and defendant's relationship suffered, leading to physical and emotional abuse of the deceased and the children of his late wife by the defendant. As a result, the relationship between the deceased and the defendant ended, and the defendant subsequently moved out of the flat, leaving the deceased with his children.

[46] The witness stated that when the relationship between the deceased and the defendant ended, the deceased resorted to merely visiting the defendant to check on the child but would not spend a night at the defendant's house.

[47] She asserted that the defendant was not the deceased's widow and was not recognised as such during the deceased's vigil, requiem mass at Christ the King Church and burial at Nsiika Town Council in Buhweju District.

[48] During her cross-examination, PW2 testified that she is staying in the flat with her sister, one of their cousins and her niece. She admitted having not attended the ceremony held between the deceased and the defendant, when the deceased visited the defendant's family, as she was at school at the time. She also admitted that she did not witness the deceased acquire the land in Namugongo but was present when he was constructing the house on it. She testified that she had attended funerals before the demise of the deceased and it was a norm in those funerals for widows to be recognised, but that was not the case at the deceased's funeral, which action proved that the defendant was not the deceased's widow.

[49] During her re-examination, she reiterated her evidence in chief and maintained that she was not aware of any marital relationship between the deceased and the defendant.

[50] She declared that two plots of land situated in Ruharo in Mbarara District were sold off by the deceased in order to complete the construction of the defendant's house in Namugongo.

[51] Dickie Bikwasizehi (first plaintiff) testified as PW3. In his testimony, he too corroborated the evidence of PW1 and PW2. Additionally, he testified that the deceased and his late mother got married in 1984 and had five children namely: Judith

Kukunda, Grace Esther Kushemererwa, Anne Kwesiga, Tom Muhumuza and the witness. Their parents also raised a one John Tibaijuka as their own child. He asserted that the deceased and his late mother acquired several properties during the subsistence of their marriage, including a residential house in Mbaguta cell in Mbarara Municipality, a plot of land in Mbaguta cell in Mbarara Municipality, a home in Nsiika Town Council in Buhweju, on land measuring approximately 5 acres, a plot of land at Nsiika Town Council in Buhweju, a piece of land in Bulere measuring 45 acres of land comprised of a tea estate, a flat in Wandegeya (Block 1 B2) and a pension fund with the Uganda Parliamentary pension scheme, amounting to about 120,000,000/=.

[52] It was his testimony that when the deceased requested the witness to escort him to visit the defendant's family, so as to introduce himself (the deceased) to them in 2005, he explained to him that the said visit was the first step in a process that would potentially lead to a marriage between himself and the defendant. A certain man, who acted as a middleman between the deceased and the defendant informed the deceased's entourage in advance about the process that would be followed in the Batooro marriage culture.

[53] The middleman informed them that the function they were attending was called "*Okweranga*" directly translated as "announcement" and that during the announcement ceremony, the groom's family was required to take several gifts, including the local brew to the parents of the bride-to-be. The bride price would then be fixed, which would be paid at a ceremony hosted by the lady's family. The bride-to-be would subsequently be considered officially engaged to her suitor. A wedding ceremony

would then follow on another day, in which the Kingdom of Tooro would issue the couple with a traditional marriage certificate.

[54] PW3 further testified that he was aware that the law provides that traditional marriages should be registered with the government within 6 months upon which the parties are issued a certificate of registration.

[55] According to him, there was no marriage between the defendant and the deceased, as no dowry was paid by the deceased for the defendant and the deceased did not return to the defendant's family for a formal engagement ceremony. Also, he stated that the deceased and the defendant were not issued a marriage certificate by the Tooro Kingdom and were not registered with the government of Uganda as a customarily married couple. He asserted that the deceased did not finally get married to the defendant, because they fell out due to the latter's animosity towards the deceased's family.

[56] He declared that the deceased had informed him that the defendant pressurised him to build her the house in Namugongo, forcing him to sell off two of his plots of land in Mbarara District, in order to build her the said house. He witnessed the sale by the deceased of one of the said two plots which is located in Mbaguta cell in Mbarara Municipality. Its proceeds were used to buy materials for the construction of the defendant's house. He was thus surprised to discover that the title of the property in Namugongo was registered in the defendant's name only, considering the fact that the deceased had built that house for the defendant between 2009 and 2011.

[57] The witness asserted that at the time of his demise, the deceased had not been in good terms with the defendant for about three years. Moreover, she had denied the deceased the

opportunity to have the child socialise with his step-siblings who were living in Wandegeya. He stated that because of the estranged relationship between the deceased and the defendant, which the deceased blamed for all his emotional and physical pain, he had instructed his children not to inform the defendant of his whereabouts when he was hospitalised.

[58] PW3 further asserted that the defendant did not contribute to the acquisition of the flat. What's more, when the bank threatened to recall the mortgage due to the default in payment after the deceased's death, it was he and his siblings who responded and are now paying the outstanding balance that the deceased owed the bank at his death.

[59] It was also his testimony that before the deceased passed on, he had assigned roles to him and his siblings to help the deceased run his tea estate. Since the deceased's demise, they have struggled to maintain the tea estate. The deceased had accumulated debts in running the tea estate, which debts were taken over by the plaintiffs. The plaintiffs have tried to clear the deceased's debts, as evidenced by his bank statements, despite the fact that they have failed to access the deceased's bank accounts, since they do not have letters of administration of the deceased's estate. The proceeds accruing from the tea estate were too meagre to meet the exorbitant costs quoted by the defendant's counsel for the support of the child.

[60] According to him, the defendant has no interest in the estate's growth or in the reunion of the family despite the deceased's wishes for the family to remain united and for the estate to be maintained as a whole. That notwithstanding, the plaintiffs were willing to share the deceased's estate amongst all its beneficiaries, if any of them expressed an interest in acquiring

their share of the said estate. He declared that the deceased had bequeathed a portion of land in Buhweju to the child, which fact all his siblings were aware of.

[61] PW3 contradicted the testimony of PW1 and PW2, when he stated that the defendant and the deceased never lived together at any one time due to the unstable nature of their relationship.

[62] During his cross-examination, PW3 stated that it was the deceased who told him that he had rented the house in Bukoto for the defendant. He also stated that when he escorted the deceased to the defendant's home in 2005, the function was attended by a few people on the deceased's side.

[63] When probed by the defendant's counsel about his knowledge of the Batooro culture on marriage, the witness testified that he had done some research about certain cultures in Uganda and had attended many wedding ceremonies of the Batooro. According to him, if a certificate of marriage was not issued by the Tooro kingdom after a traditional marriage ceremony, then that marriage would not be considered solemnised. He declared that it was general knowledge that any marriage has to be registered with the government of Uganda.

[64] He admitted that he was unaware that the defendant had consented to the mortgage, obtained by the deceased from Housing Finance Company (U) Limited as the deceased's spouse. He further admitted the fact that he was not present when the mortgage deed was signed.

[65] It was also his evidence that he and his siblings paid Musinguzi's fees for two terms, but were stopped by the defendant from continuing to do so, as she claimed that the amount paid by them was petty. He admitted knowledge of the fact that his lawyers had informed the defendant's lawyers about the

plaintiffs' inability to pay school fees for the child when the defendant's lawyers wrote to the plaintiffs requesting them to pay the child's school fees.

[66] He testified that the deceased had not left behind any will, but had verbally expressed his wishes to him.

[67] Concerning the income of the deceased's estate, the witness testified that the estate had no income but soon contradicted himself when he said that the estate's income is derived from the tea estate and rent from the house in Mbarara.

[68] PW3 identified photographs of the deceased and the defendant holding hands during the traditional ceremony held at the home of the defendant's parents. He stated that during the said ceremony in issue, guests were seated in tents which had been set up.

[69] He maintained that the deceased had built a house in Namugongo for their stepbrother, which house the defendant ought to include as one of the properties of the estate of the deceased.

[70] He admitted knowing Sophie Obalim as the mother of his children and testified that the defendant attended his introduction marriage ceremony held at the home of Sophie Obalim's parent, but did so only in her capacity as the mother of his step-brother (the child).

[71] In his re-examination, he maintained that he had never seen any document confirming the deceased's marriage to the defendant. PW3 testified that although he was not a *Mutooro*, he had researched about the different cultures in Uganda and had attended many weddings of Batooro and was therefore conversant with their culture. He stated that he is married to a woman from Tooro and that when he got married, a

representative of the Tooro Kingdom handed him and his wife a traditional marriage certificate from the Tooro Kingdom.

[72] The defendant (DW1) in her testimony, partly corroborated the evidence of the plaintiffs regarding the period that she spent residing in the flat and the fact that the child was born to her and the deceased.

[73] She further testified that she is the widow of the deceased, having gotten customarily married to him on 25th June 2005. She testified that she had a first marriage to Bernard Bigombe on 11th September 1993, but successfully petitioned for divorce from him in Divorce Cause No.13 of 2002. She had lived as a single woman thereafter until she met the deceased and cohabited with him from 2003 - 2005. She got married to him at her parents' home in Kyaboma, Kamwenge District on 25th June 2005, following his completion of all the traditional marriage obligations. Her family consented to their marriage and blessed their union. Her uncle Amos Katugaba handed her to Charles Kulibanza an uncle of the deceased. Her uncle also wrote a letter dated 25th June 2005 addressed to the deceased, confirming the finalization of the said marriage, which letter was signed by her said uncle, Irene Kambonera Tumwine, Irene Birungi who was her matron in the ceremony and Herbert Kambonera who is her brother. She was then given a ring by the deceased as proof of their marriage and handed over to her father-in-law Mr Byanyima. Thereafter, an afterparty was held to celebrate her marriage to the deceased.

[74] It was also her evidence that during the period she was living in the flat, the plaintiffs would spend their school and university holidays with the deceased and herself. She participated in bringing them up by contributing to the payment of their school

fees as well as looking for vacancies for them in secondary schools and in universities. She provided them with pocket money and cared for them when they were sick.

[75] The defendant testified that through a property agency called Kasulu Property Masters located in Wandegeya, she and the deceased jointly bought goodwill amounting to seventeen million Uganda shillings (17,000,000/=) from a one Lilian who was the sitting tenant in the flat before they moved into it. After some time, National Housing and Construction Company gave sitting tenants in its apartments an opportunity to purchase the condos they were occupying. She and the deceased acquired the flat through a mortgage facility from Housing Finance Company (U) Limited. She had on 30th April 2007 given spousal consent to the bank, before the said mortgage was granted on 25th May 2007. She also signed another spousal consent form on 18th June 2007.

[76] Her name was indicated as the deceased's next of kin in his application to the bank for the mortgage and she is named as the contact person by the bank in the event that there was a default in payment.

[77] On 16th December 2009, the deceased applied for an equity release of forty (40) million from Housing Finance of Uganda LTD. She signed the said application and the spousal consent form. On 29th December 2015, the bank gave her a notice of default of payment of the mortgage. She notified the bank about her husband's death and further notified her lawyers about the bank's communication. The 1st and 2nd plaintiffs agreed to continue paying the mortgage in instalments. On 15th February 2019, the bank further sent her an email, demanding for the payment of the arrears due on the mortgage.

[78] The defendant testified further that her lawyers had written to the bank, asking for the certification of the mortgage application forms dated 30th April 2007 and 16th December 2009 and the spousal consent form dated 16th December 2009. The said documents were certified by the bank.

[79] It was also her testimony that the reason she moved out of the flat was because she conceived their son and mutually agreed with the deceased that she moves out of the flat because of the 3rd plaintiff's smoking habit, which posed a health threat to her and the unborn child.

[80] According to DW1, the deceased had the following properties in addition to those already mentioned by the plaintiffs: Money on accounts at Centenary Bank; Housing Finance Bank, Orient Bank and Stanbic Bank; and a Terrano wagon vehicle Reg. No. UAE 183T which was in good working condition at the time of the deceased's demise.

[81] She asserted that the deceased's estate is being run illegally by persons who have not been appointed as legal representatives of the estate. Despite the fact the estate generates income on a daily basis, she and the child have not enjoyed any material and financial benefits from the estate. She had opened up an account with Stanbic Bank (U) Limited, Makerere Branch, in the name of the child, where the money for his school fees and maintenance was supposed to be banked by the plaintiffs. However, they did not make any deposits on the said account. On several occasions, through her lawyers, she had requested for money for the maintenance of the child, which was to be provided for from the proceeds of the deceased's estate, but the plaintiffs had refused to give her the requisite assistance and as

a result of the denial of financial, material and educational needs of the child, they were affecting his normal growth.

[82] She stated that the plaintiffs had twice harvested eucalyptus trees on the deceased's estate and sold them. They had continued to receive rent from tenants who were still occupying the deceased's residential house in Ruharo in Mbarara after his demise and were also running the deceased's tea estate since his demise. The plaintiffs had neither accounted for income derived from the above-mentioned activities nor distributed the estate to its beneficiaries.

[83] It was her evidence that she acquired properties on her own during the lifetime of the deceased and after his demise, using her salary as a university lecturer and had registered the said properties in her own name.

[84] It was also her evidence that the plaintiffs convened a family meeting in Kawempe, four days after the burial of the deceased, when she was still mourning for the deceased. She consented to the plaintiffs' application for letters of administration of the deceased's estate, in the interest of preserving peace and harmony in the family, having suffered mistreatment by the plaintiffs during the deceased's illness and funeral. She realised that the plaintiffs had continued to exhibit a negative attitude towards her and the child and decided to lodge a caveat, stopping the plaintiffs from acquiring letters of administration of the deceased's estate. She also decided to petition for letters of administration herself in her capacity as the deceased's surviving widow and as the mother of the youngest beneficiary of the estate.

[85] She told the court that given the controversies surrounding the estate, she has no confidence that if granted letters of

administration, the plaintiffs will administer it in the interests of all beneficiaries, herself included.

[86] She prayed that the estate be distributed under the supervision of the Registrar of the Family Division or an officer of the Administrator General and proposed that 80% of the parliamentary pension benefits of the deceased be distributed to her, to enable her to take care of the education of the child, who is still school going. She also proposed that the plot at Ruharo Mbarara with a banana plantation should also be distributed to her and that the flat in Wandegeya be given to her as well so that her son would have where to reside when he joined Makerere University. She asked for a share of the land at Buhweju District and a 20% share in the tea estate for herself as the deceased's widow and for the child.

[87] She further prayed that this court directs that all proceeds of the deceased's estate be deposited in the court and maintenance of the child be provided for from the proceeds of the estate of the deceased. She additionally prayed that the right to administer the estate of the deceased be granted to her as the widow of the deceased.

[88] She testified that the parties had been invited to parliament in January 2020 and informed that the pension benefits of the deceased were not part of his estate and that the deceased's benefits totalled 56,000,000/= which monies were distributed to his six children as follows: 14% to Dickson Bikwasizeyo, 13% to Tom Muhumuza, 13% to Grace Tushemererwa, 13% to Anna Kwesiga, 13% to Judith Kukunda and 34% to the child.

[89] During her cross-examination, the defendant maintained that the deceased paid her dowry in the presence of her family members and the deceased's family members including the 1st plaintiff.

She testified that she is a *Mutagwenda* by tribe and that in *Kitagwenda* culture, marriages are not registered. During her union with the deceased, the two of them were given a certificate of acknowledgement of their marriage dated 25th June 2005.

[90] She admitted that at the time she got married to the deceased, he had already acquired some properties, but maintained that more properties were jointly acquired by them during the subsistence of their marriage. The properties acquired by the deceased before their marriage are: land measuring 10 acres at Nsiika Town Council Buhweju District, which land contained a residential house and a matooke plantation; 17 acres of land at Nsiika Town Council of Buhweju District, which had eucalyptus trees; and a bungalow with a servants' quarters at Mbaguta cell, Ruharo in Mbarara municipality. She asserted that after they got married, they bought the following properties: 3 acres at Nsiika Town Council covered with banana and coffee plantations; a flat in Wandegeya in 2003; a tea estate of 100 acres at Burere in Buhweju; and a piece of land in Mbaguta Cell, Ruharo in Mbarara Municipality.

[91] She said that the piece of land at Mbaguta cell, Ruharo in Mbarara municipality was sold to them by one of their neighbours in Mbarara municipality. The 3 acres of land at Nsiika were jointly purchased and the sale agreements for the said pieces of land are with the plaintiffs, who had removed them from the deceased's possession when he was still hospitalized, before his demise. She also helped the deceased plant the eucalyptus trees on the 17 acres of land at Nsiika Town Council. She emphasized the fact that the tea estate was not on ancestral land.

[92] She insisted that she bought the land situated at Namugongo, named Plot 4045 of Block 185 in 2013, during the subsistence of her marriage. She declared that the house on the said land was not constructed by the deceased.

[93] In 2010, she also bought a piece of land known as Plot 162 of Block 121 Kyadondo Nangabo, measuring 12 decimals. She added another piece of land in Bwerenga in 2017.

[94] According to DW1, proceeds from the sale of the deceased's house in Mbarara were used in paying school fees for his daughter Anne who was studying in Nairobi and the 2nd plaintiff (PW1) who was studying at Makerere University.

[95] It was also the defendant's testimony in cross-examination that she started working at Mbarara University in 1992 as an executive assistant and did so up to 1998 when she moved to Kyambogo University as an accounts assistant, a job she held for four (4) years. She was later sponsored by the Belgian Technical Corporation for a master's degree in 2003 and she took leave to attain the said masters. In 2007, she became an assistant lecturer at Kyambogo University, teaching development studies courses. At that time, she got attached to the National Agricultural Advisory Services (NAADS) programme of government as a researcher, a job which provided her with research funds. Makerere University also provided her with some research funds. In 2008, she did a consultancy for UNICEF.

[96] The funds that she obtained from the said jobs together with what she received from selling her house in Mbarara, were used by her to construct her home in Namugongo. She insisted that she had lived with the deceased as his wife until his death.

[97] It was the defendant's further testimony in cross-examination that she was a witness to the transaction of sale of the land

comprised in Plot 2 Deus Close, Freehold Register Volume 558, Folio 5, concluded between the deceased and Dr Komutunga Evelyn as established by PEX2. She emphasized the fact that the proceeds of that sale did not go towards the construction of her house in Namugongo, and neither did the proceeds of the sale of land comprised in Plot 9, Freehold Volume 558, Folio 3, by the deceased, which sale is evidenced in PEX3.

[98] She stayed at the flat from 2003 to 2007. Her son was born in 2007. She started residing in her Namugongo house in 2012.

[99] She admitted the fact that she had not made any payments towards the clearance of the deceased's mortgage.

[100] She testified that the deceased did not sign her family's letter consenting to their marriage and neither did anyone from the deceased's family.

[101] According to her, the pictures admitted in evidence as DEX3 are proof that the deceased received the said letter from her family.

[102] She averred that the loan obtained by the deceased was taken to enable him to care for his family, modify the house in Ruharo Mbarara, pay school fees for the children and also care for his elderly father. The loan was to be serviced using his pension, proceeds from the tea estate and the goat farm, as well as rent proceeds from the Mbarara house. The deceased had paid off most of the loan and the mortgage and the plaintiffs had continued servicing the deceased's said loan and mortgage, using his pension, proceeds from the tea estate, the goat farm and income from rent, although the goat farm was no longer in existence.

[103] During her re-examination, she explained that prior to the marriage ceremony between the deceased and herself, the two

of them had informed their parents that the traditional ceremonies would be combined and conducted at once. Their marriage ceremony was attended by the deceased's friends and family, who included the 1st plaintiff and one of her stepdaughters Judith Kukunda among others. The 1st plaintiff participated in decorating the venue for the ceremony and personally carried the gourd of local brew ("*tonto*"). He had accompanied her and the deceased to purchase gifts that were presented to her parents.

[104] She testified that she acquired her properties above mentioned using her salary, loans and proceeds of the sale of her house in Kubiri, which she used to build her house in Namugongo, which house she had not completed at the time of her testimony in court. She insisted that she lived with the deceased in Namugongo and at times he would reside in the flat.

[105] She explained that it was her family's responsibility and not the deceased's family's responsibility to sign the letter consenting to and confirming that her marriage to the deceased had been accomplished.

[106] According to the witness in 2006, she suggested to the plaintiffs that the file of the deceased's estate be updated but they refused to work with her and pushed her out of all the estate affairs.

LIST OF EXHIBITS

[107] The following documents were admitted as exhibits for the plaintiffs:

- 1) PEX1, which is the consent order dated 14th May 2018 in ***Dickie Bikwasizehi, Muhumuza Tom, Grace Kushemererwa versus Kebirungi Harriet***

(Miscellaneous Application No. 93 of 2018), where the court *inter alia* allowed the applicant's application for discovery on oath of the documents sought and ordered St. James Cathedral Ruharo Church of Uganda, to provide the applicants with marriage certificate number 30010, dated 11th September 1993, for the marriage celebrated between the defendant and Bernard Bigombe;

- 2) PEX2, which is a sale agreement dated 26th September 2009, made between the deceased and Dr Komutunga Everline Tumwesigye for land known as Freehold register Volume 558, Folio 5, Plot 2 Deus Close, bordered by Mr Namara Joseph in the North, Mr Karanganwa in the West, Bikwasizehi D.K in the East;
- 3) PEX3, which is a sale agreement dated 7th April 2011, made between the deceased and Dr Everline Komutunga for land measuring 40m by 40m x 23 x 22, known as–Freehold Volume 558, Folio 3, Plot 9, Rutahenda lane Mbarara;
- 4) PEX4, which is a certificate of title for land comprised in Plot 2228 of Block 413 registered in the defendant's name as its proprietor on 5th September 2017;
- 5) PEX5. which is a land agreement dated 14th January 2018, made between the defendant and Yiga Experito for land comprised in Plot 2229 of Block 413;
- 6) PEX5(2), which is a land sale agreement dated 21st June 2019, made between the defendant and Yiga Experito for land comprised in Plot 1621 of Block 413 at Busiro Bwerenga Entebbe;
- 7) PEX5(3), which is a land sale agreement dated 14th November 2019, made between the defendant and Yiga

Experito for land comprised in Plot 1621 of Block 413 at Busiro Bwerenga Entebbe;

- 8) PEX6, which is a certificate of title for land comprised in Plot 558 of Block 121, situated at Nangabo, Mutuba, Kyadondo registered in the name of the defendant as its proprietor on 21st December 2010;
- 9) PEX7 - Pages 1 to 2, which is a land sale agreement dated 21st January 2010, made between Jomayi Property Consultants Ltd and the defendant for land measuring 11.5 decimals, comprised in Plot 162 of Block 121;
- 10) PEX7 - Page 3, which is a receipt dated 17th March 2010 issued by Jomayi Property Consultants Ltd, acknowledging receipt of 2,200,000/= from the defendant as final payment for land comprised in Plot 162 of Block 121;
- 11) PEX7 - Page 4, which is a receipt dated 17th March 2010 issued by Jomayi Property Consultants Ltd, acknowledging receipt of 280,000/= from the defendant as transfer fees for land comprised in Plot 162 of Block 121;
- 12) PEX8, which is a certificate of title for land comprised in Plot 4045 of Block 185, situated at Namugongo, Ssaabaddu, in Kyadondo registered on 21st October 2013 in the name of the defendant as its proprietor;
- 13) PEX9, which is a memorandum of sale of land dated 8th January 2013 between David Mugalu and the defendant for land measuring 0.067 hectares, comprised in Plot 4045 of Block 185, Kyadondo;
- 14) PEX10, which is the certificate of title for land comprised in Plot 8904 of Block 185 at Namugongo, Ssabaddu, in Kyadondo, registered in the name of the defendant as its proprietor, registered on 5th March 2017;

- 15) PEX11, which is a sale agreement between Basemera Grace and the defendant for land measuring 0.046 and 0.053 hectares, comprised in Plots 8904 and 8905 of Block 185 respectively, situated at Namugongo, Ssabaddu, in Kyadondo;
- 16) PEX12, which is a certificate of title for land comprised in Plot 8905 of Block 185, situated at Namugongo, Ssabaddu, in Kyadondo made on 15th March 2017, with the registered proprietor thereof being the defendant registered;
- 17) PEX13 is the same document as PEX11;
- 18) PEX14, which is a certificate of title for land comprised in Plot 8907 of Block 185, situated at Namugongo, Ssabaddu, in Kyadondo the defendant's name as its registered proprietor, registered on 15th March 2017;
- 19) PEX15, which is a sale agreement between Basemera Grace and the defendant for land comprised in Plot 8907 of Block 185 at Kiira, Namugongo;
- 20) PEX16, which is a Housing Finance Bank statement for Account No. 9900022186 of the deceased;
- 21) PEX17, which is a certified true copy of the Marriage Certificate of Bernard Bigombe and the defendant, issued by St. James Cathedral Ruharo;
- 22) PEX17 - Page 2, which is a receipt for 20,000/= issued by the Church of Uganda, Ankole Diocese for processing a certified copy of the marriage certificate;
- 23) PEX18, which is a letter dated 15th January 2007 addressed to the deceased by the company secretary of National Housing and Construction Company Limited, informing him that the sale agreement for LRV 3244, Folio 11 Unit No. 9, Condominium Plan No.0025, Block "A" Flat

1B2, Plot No. 410-411 Makerere Hill Road, Kampala had been signed;

- 24) PEX18 - Pages 2 to 3, which is a sale agreement dated 6th January 2007 between National Housing and Construction Company Limited and the deceased for LRV 3244, Folio 11, Unit No. 9, Condominium Plan No.0025, Block "A", Flat 1B2, Plot No. 410-411 Makerere Hill Road, Kampala;
- 25) PEX19, which is a letter dated 10th October 2007 and addressed to the deceased by the company secretary of National Housing and Construction Company Limited, forwarding the amended sale agreement to him;
- 26) PEX19 - Page 2, which is the amended sale agreement dated 28th August 2007 between National Housing and Construction Company Limited and the deceased for LRV 3244, Folio 11, Unit No. 9, Condominium Plan No.0025, Block "A", Flat 1B2, Plot No. 410-411, Makerere Hill Road, Kampala;
- 27) PEX20, which is a letter of offer dated 18th May 2007 from the head of credit and mortgages at Housing Finance Bank, addressed to the deceased and offering him an advance of 32,000,000/= on the security of the first mortgage on Plot No. 410-411, Unit 9, Flat 1B2, Makerere Hill Road;
- 28) PEX21, which is an acceptance note by the deceased dated 22nd May 2007, of the offer made to him in PEX20;
- 29) PEX22, which is a mortgage deed made between Housing Finance Company of Uganda Limited and the deceased in respect of the advancement of 32,000,000/=;

- 30) PEX23, which is a sale agreement dated 13th February 1994 and its Luganda translation, made between the deceased and the widow of the late Mediasi Tibagwa for land at Nsiika- Buhweju, neighbouring the lands of Mr Matsiko in the East, Mr Mahanga Oped in the North, Mrs Kashara in the South, a court house in the West and the Nyakishogwa - Butare road to the south;
- 31) PEX24, which is a sale agreement dated 3rd October 2005 made between Ruth Mponye and Dorcas Kiwanuka on one hand and the deceased on the other hand for land measuring 80 ft. by 125 ft., bordering the deceased in the North, the deceased and the vendors in the West and Dorcas Kiwanuka in the East and South;

[108] The following documents were admitted as exhibits for the defendant:

- 1) DEX1, which are the decree nisi dated 23rd October 2002, and the decree absolute dated 22nd May 2003 declaring that the marriage solemnised between the defendant and Bernard Bigombe on 11th September 1993 at St. James Cathedral Church Ruharo Mbarara had been dissolved;
- 2) DEX2, which is a judgment dated 23rd October 2002, delivered by His Worship Byarugabha John B.K in favour of the defendant in the case of **Harriet Kebirungi Bigombe versus Bernard Bigombe (Divorce case No. 13 of 2002)**;
- 3) DEX3, which are 14 photographs of the traditional wedding between the deceased and the defendant;
- 4) DEX4, which is a caveat dated 13th June 2014, lodged by Kebirungi Harriet as the widow/caveator, against the grant of letters of administration of the estate of the deceased to

Dickie Bikwasizehi, Grace Esther Kushemererwa and Tom Muhumuza;

- 5) DEX4, which is an affidavit in support of the caveat, lodged by Kebirungi Harriet against the grant of letters of administration to Dickie Bikwasizehi, Grace Esther Kushemererwa and Tom Muhumuza;
- 6) DEX5, which is the petition for letters of administration of the estate of the deceased by the defendant, dated 20th October 2015;
- 7) DEX6, which is a caveat dated 3rd November 2015, lodged by Dickie Bikwasizehi, Muhumuza Tom and Grace Kushemererwa as the children of the deceased, against the grant of letters of administration of the estate of the deceased to the defendant;
- 8) DEX6 - Pages 2 to 3, which is the affidavit in support of the caveat lodged against the grant of letters of administration to the defendant, sworn by the 1st plaintiff;
- 9) DEX7, which is a letter dated 22nd February 2018 authored by Namara, Twenda & Co Advocates (plaintiffs' counsel), addressed to Oketcha Byaruhanga & Co Advocates (defendant's counsel), informing them that the plaintiffs were not in a position to pay the school fees of the child. since minors are not entitled to maintenance but only to their benefit of the estate;
- 10) DEX8, which is a spousal consent form dated 16th December 2009, signed by the defendant in respect of a mortgage for land comprised in FRV/LRV 3422, Folio 11, Block 1, Flat B2, Plot 411 to 411, Makerere Hill;
- 11) DEX9, which is a letter dated 25th June 2005, addressed to the deceased by the family of the late Aston Kambonesa

of Kyabyoma of Kamwenge, in which Amos Kabugaba on behalf of the said family informed the deceased that the defendant's family had accepted him to marry their daughter Harriet Kebirungi on that same 25th June 2005 at Kyaboma, Kamwenge, having satisfied all the traditional marriage obligations and which letter also blessed the couple's marriage;

- 12) DEX10, which is another spousal consent form dated 18th June 2007, signed by the defendant in respect of the mortgage transaction;
- 13) DEX11, which is a mortgage application form dated 16th December 2009 of Housing Finance Bank, completed by the deceased and the defendant;
- 14) DEX12, which is a mortgage application form dated 30th April 2007 from Housing Finance Bank, completed by the deceased and the defendant;
- 15) DEX13, which is an email dated 29th December 2015 addressed to the deceased and copied to the defendant by Ms Dowina Achola, a Credit Recovery Officer and Ms Clothilda Nakimbugwe Mujasi, the Monitoring and Recovery Manager of Housing Finance Bank, notifying them of their default in payment of the mortgage;
- 16) DEX14, which is a letter dated 15th February 2019, addressed to the deceased and copied to the defendant by Ms Racheal Nabposa, the Recovery Officer Collections and Workouts at Housing Finance Bank, demanding for the immediate payment of arrears amounting to 1,520,000/=, following the deceased's default in payment of the mortgage on the deceased's bank Account No. 9900022186;

- 17) DEX14, which is an email from Housing Finance Bank dated 15th February 2019, addressed to the defendant, reminding her to pay accumulated arrears for 3 months or face foreclosure; and
- 18) DEX15, which is a letter dated 16th November 2020 addressed to the Managing Partner - Oketcha Baranyanga and Co. Advocates by Mr Francis Mabeli Khisa the Company Secretary/Head, Legal & Compliance at Housing Finance Bank, forwarding fully certified mortgage application forms dated 30th April 2007 and 16th December 2009 and a spousal consent form dated 16th December 2009, signed by the defendant in respect of the flat.

REPRESENTATION

[109] Ms Alinda Ikanza and Mr Elvis Twenda represented the plaintiffs, while Mr Joseph Oketcha and Ms Claire Nakabubi represented the defendant.

[110] On 17th February 2021, this court directed counsel for the plaintiffs to file submissions in support of the plaintiffs' case and serve the defendant by 17th March 2021. Counsel for the defendant were to reply by 19th April 2021 and plaintiffs' counsel would file a rejoinder if necessary, on 3rd May 2021. The plaintiffs did not file any submissions. The defendant's counsel did file submissions, which I will consider in the resolution of the issues raised by the parties.

DETERMINATION

[111] I have considered the pleadings and evidence adduced by the parties in this suit the, submissions of the defendant's counsel and the law applicable. The issues that had initially been raised

at the scheduling conference were amended at the trial as follows:

1. Whether the defendant is a widow of the deceased;
2. Whether all property of the estate of the deceased constitutes matrimonial property; and
3. What are the remedies available to the parties

Issue 1 - Whether the defendant is a widow to the deceased

[112] Section 101 (1) of the Evidence Act, Cap 6 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”.

[113] The plaintiffs in their evidence, stressed the fact that the defendant was not legally married to the deceased. According to them, the deceased only visited the defendant’s family in Kyaboma, Kamwenge District on 25th June 2005 to show that he intended to marry her but did not eventually get married to her due to misunderstandings which developed between them.

[114] On the other hand, the defendant’s evidence shows that she was customarily married to the deceased according to the customs of the Batagwenda.

[115] It was Mr Oketcha’s submission that it is settled law in our courts that 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. To support his argument, he cited the decision in the case of ***Aggrey Awori vs. Rosette Tagire, HCCS 178/2000***. According to him, the defendant had proved that she got married to the deceased on 25th June 2005, when her dowry, which included goats and "tonto" was given to her family. He averred that the exhibited pictures (DEX3)

showing the marriage celebrations that were held in the home of the defendant's parents, together with the acceptance letter written by the defendant's family, consenting to her marriage to the deceased, admitted into evidence as DEX9, are proof that the said marriage was indeed celebrated on the stated date.

[116] In **Section 2(w) (i) of the Succession Act Cap 162**, a wife is defined as:

“a person who at the time of the intestate's death was validly married to the deceased according to the laws of Uganda”.

[117] **Section 1(b) of the Customary Marriage (Registration) Act, Cap 248** defines customary marriage as:

“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”.

[118] PW3 testified that he is conversant with the cultural marriage rites of the *Batooro*, since he has attended many *Batooro* traditional weddings, and has done research on the said subject in addition to being married to a *Mutooro*. It was his evidence that when the deceased's entourage accompanied the deceased to the defendant's home on 25th June 2005, the middleman who represented the deceased's party, outlined to them the procedure of getting married according to the *Batooro* culture and that they were informed that the function they were attending was called *“Okweranga”*, which loosely translated means making an announcement of intention to marry a woman. The deceased and his party were expected to take several gifts, including local brew beer to the defendant's parents and that the bride price would be fixed then, which would be paid later in

another ceremony that they would be invited to by the defendant's parents. Subsequently, a wedding ceremony would follow, after which, the couple would be given a traditional marriage certificate from the Kingdom of Tooro.

[119] Although PW1 and PW2 initially testified that there was no marriage between the defendant and the deceased, they later admitted that they did not attend the function in issue. Thus, their evidence cannot corroborate PW3's evidence since it is hearsay evidence, which is contrary to **Section 59 of the Evidence Act, Cap 6**, having not directly seen, heard or perceived the events of 25th June 2005. It is for the same reason that the evidence of PW3 regarding what the middleman said to him is hearsay evidence. Moreover, the said middleman was not called to testify.

[120] Although PW3 testified about the traditional practices of the people of Tooro, he did not adduce evidence to prove that either the deceased or the defendant were *Batooro* and neither did PW1 and PW2. The defendant on the other hand testified that she is *Mutagwenda*, which evidence was not challenged by the plaintiffs. She stated that before her marriage to the deceased, she had asked her family to combine all the traditional ceremonies that were to be celebrated into one that would be celebrated on 25th June 2005.

[121] She did not state the specific cultural rites that are supposed to be performed by the *Batagwenda* before a couple is considered married. However, it is apparent to me from her evidence about requesting her family to combine and celebrate all of the marriage rites on one day, that more than one marriage rite is expected to take place in the solemnization of marriages by the *Batagwenda*. Her testimony that her family

members agreed to combine the marriage rites in one ceremony stands undisputed, just like her testimony that she is a *Mutagwenda* and not a *Mutooro*. Hence, I find no reason to doubt her evidence.

[122] The plaintiffs also insist that there was no marriage between the deceased and the defendant because no marriage certificate was issued to them by the Kingdom of Tooro and the said marriage was never registered. As I have already found above, the defendant is a *Mutagwenda* and not a *Mutooro*. No evidence was brought before me by the plaintiffs to prove that the Kingdom of Tooro issues traditional marriage certificates to *Batagwenda* couples as well or that it does so when one party to a marriage is a *Mutooro* or that the *Batagwenda* issue traditional marriage certificates when their daughters are given away in marriage.

[123] The defendant explained that in her tribe, marriages were not registered. Instead, a married couple is given a certificate of acknowledgement, which in her case she and the deceased received on 25th June 2005.

[124] I do agree with the plaintiffs' evidence that it is a legal requirement that customary marriages are registered not later than six months after the date of completion of the ceremonies of marriage as stipulated in **Section 6 of the Customary Marriage Registration Act**). Even so, **Section 11 of the Customary Marriage Registration Act** provides:

“A customary marriage shall be void if—

a) the female party to it has not attained the age of sixteen years;

b) the male party to it has not attained the age of eighteen years;

- c) *one of the parties to it is of unsound mind;*
- d) *the parties to it are within the prohibited degrees of kinship specified in the Second Schedule to this Act or the marriage is prohibited by the custom of one of the parties to the marriage; or*
- e) *one of the parties has previously contracted a monogamous marriage which is still subsisting."*

[125] From the said section, a customary marriage cannot be considered void for failure to register it. See **Steven Bujara Vs. Polly T. Buyara Civil Appeal 81/2002**).

[126] Similarly, while **Section 20 of the Customary Marriage Registration Act** criminalises failure to register a customary marriage, it does not render an unregistered marriage invalid. The plaintiffs cannot therefore rely on the fact that the deceased and the defendant's marriage was not registered to cause this court to invalidate it.

[127] The certificate of acknowledgement mentioned by the defendant in her testimony was not produced in this court. What she produced is a letter dated 25th June 2005 admitted in evidence as DEX9, wherein the defendant's family represented by a one Amos Kabugaba wrote as follows:

"I, Amos Kabugaba on behalf of the family of the late Aston Kambonesa do accept Hon. Bikwasizehi Duesdedit to get married to our daughter Miss Harriet Kebirungi on 25th June 2005 at Kyabyoma, Kamwenge at 1:00 pm
Hon. Bikwasizehi has finalised all the traditional marriage obligations.
Our family has given them blessings in their marriage."
(Emphasis mine).

[128] During the hearing, Ms Alinda objected to the admission of the said document on the grounds that the 1st plaintiff did not see it being handed over to the deceased on 25th June 2005 and that it was only witnessed by people from the defendant's side.

[129] The defendant responded that neither the deceased nor any representative from his family signed that consent letter, as it was her family's responsibility to consent to the marriage and not the duty of the deceased's family. She also testified that after the consent letter was given to the deceased by her uncle, the deceased put a ring on her finger.

[130] Her evidence is corroborated by the fourteen (14) photographs admitted in evidence and collectively marked as DEX3. The same shows the deceased receiving a letter which according to the defendant's evidence is the letter confirming the fact that the deceased had fulfilled all the marriage obligations placed on him by her family. In the said pictures, the deceased is also seen putting a ring on the defendant's finger. DEX3 shows that the deceased carried some gifts namely: goats and alcohol to the function. From the aforementioned evidence, particularly the consent/confirmation letter above mentioned, I have no reason to doubt the defendant's evidence to find that the deceased, accompanied by his entourage had fulfilled the required marital requirements made by her family on 25th June 2005.

[131] Concerning the plaintiffs' claim that the deceased did not pay dowry/bride price and therefore there was no marriage between him and the defendant, it was the defendant's testimony that the deceased paid bride price of goats and a guard of a local brew called "*tonto*" on 25th June 2005 as already observed above.

[132] In any case, it is my considered opinion that it is not always mandatory that the bride price is paid in a traditional marriage. What really matters is the fact that the bride's parents or family members have granted their consent to the intending couple to get married, when such consent is sought by the groom and/or his family.

[133] The photographs admitted in evidence as DEX3, capture the activities that took place in the disputed ceremony which according to the defendant, was organised by the deceased and herself on 25th June 2005, at the home of her parents. Those pictures together with DEX9, which is the consent/confirmation of marriage letter by the defendant's family addressed to the deceased, above mentioned, declaring that he had fulfilled all the traditional marital obligations and that he had paid the dowry corroborate the evidence of the defendant regarding what took place in her parent's home on 25/6/2005.

[134] Even if this court is to believe the plaintiffs' evidence that there was no marriage between the deceased and the defendant and that what happened on the date in issue was *Okweranga*, there is overwhelming evidence produced of the existence of said marriage in the exhibits admitted in evidence as DEX8, DEX10, DEX11 and DEX12, which respectively are: a certified copy of a spousal consent form dated 16th December 2019; a certified copy of a spousal consent form dated 18th June 2007; a mortgage application form filled by the deceased, dated 16th December 2009; and a mortgage application form filled by the deceased, dated 30th April 2007, wherein the defendant gave her spousal consent to the bank for the flat to be mortgaged.

[135] The deceased would not have had the defendant sign those spousal consent forms if he did not consider her to be his lawful wife.

[136] Counsel Arinda particularly objected to the admission of the spousal consent form of 18/6/2007 (DEX10), since the mortgage deed (PEX22) dated 25/5/2007, was not endorsed by the defendant as the deceased's spouse and yet the defendant had allegedly signed the said spousal consent form (DEX10) almost a month after the execution of the mortgage deed on 18th June 2007.

[137] The defendant explained in her testimony that she had given her written spousal consent on the mortgage application form dated 30th April 2007 (DEX12). She additionally pointed out the fact that the bank had certified all the bank documents tendered in court in respect of the said mortgage, thus owning them.

[138] I do agree with the plaintiffs that there is no evidence that spousal consent was given on the mortgage deed itself (PEX22). However, I do note that the mortgage application forms admitted in evidence as DEX11 and DEX12 as well as the spousal consent forms admitted as DEX8 and DEX10, establish the fact that the defendant did give spousal consent to the bank in respect of the mortgage transactions made between the defendant and Housing Finance Bank. The time frames in which she did so are not material to this court, considering the fact that the plaintiffs have not challenged the authenticity of the said Housing Finance Bank certified mortgage documents adduced by the defendant.

[139] After the deceased's demise, Housing Finance Bank wrote a letter to the deceased, copied to the defendant, dated 29th December 2015 (DEX13) and subsequently sent an email to the defendant dated 15th February 2019 (DEX14), demanding for a

settlement of the outstanding loan amount. This evidence confirms the defendant's testimony that she granted spousal consent to the mortgage transactions in issue.

[140] The plaintiffs similarly argued that if there was indeed any marriage between the deceased and the defendant, it was void, because the defendant was still married to one Bernard Bigombe since 11th September 1993. They produced PEX17, which is a certified true copy of the Marriage Certificate of Bernard Bigombe and the defendant issued by St. James Cathedral Ruharo.

[141] The defendant admitted having been married to the said Bigombe. She explained that she had legally divorced him as evidenced by DEX2, dated 23rd October 2002, which is a decision by His Worship Byarugaba John B.K in Divorce Cause No.13 of 2002, between the defendant and Bernard Bigombe. In that case, the marriage between the defendant and Bigombe was dissolved on the grounds of desertion. Her evidence to that effect is corroborated by DEX1 and DEX2, which are the decree nisi dated 23rd October 2002 and decree absolute dated 22nd May 2003 respectively, issued by the Chief Magistrates' Court of Nakawa.

[142] While **Section 11 (e) of the Customary Marriage (Registration) Act** provides that a customary marriage is void if one of the parties has previously contracted a monogamous marriage, which is still subsisting, that is not the case with the defendant's marriage to Bernard Bigombe which was dissolved on 23rd October 2002, approximately three years before her marriage to the deceased. Consequently, it is my esteemed opinion that the defendant entered into a valid marriage with the deceased on 25th June 2005.

[143] Furthermore, the plaintiffs also adduced evidence that the deceased and the defendant were separated at the time of his divorce. PW1 and PW2 testified that the deceased and the defendant separated in the year 2007 when she moved out of the flat in Wandegeya, because of what they generally termed her hostility towards them.

[144] The defendant insisted that she was still married to the deceased at his demise, since they lived together in her house at Namugongo, although the deceased also lived in the flat with the plaintiffs. This evidence was partly corroborated by PW1 in his cross-examination when he testified that the deceased lived with the defendant in Bukoto and when she moved to Najjera, but that when she migrated to Kiira-Namugongo he merely visited her and the child.

[145] The defendant in her testimony explained to the court why she and the deceased reached the decision that she moves out of the flat, which was to protect herself and their unborn child from the smoking habit of the 3rd plaintiff, which was unhealthy for the defendant who was an expecting mother. PW1's testimony that the couple in question continued to live together in Bukoto and Najjera supports the defendant's evidence that her marriage to the deceased subsisted even when she left the flat. Even if this court was to believe PW1 and PW3 that the deceased never resided in the Namugongo home with the defendant, except for visiting her periodically, while accompanied by either PW1 or PW3, that fact alone cannot establish the fact that the two had separated in light of the documentary evidence adduced by the defendant that the deceased sought spousal consent from the defendant to obtain another mortgage on the flat on 16th December 2009.

[146] That unchallenged evidence corroborates her evidence that the two of them were still living together as man and woman and dismisses the plaintiffs' speculation that the defendant and the deceased had separated in 2007 when she moved out of the flat. The plaintiffs belaboured to show the court that their father and the defendant were no longer sharing a home as a married couple should. It is noteworthy that PW1 contradicted PW3 when he testified that the deceased and the defendant only separated when the latter migrated to Namugongo. It is also noteworthy that PW3 contradicted the testimonies of PW1 and PW2, when he stated that the defendant and the deceased never lived together at any one time, due to the unstable nature of their relationship.

[147] I find that contradiction material and going to the root of the plaintiff's case. It shows that there are lies in that aspect of their evidence, since they would not have contradicted themselves about that most important thing if they had all lived in the same house with the deceased. For that reason, I have failed to believe the plaintiffs' evidence that the deceased only visited the defendant and the child in her Namugongo home accompanied by either PW1 or PW3. In any case, I do not think that the evidence adduced by the plaintiffs proves to the required standard that the deceased and the defendant shared no communication except in the presence of PW1 or PW3.

[148] Strangely, the same plaintiffs, in paragraph 3 of their petition for letters of administration of the estate of the deceased vide Administration Cause No. 50 of 2014, acknowledge the fact that the defendant is the deceased's widow. They are thus estopped from claiming otherwise, merely to propagate their obvious desire to exclusively administer the estate of the deceased.

[149] In the result, I find that the evidence adduced by the defendant disproves the plaintiffs' evidence that there was no subsisting marriage between the deceased and the defendant. I do find that the defendant's evidence is credible and well-supported. It establishes on the balance of probabilities the fact that a customary marriage was solemnised between the deceased and the defendant. I thus find that defendant is the deceased's widow.

Issue 2 - Whether all property of the estate of the deceased constitutes matrimonial property.

[150] The parties agree that the deceased owned the following properties:

- a) *Property comprised of a piece of land of about 10 acres at Nsiika Town Council of Buhweju District with a banana plantation and residential house;*
- b) *Property comprised of a forest estate of about 17 acres of eucalyptus trees at Nsiika Town Council of Buhweju District;*
- c) *Property comprised of a residential house with servants' quarters at Mbaguta Cell Ruharo Mbarara Municipality;*
- d) *Property comprised in LRV 3244 Folio 11 Unit No. 9 Condominium Plan No. 0025 Block 'A' Flat No. 410-411;*
- e) *Property comprised of a plot of land measuring 80ft by 125ft, with Banana Plantation at Ruharo, Mbaguta Cell of Mbarara Municipality;*
- f) *Property comprised of a piece of land of about 3 acres at Nsiika Town Council of Buhweju District with banana and coffee plantations; and*
- g) *Uganda Parliamentary Pension Scheme.*

[151] According to the 1st plaintiff, the tea estate at Burere County, Buhweju District is on about 45 acres of land, while the defendant's testimony was that it is on 100 acres. The defendant's unchallenged evidence was that the deceased also owned the following assets:

- a) *Money on accounts at Centenary Bank, Housing Finance Bank, Orient Bank and Stanbic Bank; and*
- b) *A vehicle (Terano Wagon) Reg. No. UAE 183T.*

[152] While the plaintiffs did not mention the above bank accounts and vehicle in their plaint and evidence in this suit, they listed them in their petition for letters of administration in Administration Cause No. 50 of 2014.

[153] What the parties are mostly conflicted about is the question of whether the above-mentioned properties constitute matrimonial property.

[154] The plaintiffs also allege that the property acquired by the defendant before and after the deceased's demise forms part of the deceased's estate. The said properties are:

- i. *Property comprised of a plot of land measuring 0.067 hectares at Plot 4045 of Block 185, Kyadondo, Ssabaddu, Namugongo - PEX8;*
- ii. *Property comprised of a plot of land measuring 0.047 hectares at Plot 558, Block 121 at Kyadondo, Mutuba Nangabo - PEX6;*
- iii. *Property comprised of a plot of land measuring 0.046 hectares at Plot 8904 of Block 185, Kyadondo, Ssabaddu, Namugongo - PEX10;*
- iv. *Property comprised of a plot of land measuring 0.053 hectares at Plot 8905 of Block 185, Kyadondo, Ssabaddu, Namugongo - PEX12;*

- v. *Property comprised of a plot of land measuring 0.050 hectares at Plot 8907 of Block 185, Kyadondo, Ssabaddu, Namugongo - PEX14; and*
- vi. *Land at Bwerenga - Busiro Plot 2228 of Block 413.*

[155] Regarding these latter properties, for some strange reason, given that **Section 59 of the Registration of Titles Act, Cap 230** provides that possession of a valid land title is conclusive evidence of ownership of land under the Act, the plaintiffs claim that properties described as Plots 4045, 8904, 8905 and 8907 of Block 185 as shown in their exhibits PEX8, PEX10, PEX12 and PEX14, which exhibits the defendant did not challenge, were jointly owned by the deceased and the defendant.

[156] They also adduced evidence (PEX6) to establish the fact that the defendant is the registered proprietor of Plot 558 of Block 121 Kyadondo at Nangabo and a sale agreement for Plot 2228 of Block 413, which the defendant purchased from a one Yiga Experito, which is PEX5(3).

[157] There is no scintilla of evidence brought by the plaintiffs to prove that the deceased contributed in any way to the acquisition of those properties by the defendant, except to say that the deceased sold his land in Mbarara to complete the construction of the defendant's residence on Plot 4045 of Block 185 in Kiira - Namugongo. The defendant on the other hand testified that she built her residence using loans, her salary and allowances. It was her testimony that the proceeds of the sale of the Mbarara land by the defendant went to the payment of school fees, renovation of the house in Ruharo, taking care of the family and his elderly father.

[158] It is trite law that parole evidence is inadmissible to vary the contents of a document, unless there is proof of any vitiating

factors such as fraud and illegality *inter alia*, which would invalidate the said document. In this case, fraud has not been pleaded specifically against the defendant, neither has it been proved in respect of the disputed properties registered in her name, except for PW1 to speculate that the deceased must have left behind money-generating activities which the defendant reaped from to acquire the said properties. Unfortunately, there is no concrete proof of that claim. The plaintiffs have also not led evidence in this court to discredit the said certificates of title in the defendant's name or the sale agreement they adduced in respect of Plot 2228 of Block 413.

[159] Moreover, in their petition for letters of administration in Administration Cause No.50 of 2014, the plaintiffs have not mentioned these properties as part of the deceased's estate. On the evidence adduced, I find that the said properties are not part of the estate of the deceased.

[160] Regarding the undisputed properties of the deceased, **Section 191 of the Succession Act**, prevents this court from declaring the rights of any of the parties to the estate of the deceased. It provides:

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

[161] Despite the evidence adduced by each of the parties concerning their rights to the deceased's estate, the determination of matrimonial property would involve a discussion on the rights of the parties to the said property, which

is contrary to **Section 191 of the Succession Act**. This court is manacled by the above-captioned provisions of the law from resolving any question of their proprietary rights to the deceased's estate, given that no letters of administration have been issued in respect of the estate of the deceased.

[162] In that regard, the issue of which of the estate properties constitute matrimonial property will be determined during the administration of the estate.

Issue 3 - What are the available remedies of the parties

[163] In their prayers, the plaintiffs prayed for the following reliefs: the caveat lodged by the defendant against the grant of letters of administration to the plaintiffs be vacated; letters of administration for the estate of the deceased be granted to the plaintiffs; a permanent injunction restraining the defendant, her agents and/or persons claiming under them from interfering with the plaintiffs' administration of the estate of the deceased; general damages; interest on general damages from the date of judgement till payment in full; costs of the suit; and any other relief that court deems fit to award.

The caveat lodged by the defendant against the grant of letters of administration be vacated

[164] From my above findings, that the defendant is a widow of the deceased, it goes without saying that the caveat lodged by the defendant against the grant of letters of administration to the plaintiffs vide Administration Cause No. 50 of 2014 is valid since she is entitled by law as his widow, to administer the estate of the deceased.

The grant of letters of administration for the estate of the deceased to the Plaintiffs

[165] From the evidence produced in this court, there is no doubt in my mind that the parties do not trust each other. The plaintiffs accuse the defendant of being hostile toward them, while the defendant accuses the plaintiffs of not respecting her marriage to the deceased and that they have since his death, side-lined her on matters of the administration of his estate. In fact, in paragraphs 3, 4 and 5 respectively of her affidavit in support of the caveat lodged in **Administrative Cause No.50 of 2014** (attached to the pleadings of both parties in this suit), the defendant stated as follows:

“That although the applicants are all adults and share one mother, the only minor child of the deceased known as Samuel Musinguzi was mothered by myself.

That during the lifetime of the deceased and even after his demise, the applicants have not shown any care for their minor brother and I am worried that if granted the letters of administration alone, the applicants are likely to exclude, me and my son from benefitting from the deceased's estate.

That excluding me from the grant as a widow and the mother of the only minor child of the deceased bearing in mind the conduct and attitude of the applicants towards me and my son will most likely exclude us from participating in the affairs of the deceased's estate”.
(Emphasis mine)

[166] The declarations made by the 1st (PW3) and 2nd (PW2) plaintiffs' in their evidence that the estate of the deceased was being run by them alongside their siblings without letters of administration show that the defendant and the child have indeed been excluded from the estate of the deceased. Nonetheless, what is clear from the above excerpt and her evidence, is that she is not against administering the estate alongside the plaintiffs.

[167] The deceased prior to his marriage with the defendant, was married to the plaintiffs' late mother and sired five children with her. He acquired properties during the said marriage and after the death of the plaintiffs' mother in 1998. It is also clear that the deceased acquired more properties during the subsistence of his marriage to the defendant.

[168] The overall importance of a grant of letters of administration of an estate is to ensure proper administration of the estate and protection of the interests of the beneficiaries. In ***Ndabahweje Pauline vs Babirye Rosemary and 2 others Civil Appeal No.95 of 2001***, it was held that the two stepdaughters of the appellant, were also entitled to a share of the deceased's property and to administer the deceased's estate. Persuaded by the decision in that case and having found that the caveat lodged in the Administrative Cause No. 50 of 2014 was properly lodged and is valid, it is my considered opinion that the two petitions (Administration Cause No. 50 of 2014, and Administrative Cause No. 830 of 2015), lodged by both parties regarding the same estate property be consolidated under ***Order 11, Rule 1 of the Civil Procedure Rules***, since the defendant is the deceased's widow and is entitled to applying for letters of administration alongside the plaintiffs.

A permanent injunction restraining the defendant, her agents and/or persons claiming under them from interfering with the plaintiffs' administration of the estate of the deceased

[169] Since this court has ruled that the letters of administration should be administered by the plaintiffs and the defendant, this prayer naturally fails.

General Damages.

[170] As for damages, it is a well-settled law that general damages are the direct probable consequences of an act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering (See ***Kampala District Land Board & Another versus Venansio Babweyana Civil Appeal No. 2 of 2007***). No evidence was adduced by the plaintiffs to show that the defendant caused loss, mental distress or inconvenienced them. I have found that she was justified in lodging the caveat as the deceased's widow who is entitled to administering his estate. This prayer fails as well.

[171]

Interest on general damages from the date of judgement till payment in full

[172] Given that the prayer for general damages failed, this court cannot award interest for the same.

Costs of the suit

[173] It is trite law that costs follow the event and the successful party is entitled to costs, unless the court shall for good reason otherwise order. This suit was brought to defeat the caveat lodged by the defendant against the issuance of letters of administration to the plaintiffs. I have found that the defendant was justified in

lodging that caveat. However, since the court has held that the parties should co-administer the estate of the deceased and coupled with the need for them to work together as family members for their common good, their prejudices notwithstanding, each party is ordered to bear its own costs.

Any other relief that the court deems fit

[174] In light of this court's findings above, it is my view that the plaintiffs are not entitled to any other reliefs.

[175] In the result, this suit succeeds with the following orders:

- a) The caveat lodged in Administration Cause No. 50 of 2014 is valid;
- b) The petitions of both parties, namely: Administration Cause No. 50 of 2014, and Administrative Cause No. 830 of 2015, for grant of letters of administration shall be consolidated; and
- c) Each party shall bear its own costs.

I so order.

Susan Okalany
JUDGE
24/6/2022