

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**CIVIL SUIT NO.429 OF 2016**

**1. DDUMBA GEOFREY**  
**2. NAKASI IRENE**  
**3. DAVID MULOKWA ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**  
**VERSUS**

**1. KATO JOSEPH SSENTAMU**  
**2. DDUMBA GERALD**  
**3. EVA NANYANZI ::::::::::::::::::::::::::::::::::::::: DEFENDANTS**

**Before: Lady Justice Ketrach Kitariisibwa Katunguka.**

**Judgment.**

**Introduction:**

1. Ddumba Geoffrey, Nakasi Irene and David Mulokwa (herein after referred to as ‘the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs’) jointly filed this suit against; Kato Joseph Ssentamu, Ddumba Gerald and Eva Nanyanzi (herein after called ‘the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants’); seeking for; court’s declaration that the plaintiffs are entitled to the suit property as rightful administrators of the late Kanani Kasibante’s estate and as the only beneficiaries and surviving offspring of the late Kanani Kasibante; declaration that the letters of administration granted to the defendants over the late Kanani Kasibante’ estate was fraudulently obtained thus are null and void and should be revoked and the plaintiffs should be granted letters of administration over the estate of the late Kanani Kasibante; an order for cancellation of the registration of the defendants as proprietors on Block 732 Plot 2 land at Kyamuyaga; and subsequent titles subdivided and issued to the defendants cancelled and any other parties deriving titles thereof; an eviction order against the defendants and any person deriving authority there from, from the suit land; the caveat lodged on the application for grant of letters of administration by the plaintiffs be lifted; mesne profits, interest at court’ rate; general damages; costs of the suit; and any other relief as courts deems fit.



***Background.***

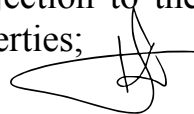
The Plaintiffs' case.

2. The late Kanani Kasibante died testate on 21<sup>st</sup> day of May 1982 the 1<sup>st</sup> plaintiff is a biological son and heir to the late Kanani Kasibante ('the deceased'); while the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are grandchildren of the said deceased; the 1<sup>st</sup> defendant is a fraudster who is not related to the deceased; the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are children of the deceased's brother (the late Kabuga Yosefu); the plaintiffs accuse the defendants of impersonation; that the 1<sup>st</sup> defendant's true names are 'Kato Joseph'; the 2<sup>nd</sup> defendant is 'Nyanzi Ddumba'; and the 3<sup>rd</sup> defendant is 'Babirye Namukwaya' and not Kato Joseph Sentamu, Ddumba Gerald, and Eva Nanyanzi.
3. The deceased left a Will; 7 children and one widow (Namyenga Mandi now deceased); the defendants with an intention to defraud falsified documents and fraudulently obtained letters of administration to the estate of the late Kanani Kasibante vide High Court Administration Cause No.2045 of 2007; and transferred estate land comprised in block 732 plot 2 to unknown persons who are now in possession of the land; the defendants obtained the grant of letters of administration on 17/3/2008; yet the Administrator General had already obtained letters of administration to the estate on 20/10/1983 vide HCAC No.151 of 1983 on behalf of the plaintiffs who are said to have been young then.
4. The Administrator General subsequently renounced administration of the estate of the deceased's estate on 21/2/2015; and on the same day the Administrator General issued a certificate of no objection to the plaintiffs; the plaintiffs petitioned for letters of administration to administer the estate vide AC No.431 of 2016; the defendants who already had letters of administration lodged a caveat against the grant of letters of administration to the plaintiffs.

***Defendants' case:***

5. The 1<sup>st</sup> defendant filed a Written Statement of Defence; but the 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not.

The 1<sup>st</sup> defendant contends that they got the grant of Letters Of Administration to the estate of the late Kanani Kasibante after obtaining a Certificate of No Objection from the Administrator General; that the later grant of a certificate of no objection to the plaintiffs by the Administrator General was illegal; the renunciation of administration by the Administrator General did not validate the illegal grant of a certificate of no objection to the plaintiffs; they rightly lodged the caveat to protect the estate properties;



6. The defendants are issues to the deceased while the plaintiffs are not; the plaintiffs were aware of the existence of letters of administration issued to the Administrator General but chose to conceal the same and applied for a certificate of no objection; the suit should be dismissed with costs.

## 7. Representation

Counsel Philip Mubiru first represented the plaintiffs then counsel Senfuka Robert and later counsel Umar Nyanzi of M/s SK & Partners Advocates; Counsel Godfrey Mafabi appeared for the 1<sup>st</sup> defendant;

8. On 10/12/2021; substituted service was effected upon the 2<sup>nd</sup> & 3<sup>rd</sup> defendants to file their defence by a notice published in the Daily Monitor of Thursday, 31<sup>st</sup> of December, 2021; and in Bukedde News Paper, they did not file a defence so the matter proceeds *exparte* as against them under Order 9 rule 10 of the Civil Procedure Rules;

9. The 1<sup>st</sup> defendant would appear but never complied with the orders to file trial bundles and witness statements; so the suit proceeded under O.17 rule 4 of the Civil Procedure Rules as against the 1<sup>st</sup> defendant; the implication was explained to the 1<sup>st</sup> defendant.

10. As against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants having failed to file a defence the put themselves out of court and do not have any *locus standi* and cannot be heard; for court does not know them(see: **Sengendo Versus Attorney General (1972)1 EA 140; Mufumba Fredrick V. Waako Lastone Revision Cause No. 006 of 2011**);

11. However when one is claimed to have done certain acts, he is required to specifically deny if in his view what is claimed against him is false otherwise it will be deemed the truth;( see **Prof. Oloka Onyango & Others Vs Attorney General (Constitutional Petition No.6/2014)** and also (see **Massa V Achen [1978] HCB 279**). It has been proved that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in this case were effectively served with summons to file a defence; and they opted not to file a defence. This would mean that all the facts stated in the plaint are not denied by them; the 2<sup>nd</sup> & 3<sup>rd</sup> defendants are deemed to have filed their defence and admitted all the plaintiffs' pleadings in the plaint; although the claims themselves must pass probity;(see **Samwiri Massa vs Rose Achen (1978) HCB 297**;



**12. Issues for determination:**

Counsel for the Plaintiffs filed scheduling memorandum raising three issues for court's determination.

1. *Whether the defendant fraudulently obtained letters of administration to the estate of the late Kanani Kasibante?*
2. *Whether the subsequent actions of the defendants in the estate of the late Kanani Kasibante are lawful?*
3. *What remedies are available to the parties?*

**Court's resolution of issues raised:**

***Whether the defendant fraudulently obtained letters of administration to the estate of the late Kanani Kasibante?***

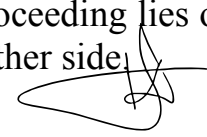
13. It is argued for the plaintiffs that the defendants applied for and obtained the grant for Letters of Administration without a Will of the deceased; yet they had full knowledge of the valid Will which was never disclosed to court; the estate was already under the administration of the Administrator General who had letters of administration; the subsequent letters of administration issued to the defendants are therefore null and void;
14. The 1<sup>st</sup> plaintiff testified as PW1 that; he is one of the biological children of the late Kanani Kasibante; the late Kanani Kasibante died testate on 21/5/1982 leaving behind a valid Will; (a copy of the said Will and translated copy thereof was admitted and marked as 'PExb.1(a)' and 'PExb.1(b)'; the estate was administered by the Administrator General vide High Court Administration Cause No.151 of 1983; a copy of the Letters of Administration to the estate of the deceased is marked as 'PExb.2'; the Administrator General filed a report of the final accounts to the estate of the deceased on 30/6/2011 showing the distribution of the estate as per the Will of the deceased; a copy of the said report of the account was admitted and marked as 'PExb.3'; according to the meeting held with the Administrator General, the defendants misled the Administrator General and were issued with a certificate of no objection; the defendants petitioned court for the letters of administration without disclosing the valid Will of the deceased and stated that the deceased died intestate on 17/4/1987 while he died on 21/5/1983; the defendants claimed to be children of the deceased whereas not; they applied for the letters of administration under names that are not theirs.
15. Bogere Robert (Assistant Administrator General) testifying as PW2; stated that he was in personal conduct of the file relating to the estate of the late

Kanani Kasibante in the office of the Administrator General; identified the parties to this suit as having appeared before him during the period that he handled the estate file; that the defendants together with a one Nalweyiso Mary appeared before the office of the Administrator General and reported that they are children of the late Kanani Kasibante; whereupon they were issued with a certificate of no objection by the office of the Administrator General on 6/12/2007; the certificate was admitted in evidence and marked Pexb.7;

16. The office of the Administrator General upon receiving complaints from the plaintiffs and other rightful beneficiaries to the estate of the deceased realized that there was an earlier file in respect of the estate; where letters of administration were issued to the Administrator General vide High Court Administration Cause No.151 of 1983; since the Administrator General's registry was not computerized from 1933 to 2009; the Administrator General was not aware of the fact that it had already administered the estate of the deceased;
17. That according to the Will; it was discovered that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not children of the deceased; but the 3<sup>rd</sup> defendant who is the same person stated as Eva Nankabirwa in the Will; the Administrator General had distributed the estate in the 1980s and issued certificates of succession to the beneficiaries and a final account filed on 5/7/2011; following a meeting with the plaintiffs; the Administrator General renounced administration in favour of the plaintiffs; (a copy of the said renunciation is marked as Pexb.9); following the renunciation, a certificate of no objection(PExb.7), was issued to the plaintiffs herein;
18. The 1<sup>st</sup> plaintiff denies that the estate of his late father had already been administered by the Administrator General because no documentation was ever availed to them as the beneficiaries; the 3<sup>rd</sup> defendant is accused of withholding information from the Administrator General that the estate in issue had already been administered by the Administrator General yet she featured in the previous family meetings in 1983 and actually received a share in the estate;

***Court's decision on issue 1:***

19. **Section 101 (1)** of the Evidence Act, Cap 6, provides that 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; section 102 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side;



20. *In Fredrick J.K Zaabwe vs. Orient Bank & Others, SCCA No.4 of 2006*, fraud was described by Katureebe JSC (as he then was) as; “...Anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood ... a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth....and an unfair way by which another is cheated,...As distinguished from negligence, it is always positive intentional. It involves all acts.... involving breach of a legal duty or equitable duty resulting in damage to another.”
21. **Black’s Law Dictionary 6<sup>th</sup> Edition at page 660**; defines fraud as ‘An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right’ - A false representation of a matter of fact, whether by words or by conduct by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.
22. Evidence was led to show that the defendants obtained the letters of administration vide High Court Administration Cause No.2045 of 2007, admitted and marked PExb.5; there are minutes of the family meeting under file Mubende/AC/3540/2006 dated 1/11/2007 admitted as Pexb.4; the meeting was held at the Administrator General’s office where it is stated that: ‘Deceased died 17/04/1987- testate- Will read over – parties- they accept it...’;
23. The Will was admitted as Pexb 1(a) and the translated version Pexb 1(b); the children stated in the Will are Yawe Kasibante, J. Ddumba, J. Lwanyaga, Eve Nankabirwa Bukirwa, Lusi Namagembe, M. Namuleme; the minutes indicate: *Kato Joseph Sentamu son, ddamba Gerald mwaana, nanyanzi Evva mwanna, nalweyiso Mary muzukulu* ; other than a one called Eva going by different surnames, the rest, including the 1<sup>st</sup> defendant are not stated as children in the will; yet they presented themselves to the Administrator General as children of the late Kanani Kasibante; this in my view was intended to deprive the rightful beneficiaries to the estate their legal entitlement as per the deceased’s Will;
24. PW2 testified that the 3<sup>rd</sup> defendant Eva is the same person listed in the Will as ‘Eva Nankabirwa’ the only recognised child to the late Kasibante among the defendants, had already been given a share from a distribution that had already been done; Pexb 3 is the report of final accounts dated 30/06/2011-



showing that Eva Nankabirwa Bukirwa received 11.6 acres of the 105.5 hectares at Kyabalika Singo Block 778 plot 1; and 30 acres of the 130 hectares of land at Kyamuyaga Ssinga Block 732 plot 2; and 0.385 decimals of 3.05 acres of land at Mutundwe Kibuga Block 33 Plot 12;

**25.** The 3<sup>rd</sup> defendant knew that the estate was already administered; she is the one who allegedly introduced the 1<sup>st</sup> defendant as a son to the deceased without involving other beneficiaries to the estate; more so, the family meeting minutes held at the office of the Administrator General does not show a full list of the entitled beneficiaries; the defendants obtained a certificate of no objection and letters of administration as children of the deceased;

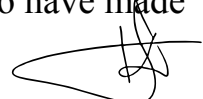
**26.** The information given to the Administrator General by the defendants the basis of the Certificate of No Objection and later the Letters of Administration to the estate of the late Kanani Kasibante was false because while the defendants had before the Administrator General acknowledged the existence of the Will in their petition for Letters of administration they stated that the late Kasibante Kanani died intestate:(see page 74 of the Plaintiffs' trial bundle ; In the premises, it is my finding that the letters of administration were obtained fraudulently by the defendants.

Issue one is answered in affirmative.

***Whether the subsequent actions of the defendants in the estate of the late Kanani Kasibante are lawful?***

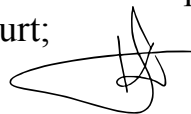
**27.** The plaintiffs adduced a copy of a certificate of title at page 18 of the plaintiff's trial bundle comprised in Ssinga Block 723 Plot 2 at Kyamuyaga previously registered in the names of the late Kanani Kasibante; and now registered jointly in the names of the defendants. It is undisputed that by the time the defendants obtained Letters of Administration to the estate on 17/3/2008 vide HCAC No.2045 of 2007; the Administrator General was still administering the estate vide Letters of Administration with will annexed issued granted by Justice Peter Austin Philip Jermyn Allen, on 20/10/1983, vide HCAC No.151 of 1983; in fact, the report of the final account to the estate in issue by the Administrator General dated 30/6/2011 was filed in this court on 5/7/2011.

**28.** The Administrator General according to the minutes admits that they issued the certificate of no objection to the defendants out of an error due to non computerisation of the registry which was finally done in 2009; so the office was not aware of the previous grant; the defendants in their petition stated that the late Kanani Kasibante died in 1987, which in my view could also have made



the Administrator General to believe this was a different deceased person although this was not adduced in evidence;

29. Having stated as above there was no estate over which letters of administration could validly be granted because the estate of the late Kanani Kasibante already had an administrator; in fact one of the beneficiaries had already been given a succession certificate as way back as 4<sup>th</sup> September 1987; A Grant for Letters of Administration is a court order; it is therefore not legal for two grants of Letters of Administration to the same estate to different persons to co-exist; (see: **Stella Maris Amabilis & Another v. Esther Nabusakala [2009] UGHC 21**); the one granted to the defendants was not only null and void on the onset but it was also fraudulently procured;
30. I have found it pertinent to state that the plaintiffs acknowledge that the estate was already distributed and a final account filed in this court; There is an attachment to Pexb. 6 the Letters of Administration granted to the Administrator General; It is a Report of Final Account. The english definition of the word 'final' is 'coming to the end'; it therefore means that all has been done and that is the last; by filing a final account, administration of the estate had been concluded;
31. In my considered view there was nothing for renunciation or hand over to the plaintiffs or to any one for that matter; the final account being a public document therefore would guide the entitlement by the various beneficiaries; estates of deceased persons do not stay forever and once distributed the properties so distributed cease to become part of the estate and any disagreement would then be addressed by the various beneficiaries/recipients.
32. In fact the Administrator General finally distributed the estate and gave an account; I have seen a copy of a succession register Ref. No. 14311 in favour of a one Mikaeri Yawe Kasibante for 170 acres of land Block 778 Plot 1 land at Kyalibaka Singo; according to the will of the late Kanana Kasibante. The succession certificate is dated 4<sup>th</sup> September 1987 and it is signed by the Administrator General; others who did not get their dues would have to refer to the distribution scheme and not to seek letters of administration over an estate that was finally distributed; the renunciation by the Administrator General in favour of the plaintiffs dated 21/12/2015 is of no effect because by then on 30<sup>th</sup> June 2011 the final accounts of the distribution of the estate property and credits had already been rendered to this honourable court;





**33.** The position of the law is that fraud is an exception to the indefeasibility of title envisaged under section 59 of the Registration of Titles Act; it has been held to be such ‘...a grotesque monster that the courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. *Fraud unravels everything and vitiates all transactions*’., so once it is proven before courts of law, the transferee’s title would be cancelled.(see **Fam International Limited and Ahmad Farah versus Mohamed El Faith 1994**] KALR 307. Section 77 of the same RTA provides that any certificate of title, entry, removal of incumbrance, or cancellation, in the Register Book, procured or made by fraud, shall be void as against all parties or privies to the fraud; (see **Kampala Bottlers Limited v Damanico (U) Ltd (Civil Appeal No. 22 of 1992) [1993] UGSC**. While the defendants can not continue to be registered onto the suit land whoever dealt with them and had no knowledge/ notice of the fraud must be compensated by the defendants personally.

The subsequent actions of the defendants in the estate of the late Kanani Kasibante are un lawful.

Issue 2 is answered in the negative.

***Issue 3. What remedies are available to the parties?***

**34.** *The plaintiffs prayed for revocation of letters of administration issued to the defendants. Section 234 (2) (b) of the Succession Act;* provides that letters of administration may be revoked for just cause including scenarios where “**the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case**” (emphasis mine). Having found as I have in issue 1; that the defendants fraudulently obtained letters of administration; the said letters vide High Court Administration Cause No.2045 of 2007 issued to the defendants for practical purposes are hereby revoked;

*The plaintiffs prayed for general damages.*

**35.** Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant’s actions. In assessment of the quantum of damages, court is mainly guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered and what is required to put back the injured party in the position he would have been but for the injury; the assessment must also take into consideration the attempts by the injured party at mitigation of the loss; where no figures are provided court would base on the circumstances in its and in its discretion award nominal damages;(See Uganda



Commercial bank v. Kigozi [2002] 1 EA 305); Hadley v. Baxendale (1894) 9 Exch 341; Charles Acire v. M. Engola).

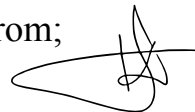
**36.** I have considered the fact that the defendants got letters of administration albeit illegally and fraudulently and without the consent of the plaintiffs and other beneficiaries to the estate; and went ahead to deal with the suit property and excluding the plaintiffs and the beneficiaries to the estate of the late Kalani Kasibante; I shall award the plaintiffs general damages of UGX 50,000,000/=;

**37.** Having revoked the Letters of Administration granted to the defendants I have not found reason to grant letters of administration to anyone since the Administrator General already distributed the estate and filed a final account. It is therefore prudent that he continues and winds up the estate.

**38.** The beneficiaries are entitled to a true account of the estate, general damages and costs of the suit; the plaintiffs have not proved mesne profits as against the defendants.

In the premises the suit succeeds and I make the following orders;

- i. The Letters of Administration granted to the Defendants for the estate of the late Kanani Kasibante vide Administration Cause No. 2045 of 2007 are hereby revoked.
- ii. The defendants shall render to this court a full account of the properties and credits of the late Kanani Kasibante's estate from 2008 to date.
- iii. The defendants shall be liable for all actions done as a result of their holding Letters of Administration to the estate of the late Kanani Kasibante vide Administration Cause No. 2045 of 2007.
- iv. An order for cancellation of the defendants' name from the certificate of title to the land comprised in Ssinga Block 723 Plot 2 at Kyamuyaga plus other properties of the said deceased, if found to be registered in the defendants' name at the time of judgment, hereby issues;
- v. All certificates of title earlier registered in the names of the late Kanani Kasibante and all un registered properties shall revert to his name and any future registration done in accordance with the distribution scheme filed by the Administrator General shall emanate there from;



- vi. The Administrator General shall continue to administer the estate for purposes of the required transfers to avoid confusion and for purposes of closure;
- vii. The petition for letters of administration filed by the plaintiffs in respect of the estate of the late Kanani Kasibante vide High Court Administration Cause No.431 of 2016 is hereby struck out.
- viii. The Defendants and or their agents are hereby permanently restrained from intermeddling with the estate of the late Kanani Kasibante.
- ix. The defendants shall pay UGX 50,000,000/= (Fifty million Uganda shillings) as general damages to the estate of the late Kanani Kasibante.
- x. The defendants shall bear the costs of this suit.



Ketrach Kitariisibwa Katunguka.

Judge

4/01/2023

Delivered by email to : [unyanzi92@gmail.com](mailto:unyanzi92@gmail.com),  
[skpartnersadvocates@gmail.com](mailto:skpartnersadvocates@gmail.com)

A dissatisfied party may appeal to the court of Appeal of Uganda within 14 days from the day of this judgment.