THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
CIVIL SUIT NO.88 OF 2015

1. **NAKAWOMBE PROSSY**
2. **SSALI SAM**
3. **NAKABUGO NURU**
4. **KATUMBA STANLEY ::::::::::::::::::::::::::::::::::::PLAINTIFFS**

VERSUS

1. **SSALI G. WILLIAM KATO**
2. **BABIRYE DEBORAH NAMULI ::::::::::::::::::::::DEFENDANTS**

Before: Lady Justice Ketrah Kitariisibwa Katunguka.

Judgment

Introduction:

1. Nakawombe Prossy, Ssali Sam, Nakabugo Nuru and Katumba Stanley (herein called **'the plaintiffs'**) sued Ssali G. William Kato and Babirye Deborah Namuli (herein called **'the defendants'**) seeking for; annulment/revocation/cancellation of letters of administration granted to the defendants; a permanent injunction restraining the defendants; costs; and any other relief as this court deems fit;

2. The plaintiffs contend that on the 19th day of December 2014, the defendants were granted Letters of Administration for the estate of their late father Walujjo Yekoyada (herein called **'the deceased'**); who died intestate in 1975; prior to the grant of Letters of Administration, a family meeting was convened on request of the Chief Administrative Officer of Wakiso district and presided over by the officials of Kira Town Council; all family members, including the defendants attended the meeting where it was unanimously agreed that Ssali Mwambale, Nuru Nakabugo and Nakawombe Prossy become the administrators; the defendants went ahead and obtained letters of administration without the consent of the family members yet they had already received their share so the said letters of administration were obtained fraudulently.

3. The defendants filed a joint written statement of defence admitting to have obtained letters of administration to the estate of the late Walujjo Yekoyada; and to have attended the family meeting; but aver that the final draft of the minutes did not represent what was discussed on the properties which comprised the estate; that the Kibanja at Banda does not comprise part of the deceased's estate but belonged to the defendants' late mother; that before obtaining a Certificate of No Objection from the Office of Administrator General, the plaintiffs were invited for meetings and inspections of the suit land at Kireka which they objected to; they are entitled to a share in the estate of their late father at Kireka which the plaintiffs distributed amongst themselves leaving out the defendants and so the suit should be dismissed with costs.

Representation:

4. The plaintiffs are represented by counsel Nakigudde Wnnie of M/s Rwakafuuzi & Co. Advocates; while counsel Alinaitwe Lwarence of M/s Nakalule & Co. Advocates represented the defendants. Both counsel filed written submissions which I have considered.

Issues:

5. The agreed issues are: -

1. *Whether the kibanja at Banda forms part of the estate of the late Walujjo Yekoyada.*
2. *Whether there exists just cause for the revocation of the grant of letters of administration of the late Walujjo Yekoyada to the defendants?*
3. *What remedies are available to the parties?*

Background.

6. The plaintiffs and defendants are biological children and beneficiaries to the estate of the late Walujjo Yekoyada who died intestate in 1975; the deceased left three widows to wit; Alice Nakya Nankabirwa (now deceased), Mary Nakayima (now deceased); and the late Jane Nakandi who is the defendants' biological mother.

7. According to the plaintiffs, the deceased's estate comprises of kibanja land at Kireka and Banda; the first two wives (the late Alice Nakya Nankabirwa and the late Mary Nakayima) who are the plaintiffs' and other children's mothers resided at Kireka; while the defendants' biological mother stayed at the land in Banda; according to the plaintiffs, Banda land forms part of the estate of the deceased; that the defendants having shared the kibanja land at Banda, they are not entitled to a share in the land at Kireka which has already been shared amongst the plaintiffs and other children or beneficiaries to the deceased's estate.

8. The defendants claim that the land at Banda belonged to their mother in her personal capacity; is not part of the estate so they are entitled to a share in the land at Kireka.

Court's determination

Issue 1: **Whether the kibanja at Banda forms part of the estate of the late Walujjo Yekoyada?**

9. PW1 (Namusoke Margaret) testified in court that she is sister to the late Walujjo Yekoyada that the deceased has two homes, one in Kireka and another home in Banda;it is the deceased who purchased the land at Banda and built a house there; Jane Nakandi (the defendant's mother) moved in together with the deceased and her 4 children born in her first marriage; upon giving birth to twins(the defendants), the cultural rituals of baganda concerning celebrating the twins' birth were celebrated at Banda; it is a baganda cultural belief that twins must be brought in their father's home; during the celebration of the deceased's funeral rites, it was mentioned that the deceased had two Bibaja,(land), one at Kireka and another at Banda; as a family, it was agreed that the twins retain the land at Banda and the other children share the Kibanja at Kireka; on cross examination she testified that the deceased used to construct buildings and that is where he earned the money for purchasing the suit land at Banda.

10. John Mukasa Mitto (PW2), testified that he is the head of the deceased's clan and that at the last funeral rites, also attended by Jane Nakandi, the deceased's properties were mentioned

as a kibanja at Kireka and another at Banda, and she never complained; that the land is occupied by the defendants; in 2008, the estate was distributed by the clan and the defendants were given the Banda kibanja while the plaintiffs were given the Kireka kibanja land and the defendants never objected to the distribution;

11. The 3rd plaintiff testified as PW3 and corroborated the testimony of PW1 and PW2;further that at the family meeting the land at Banda was included as part of the deceased's properties and the family decided that the defendants keep it as their share; the defendants went against the family consensus and laid a claim to the Kireka property.

12. Nnaku Alice Nola (PW4) testified that she has been a resident of Kireka Railway Zone since 1966 and knows the plaintiffs and defendants as children of the deceased; in her witness statement admitted as her evidence in chief, she states that herself being a mother of twins and coming from a family with twins, she knows the baganda cultural rituals performed on twins; which are supposed to be performed from the twins father's home; that if the twins' father has no home, the rituals are performed at his brother's or father's home; the twins' umbilical cords are tied together and kept in the father's home; because they cannot be kept at a home that is not their father's or the twin's paternal grandfather as this might lead to their death; twins cannot grow up in a home that is not their father's because that would lead to a bad omen in the family.

13. DW1 (the 2nd defendant) testified that the Kibanja land at Banda was purchased and owned by their late mother Nalongo Maria Nakandi. in 1965 from a one Katante Kaloli at Ug shs. 250/= (two hundred fifty shillings); a copy of a sale agreement was admitted in evidence and marked as Exb.D1 and a translated copy thereof marked as Exb.D1(b); that the late Nakandi as the owner of the Kibanja and the house thereon used to pay busulu tax; a copy of the busulu ticket dated 30/12/1971 is marked as Exb.D2;he also relied on a demand note of 1978 from City Council of Kampala and a receipt of payment of the annual rate, admitted and marked as Exb.D3; another demand note of 1984 was admitted as ExB.D4; both demand notes are issued to a one Nalongo Mariya Nakandi and the receipts indicate that payment is received from Nalongo Mariya Nakandi in respect to property in Banda Block 82, plot 7, S. Nakawa;

14. The defendants contend that their deceased father only owned Kibanja land at Kireka which land upon his demise the plaintiffs and other siblings shared amongst themselves leaving them(the defendants) out; that they have constructed houses on their portions; the 2nd defendant in her witness statement admitted as her evidence in chief states that the 2nd plaintiff opened up file number 796 of 2011 at the Administrator General's office to streamline the deceased's estate; the properties of the deceased were reported to be kibanja at Kireka and a bicycle; the minutes from the Administrator's office were admitted and marked as Exb.D.5;

15. The 1st defendant testified as DW2 that their mother died in 1998 leaving property in Banda to them the defendants; when they complained to the clan head about not having received a share in the Kireka property, their complaint was ignored on the basis that the defendants had already shared the Banda property; the same complaint was raised before the

Administrator General; based on the advice from the Administrator General, the plaintiffs decided to give the defendants a portion of land at Kireka which they declined because it was road reserve.

Court's consideration of issue 1:

16. The gist of the plaintiffs evidence is that because the report of the Town Clerk on the family meeting held on 9/09/2011 stated that the land at Banda belonged to the estate, the defendants attended the meeting and signed the attendance list so they can not turn around and claim that the land belonged to their mother, so it does not form part of the estate; that coming back after the meeting to claim the land as having belonged to their mother was an afterthought on the part of the defendants; that there is no way the land could belong to the late defendants' mother because the customary rites of twins were performed at Banda so that makes the said Banda home the property of the late Walujjo Yekoyada; that the family had agreed that the property at Banda also belongs to the estate and this was declared at the last funeral rites of one of the clan members which was attended by the defendants' mother yet she did not object; that receipts for the Busuulu relied on by the defendant refer to a different person and not their mother; the sale agreement was not signed and it is not clear whose thumbprint, on the agreement, belongs to; the translated sale agreement has a date yet the Luganda version does not; that the defendants' mother left a will and bequeathed the Banda property to the defendants and not to the other children who did not belong to the late Walujjo Yekoyada so it means the property belonged to the late Yekoyada therefore part of his estate which was given to the defendants; The Administrator General should not have granted the Letters of Administration to the defendants yet the family had already chosen the plaintiffs;

For the defendants they led evidence that although they signed the attendance list which was handwritten, they never agreed to the property belonging to the estate and the minutes which are typed were changed; their mother bought the land and gave it to them as her children; the plaintiffs know that the land at Banda belongs to the late deceased's mother that is why they never declared it to the Administrator General;and that is why they attempted to give them a piece of land at Kireka.

17. Section 101(1) of the Evidence Act provides that whoever desires any Court to give judgment as to the legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist; section 103 of the Evidence Act provides that; *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."* In the instant case, the burden lies on the plaintiffs to prove on the balance of probability that the suit kibanja land at Banda forms part of the estate of the late Walujjo Yekoyada;

18. I have carefully considered the evidence adduced particularly: the letter authored by Sebadduka Town Clerk, to the Chief Administrative Officer dated 7/11/2011 stating and I quote: 'The family meeting was convened on September 21 2011 at Kireka 'B'...Attached are the minutes and relevant documents'; the attached minutes show that the meeting was held on September 9, 2011 and not September 21 2011;

19. The report and the minutes are typed and there is no proof that they were read to the members of the family and they confirmed, contrary to the established protocol of minutes of meetings; Black's Law dictionary defines minutes as '..notes of a transaction, proceeding or meeting..'; minutes should therefore be a reflection of what was agreed even what was raised and disagreed upon; and this can be ensured by proof that they were read to the meeting and confirmed, which in this case was not done; the doubt would be removed if the handwritten original minutes had been adduced in evidence; where a person disputes a record of the meeting he or she is deemed to have participated in, the onus would be on the one seeking to rely on the minutes to prove that the record is right; insisting that because one signed an attendance list which the defendants do not deny, does not mean that one confirmed the record of the meeting which in this case was sent directly to the Chief Administrative Officer and not to the attendees of the meeting; it appears that when next the matter came up before the Administrator General the defendants raised the complaint which seems to have been resolved in the presence of the 1st and 2nd plaintiffs but was never acted upon;

20. The attached documents referred to in the forwarding letter to the Chief administrative officer show that a consent letter was signed on 18/09/2011 before the meeting was held; the attendance list bears 2 stamps of the office of the town clerk- one dated 16th November 2011 and another dated 15th April 2015;there is no indication whether the stamps are for purposes of certification or presence of the bearer of the stamp at the meeting in which case they would be out of place because the consent is said to have been signed on 18/09/2011 much earlier;

21. Minute 7/2011 states "It was established that the deceased left a kibanja at Kireka B on Kisosonkole land with a residential house. The deceased also left a plot at Banda and was given to Kato and Babirye. The property was distributed by the clan leaders.'; the distribution scheme refers to a clan meeting of 17/08/2008 but there is no reference to the distribution of the Banda land to the defendants, yet the defendants are admitted by the plaintiffs to be their siblings and among the 14 declared to the administrator General.

22. There is a record of the Administrator General Dexb 5;of 21/03/2011; it states: 'Present are Ssali Samuel son to the late Yokoyadda Walujjo, Nakawombe Proscovia daughter to the late. Property: land C` 2.0 acres at Kireka Zone B..C` a house.….children of the deceased 14 of which 4 are dead….' ;the land at Banda was not declared by the 1st and 2nd plaintiffs then; the record of 10/08/2012 shows that the defendants raised their complaint on the land at Banda. The record shows and I quote: '2nd distribution of the kibanja at Kireka: Sali Samuel s/d stated that the complainants were given a piece of land but they rejected it. Kato stated that ..in the road reserve thats why they rejected it . Resolved that complainant be given a piece of land...';

23. A record as important as when ownership of property is said to have been discussed and consented upon must be clear; but when, like in this case it is disputed then coupled with dates that do not rhyme then in my considered view that aspect of the record is material; the discrepancy can not be ignored and must be considered with caution; although the rest non

challenged aspects may remain. In **Oryem David v. Omory Phillip, H.C.C.S No. 100 of 2018,court** held that;"*It is trite law that grave inconsistencies and contradictions unless satisfactorily explained will usually but not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored;*"*What constitutes a major contradiction will vary from case to case. The question always is whether or not the contradictory elements are material, i.e "essential" to the determination of the case. Material aspects of evidence vary from case to case but generally in a trial, materiality is determined on the basis of the relative importance between the point being offered by the contradictory evidence and its consequences to the determination of any of the facts or issues necessary to be proved. It will be considered minor where it relates only on a factual issue that is not central or that is only collateral to the outcome of the case."*

24. I would therefore agree with the defendants that having been at the meeting and knowing that they challenged the allegation that the Banda property belonged to the estate ; they could not have signed the attendance or the attendance was merely that, but not agreement with what was discussed for they may not have seen what was recorded;

25. There is no documentary evidence adduced to prove that the kibanja land at Banda was owned by the late Walujjo Yekoyada; the defendants raised their complaint which was acknowledged by the 1st and 2nd plaintiffs when the 2nd plaintiff conceded to have attempted to give the defendants part of the Kireka land which was rejected for being a road reserve; the plaintiffs did not lead evidence to dispute the record of the meeting before the Administrator General; DW4 Muyomba Simon confirmed the record;

26. I have also been unable to find where the Banda property was distributed to the defendants yet the Kireka one was distributed allegedly to the children of the deceased excluding the defendants;

27. The plaintiffs led evidence to effect that the defendants' late mother had other children from an earlier relationship and that it is reason why in her Will, it was stated that the other 4 children could not take a share from the Banda property as they were not children of the late Walujjo Yekoyada; the said Will was not adduced in evidence so I have no way of knowing its contents; while the defendants did not deny that their mother had other children from a different father; I do not find giving the Banda land to the defendants by reference to their father a confirmation that the land therefore belonged to the late Walujjo, for it may have been a way of differentiating them from the other children not born of Walujjo;

28. The defendants rely on a copy of a land sale agreement asserting that their late mother whom they refer to as Nalongo Maria Nakandi purchased the suit property in Banda from Kaloli Katante in 1965;this is challenged by the plaintiffs; I have examined the said Luganda version sale agreement in comparison with its translated English version; whereas the Luganda version has no clear date to indicate when the sale transaction was executed; the english copy indicates the date as 3-12-65. according to counsel for the defendants if one looked closely the date was there;

29. It is the duty of one who wants to be believed to convince court and not court to imagine presence of evidence; clearly the date on the Luganda version of the agreement is not

readable so court is not able to tell the date of the agreement. on the discrepancy in the names 'Nannoto Nakandi' and Nalongo Maria Nakandi as the purchaser, according to the sale agreement, is in my view minor because the plaintiffs did not prove that the names could not refer to one and the same person who was the mother of the defendants; this is confirmed in the Busuulu receipt Exb D2, Rate demand notes Exb.D3,and D4 where the names are indicated as Nakandi Nalongo,Miriya Nakandi Nalongo, and Nalongo Miliya Nakandi respectively- the common name being Nakandi.In **Mulindwa Isaac Ssozi vs Lugudde Katwe Elizabeth Election Petition Appeal No. 14 of 2016**;it was held that where there was a discrepancy in names, the petitioner had to adduce more evidence to prove to the satisfaction of the court that the person who sat and obtained certain academic qualifications was not the same person who was nominated for an election.

30. In this case it is my considered opinion that the defendants are best suited to know what names are attributed to their mother and where they are challenged like in this case it is up to the plaintiffs to prove that the names Nakandi Nalongo,Miriya Nakandi Nalongo, and Nalongo Miliya Nakandi refer to a different person and can not refer to the mother of the defendants; the plaintiffs did not provide such evidence.

31. The said agreement is attacked for having only one thumbprint but it is not indicated whose thumb print it is; states two witnesses who never signed; and none came to court to testify; there is no accurate description of the property since the agreement does not state the location and size of the land;

32. Indeed the attestation of the purchase agreement was not proved yet evidential value of a document like in any other evidence is in its authenticity; In ***Kaggwa Michael versus Olal Mark & 6 Orslligh Court Civil Appeal No.10 of 2017***, court stated that: *"Documentary evidence must be properly authenticated and a foundation laid before it can be admitted at trial. Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker"*. I hold the same view; however I find that the Rate demand notes and the receipt for Busuulu are circumstantial corroborative evidence in absence of proof that the Banda land could not belong to the said Nakandi.

33. The plaintiffs contend that the discription of the land is missing. While the demand notes refer to land comprised in plot No.7, Banda, S.Nakawa; the said description of Kibanja land is not indicated in the sale agreement; the plaintiffs did not provide the description other than that the land is at Banda; in the sale agreement after the name Kaloli Katante is the word 'Banda'; which in my view may imply the location of the land;

34. The plaintiffs led evidence on the Buganda cultural rituals performed in the celebration of twins; contending that, it is a taboo for twins in Buganda to grow up in a home which is not owned by their father('Salongo') or the paternal grandfather; therefore, that the deceased celebrated the twin cultural rites from his Banda home and it is where the twins' umbilical cords are kept.It is not in contention that the defendants grew up from the Banda home.

35. Culture is upheld by article 37 of the 1995 Constitution of Uganda which provides for a person's right to practice and enjoy his or her culture. This right can be enjoyed individually or in association with others. In relation to that, The National Objectives and Directive Principles of State Policy XXIV state; *"Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in the aspects of Ugandan life.* Section 15 of the Judicature Act stipulates that; *"Nothing in this Act shall deprive the High Court of the right to observe or enforce the observance of, or shall deprive any person of the benefit of, any existing custom, which is not repugnant to natural justice, equity and good conscience and not incompatible directly or by necessary implication of any written law.*

36. PW1 and PW4 both aged 90 years and 75 years respectively, and Baganda by tribe, testified that the twin celebration are held from the home of the father of twins as it is forbidden for the celebrations to take place outside the home of the father of the twins ('Salongo') or the paternal grandfather or brother of Salongo. The facts of the case show that the defendants who are twins were brought up from the Banda home and their celebrations as twins took place there and their umbilical cords were 'tied' and kept there; yet it is believed that twins cannot be brought up outside their father's home; PW3 testified that she went to the Banda home to seek blessing when she decided to get married because that was her father's home; PW4 however testified that if the clan allows, one can perform the rituals in another person's home. Evidence was not adduced on whether father's home meant ownership under article 26 of the Constitution or having a home when one lives not necessarily where one owns the land.

37. Under the Halsbury's Laws of England, 3rd Edition, Vol. 15, it is stated that:*"Judicial notice is taken of facts which are familiar to any judicial tribunal by virtue of their universal notoriety or regular occurrence in the ordinary course of nature or business. As judges must bring to the consideration of the questions they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of any action to give formal evidence of matters with which men of ordinary intelligence are acquainted whether in general or to natural phenomenon".*

38. Section 46 of the Evidence Act provides; *'When the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of that custom or right, of persons who would be likely to know of its existence if it existed, are relevant'.* In **Angu v Attah (1916) PC 74** it was stated and I quote: *"As is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native customs until the particular customs have, by frequent proof in the courts, become so notorious that the courts will take judicial notice of them'.*

39. *In Ernest Kinyanjui Kimani v. Muira Gikanga [1965] EA 735 it was* held that where African Customary Law is neither notorious nor documented, it must be established for the court's guidance by the party intending to rely on it and also that as a matter of practice and convenience in civil cases, the relevant customary law, if it is incapable of being judicially noticed, should be proved by evidence of expert opinions adduced by the parties. Such

custom then has to be proved not to be incompatible with the provisions of the constitution, any written law and is not repugnant to natural justice, equity and good conscience.

40. The witnesses both of advanced age, who testified were not called as experts and did not state they were, although they stated that they know the culture; no case law was presented by counsel to show notoriety of the custom; therefore while the practices may be real and I have no reason to believe they are not, I am unable to determine ownership of property based on the alleged culture; because proof of ownership of property requires more-acquisition either through purchase, gifting, inheritance or other means more than that circumstantial evidence based on the cultural knowledge; the plaintiffs have not on a balance of probability contradicted evidence adduced by the defendants on the ownership of the Banda kibanja by the former's mother.

41. In summary I find that the kibanja at Banda was not distributed by the clan to the defendants as was done with the land at Kireka; the plaintiffs agreed to give the defendants part of the land at Kireka but it was rejected because it was a road reserve; it was resolved before the Administrator General in the presence of the 1st and 2nd plaintiffs that the defendants be given a piece of land which would mean admission by the plaintiffs that the Banda kibanja did not form part of the late Walujjo's estate; the defendants' mother did not give her land to them not because it belonged to their father but to her since distribution of the estate was done by the clan and not the widows; I therefore hold that the kibanja land at Banda land does not form part of the estate of the late Walujjo Yekoyada.
Issue one is answered in negative.

Issue 2: **Whether there exists just cause for the revocation of the grant of letters of administration of the late Walujjo Yekoyada to the defendants.**

42. Section 234(1) of the Succession ActAct Cap.162 provides that Letters of Administration may be revoked for just cause; **Section 234(2)** provides that; "just cause" means— *(a) that the proceedings to obtain the grant were defective in substance; (b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently; (d) that the grant has become useless and inoperative through circumstances; or (e) that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.*

43. Evidence shows that a file was opened up at the Office of the Administrator General's office under Mengo Administrator General's Cause No.796/2011 in respect of the estate of the deceased; following the instructions of the Chief Administrative Officer of Wakiso district, a family meeting was convened on 9/9/2011 admitted as Exb P.1; according to the minutes of the family meeting as reported by the Town Clerk, the chosen persons for the grant of a certificate of no objection were; Sam Ssali Mwambale, Nuru Nakabugo and Nakawombe

Proscenia; the defendants do not deny attending the family meeting; no where do the defendants deny that the family chose persons to petition for Letters of Administration;

44. Letters of Administration to the estate of the late Walujjo Yekoyada were issued to the defendants on the 19/12/2014; vide High Court Administration Cause No.946 of 2013; which according to the plaintiffs were obtained dishonestly without the consent of the family members with an intention of defeating the interests of other family members.

45. In their defence, the defendants contend that due to the mismanagement of the estate and inclusion of the Banda kibanja in the properties of the estate, the defendants made a complaint to the Administrator General who invited the parties for 4 family meetings to determine the properties which comprise the estate; out of which the plaintiffs attended only two meetings; a 14 days' notice of intention to issue a certificate of no objection under Mengo Administrator General's Cause No.796 of 2011 was advertised by the Office of the Administrator General in New Vision newspaper of Wednesday, April 3,2013; calling upon the children of the late Walujjo Yekoyada to file an objection in case they do not agree to the issuance of the Certificate of No Objection to the defendants;

46. Simon Peter Muyomba (The Assistant Administrator General) testified as DW4 that letters of invitation were issued to the family members of the deceased in order to settle the disagreements in the estate; however, that save for the defendants and the 2nd plaintiff who attended the meeting of 15/12/2012, the rest did not attend; the other meeting of 2/2/2013 was only attended by the defendants and upon advertising the notice in the newspaper and no response from the other family members, a certificate of no objection was issued to the defendants.

47. I have considered the pleadings; it is not clear that the office of the Administrator General was aware of the report concerning the family meeting of 9/9/2011 vide letter dated 7/11/2022 by the Town Clerk to the Chief Administrative Officer stating that a family meeting was duly convened as requested.; or the preceding instruction by the Chief Administrative officer Exb.P.1; dated 21/07/2011 to the Town Clerk of Kiira Town Council with instructions that a family meeting be convened concerning the affairs of the late Walijjo Yekoyada (Mengo Administrator General's Cause No.796 of 2011); although the practice would have been that the Administration cause number would have been given by the Administrator General.

48. A Chief Administrative Officer or Town clerk would act as agents of the Administrator General. There is no evidence to show that the Administrator General requested the Chief Administrative officer or the Town Clerk to convene the family meeting; that said however what seems to be on record is that the defendants were part of the meeting that was held. I have discussed above the effect of the meeting and the fact that the defendants brought their complaint to the attention of the Administrator General concerning the Banda land and failure by the plaintiffs to give them part of the estate land which was land at Kireka; the minutes referred to above Dexb 5 show that the complaint appeared to have been settled; however instead of the plaintiffs applying for Letters of Administration, the Certificate of No Objection instead was issued to the defendants culminating into issue of Letters of

Administration in 2014.DW4 the Assistant Administrator General testified that because the plaintiffs did not give the defendants their share he decided to convene meetings on 15/12/2012 but only the 2nd plaintiff and the defendants attended;

49. He scheduled another on 2/2/2013 where only the defendants attended; that frustrated, the defendants applied for a certificate of no objection; he issued a notice in the papers but did not get a response from the plaintiffs, he considered that as constructive notice and went ahead and issued a certificate of no objection to the defendants; that he did not receive the report of the Town clerk but even if he had he is not bound by it; the plaintiffs refused to attend the meeting at the site because they knew they were sidelining the defendants; the plaintiffs are greedy and selfish so he the Administrator General opted to protect the minority genuine interests of the defendants; the plaintiffs are not interested in the administration of the estate because they have already shared among themselves excluding the defendants;

50. On cross examination he acknowledged the letter by the Chief Administrative Officer to the town clerk to convene a meeting; stated that the administration cause was opened because there was a conflict and Sam Ssali applied so that he could protect the estate against Kiligwajjo; that once the defendants presented evidence that the land at Banda did not form part of the estate, he took the decision he did and that once availed with proper documentation they advise whoever disputes to go to court.

Analysis

51. The fact that the family of the late Walujjo Yekoyada including the defendants consented that Sam Ssali Mwambale, Nuru Nakabugo and Nakawombe Proscovia(the 1st, 2nd and 3rd Plaintiffs), be issued with a certificate of no objection has not been denied; generally and depending on particular circumstances it would be improper for the Administrator General to go against the decision of the family members and issue a certificate of no objection to a family member on the basis of failure by the other family members to corporate in resolving conflicts in the estate; as this would escalate more conflicts in the family of the deceased; just because family members have conflicted on what constitutes estate property can not be reason to choose one and not the other contrary to what the family have agreed;

52. I however respectfully do not agree with the submissions of counsel for the plaintiffs that the family having reached a decision as to who should be granted a certificate of no objection, the Administrator General was *functus officio; because* the Administrator General is neither the one who made the decision in the first place nor according to DW4, did he instruct the Chief Administrative Officer to cause the meeting to be convened; having said that however the issue of what constitutes the estate property can not be settled by going against the choice of the family members on who should petition for letters of administration irrespective of who convened the meeting as long as the defendants were part of the meeting;

53. Having said as above again, however, no one should be chosen to apply for Letters of Administration and sit back simply because they have already gotten their share to the detriment of the other beneficiaries; having got shares without Letters of administration for

the estate of a deceased person is illegal; the plaintiffs if court is to go by the consent of 2011 never bothered to pursue letters of administration; the defendants I believe being the aggrieved party sought letters of administration and which were granted in 2014;while the Administrator General ought to have considered the consent on choice of the administrators, since there were conflicts in the family and he invited family members to consider amicable settlement leave alone simply to meet and chat a way forward, in vain; administration of estates of deceased persons should not take forever and there are timelines within which to follow the processes; section **4(1) of the Administrator General Act provides that**

'*When a person dies in Uganda, the agent of the area in which the death occurs shall, upon receiving notice of the death or upon the death coming to his or her knowledge,* ***forthwith*** *institute inquiries to ascertain whether the deceased left any, and if so what, property in Uganda and shall report the death with full particulars as to property, as far as ascertainable, to the Administrator General'* (emphasis supplied).

54. A family resolution is simply a step but not the end; the superintendent of the process is the Administrator General so where the family is not interested to apply but some are, then it is legally the preserve of the Administrator General to move and grant the certificate of no objection to whoever is willing and able; if there are any conflicts then like in this case they are brought by way of filing a suit;

55. Needless to say that he who comes to equity must come with clean hands; the plaintiffs appear to have received and shared the estate of the late Walijjo without Letters of Administration(see section 268 of the Succession Act).

56. In the result I hold that the Administrator General could not have sat out the plaintiffs' intentional delays therefore the Certificate of No Objection was validly issued because a family consent is not a certificate of no objection or a letters of Administration and can not be held in perpetuity in abuse of and to delay other beneficiaries' interests;

Issue 2 is answered in affirmative.

Available remedies.

57. Having found that the procedure followed in obtaining letters of administration to the deceased's estate was not defective there is no just cause for revocation of the letters of Administration. However article 126 of the Constitution requires court to promote reconciliation between the parties; section 98 of the civil Procedure Act grants power to this court to make orders for the ends of justice to be met. The late Walijjo is said to have left children from different mothers; the defendants are from the same mother and the plaintiffs are from different mothers; section 204 of the Succession Act cap. 162 provides:

'If there are two or more persons who are entitled to the same proportion of the estate, those persons are equally entitled to administration, and a grant may be made to any one or some of them without any citation of the others'.

58. In the interests of justice it shall be reconciliatory to have two of the plaintiffs join the defendants as administrators; in this regard and in the interest of gender balance Nakawombe Prossy and Ssali Sam shall be added as co- administrators.

59. On costs, since the parties are siblings, in the spirit of fostering reconciliation pursuant to article 126 of the Constitution of Uganda, each party shall meet their own costs

In the result, the suit fails; and is hereby dismissed. It is ordered and declared that

1) The kibanja at Banda does not form part of the estate of the late Walujjo Yekoyada.
2) Letters of Administration granted to the defendants in respect to the estate of the late Walujjo Yekoyada vide High Court Administration Cause No.946 of 2013 were validly granted
3) Let Sam Ssali Mwambale and Nakawombwe Prossyed as administrators for the estate of late Walujjo Yekoyada;in addition to the deffendants.
4) Each party shall bear their own costs.

Ketrah Kitariisibwa Katunguka

Judge

8/02/2023

Delivered by email to: ,lalinaitwel@gmail.com,nakalulesophie14@gmail.comwinnakigudde92@gmail.com

Any dissatisfied party may appeal to the Court of Appeal of Uganda within 14 days from this judgment.