

3. The plaintiffs are widows of, and beneficiaries and administrators to the estate of the late Musa Sebadduka (herein called '**the deceased**'); the defendant illegally and fraudulently obtained letters of administration and has been selling the property of the estate of the late Musa Sebadduka, they seek general damages and costs;
4. The plaintiffs obtained letters of administration to the estate of the deceased in 2001; the defendant in total disregard of the plaintiffs' letters of administration, went ahead and illegally and fraudulently obtained letters of administration on the same estate in 2013; the defendant has used the illegally obtained letters of administration to trespass on estate property comprised on Block 73 Plot 18 land at Nkerenge measuring 11.86 hectares;
5. The defendant states she is a widow to the deceased and disputes that the plaintiffs are beneficiaries to the estate; she instead pleads that the letters of administration to the plaintiffs were obtained illegally and fraudulently; she accuses the plaintiffs of misusing the obtained letters of administration and for failing to execute their mandate to the detriment of the estate and the beneficiaries thereto; that at the time of obtaining letters of administration, she was not aware that letters of administration to the same estate had been procured by the plaintiffs; denies claims of fraud and insists that the plaintiffs are not entitled to the remedies claimed; she prays that the suit be dismissed with costs.
6. By counterclaim the defendant claims that she was legally married to the deceased in 1962; that at the time of his death, the late Musa Sebadduka had already distributed his estate; the plaintiffs did not involve her nor the sole surviving son of the deceased (Musa Sebadduka Junior) in the acquisition of letters of administration; the plaintiffs/counter defendants obtained the letters of administration illegally and fraudulently claiming to be widows of the deceased whereas not; and are threatening to evict the beneficiaries from the estate.

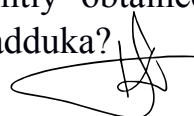
Representation:

7. The plaintiffs are represented by counsel Zawede Lukwago of M/s Zawedde Lubwama & Co. Advocates; while the defendants are represented by Counsel Ssekide Hamza of M/s Wameli & Co. Advocates.

Issues for consideration:

Parties filed a joint scheduling memorandum raising three issues as bellow;

1. Whether the defendant illegally and fraudulently obtained letters of administration to the estate of the late Musa Sebadduka?



2. Whether the defendant is a trespasser on the suit land?
3. What remedies are available for the parties?

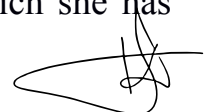
As directed by this court, counsel for the plaintiffs filed written submissions; but the defendant's counsel did not comply with court's instructions to file written submissions according to the given timelines.

8. The 2nd plaintiff appointed her son, Abu Sebadduka as her lawful attorney to among others, prosecute this matter on her behalf; the power of attorney dated 7/11/2016 was admitted and marked as Pid(iii).

Determination of issues:

Issue No.1: *Whether the defendant illegally and fraudulently obtained letters of administration to the estate of the late Musa Sebadduka?*

9. PW1 (Abu Sebadduka) testified that; he is the biological son of the late Musa Sebadduka who died intestate on 10/8/1979; the 2nd plaintiff is his biological mother; the defendant forged letters of administration by unlawfully claiming that she is a widow of the deceased which is not the case; during cross examination, he told court that his father had six wives amongst whom are the plaintiffs; the deceased had 59 children; the plaintiffs were rightly appointed as administrators in 2001 after a family meeting which was attended by 30 members of the family; PW1 admitted to have known the defendant since 2000 as neighbour to the suit land; but denies that the children belonging to the defendant are for the deceased;
10. The defendant testified in court as DW1; in her witness statement admitted as her evidence in chief, she states that she had never seen the plaintiffs, disputes the plaintiffs' claims of being widows of the deceased and beneficiaries to the deceased's estate; that the deceased married her in 1962 at the home of her late father Sheikh Kiborango Edirisa, but the marriage certificate got lost during the liberation war when the mosque was destroyed; as proof of her marriage, DW1 presented a copy of a letter dated 5/4/2013 from the Imam of Kakerenge mosque; the letter and its English translation was tendered in and marked as **Dexb1(a) & (b)**; in the letter it is expressed that the defendant was married to the late Sebadduka Musa in 1962; that the marriage was officiated by Imam Muhammed Lwanyagga in the presence of 6 witnesses whose names are indicated in the aforesaid letter but they all died;
11. That the deceased took her to the suit land which was then measuring 100 acres situated at Kakerenge village in Wakiso district; the certificate of title was registered in his names; the deceased gave her 29 acres of the entire land on which she has



stayed since 1971; the 29 acres are now registered in her names; before obtaining letters of administration in 2013 she had met some of the children of the deceased; she did not get the letters of administration through fraud;

12. During cross examination, DW1 claimed that she bore one child for the deceased (Nambowa Mariam) whom she claims to have died during the liberation war; nonetheless, she admits that her two children to wit; Senoga Ibrahim Ahmed and Nabulya Madina are not children of the late Musa Sebadduka; she asserts that she mentioned only her own children in the petition of letters of administration in order to administer her own land given to her as a inter vivos by the deceased; Dw1 also denied having knowledge of the existence of the deceased's Will; she maintains that the plaintiffs are not widows to the deceased; and only found out about the plaintiffs' letters of administration when she was sued.

13. Senoga Ibrahim Ahmed testified as DW2 that the defendant is his biological mother; the late Musa Sebadduka is not his biological father; his biological father is a one Badiru Mayambala; in his evidence in chief, DW2 stated that he grew up on the estate of the late Musa Sebadduka at Kakerenge; the said late Musa Sebadduka was the paternal uncle to his sister the late Marriam Namboowa; the suit land measuring to 30 acres was given to the defendant by the deceased;

14. That; upon the defendant showing him other plots belonging to the estate of the deceased, in 2006, he contacted some of the children/beneficiaries to the estate of the late Musa Sebadduka with an intention that they come to claim their father's land which 'the other Sebaddukas' wanted to grab; it is a one Namyalo Hadija a daughter to the deceased who caveated the other plots belonging to the estate of the deceased leaving out plot 18 which the defendant got from the deceased; the defendant procured letters of administration to the estate of the late Musa Sebadduka with an aim of protecting her interest therein;

15. On cross examination, DW2 maintains that he never saw the deceased and the deceased is not his father; and neither is the deceased the father to his other sister Nabulya Madina; he attended the family meeting prior to the grant of letters of administration; his mother indicated them as children of the deceased during the family meeting.

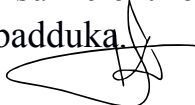
16. For the plaintiffs it was submitted that the defendant's actions of obtaining letters of administration to redress the wrongs purportedly done by the plaintiffs in the first grant was an abuse of court; the grant was void ab initio, as two grants

cannot exist on the same estate; the process to obtain the grant were defective, marred with lies and illegalities, the inventory filed was incurably defective yet the defendant's intention was only to steal the suit land; she did not put into consideration the deceased's 59 biological children and the six widows who are the rightful beneficiaries to the estate; counsel cited section 234 of the Succession Act and prayed that the letters of administration granted to the defendant be revoked;

17. Counsel invited this court to find material, the contradictions in the defence evidence concerning the children of the deceased when the defendant was obtaining letters of administration; the defendant failed to prove marriage between her and the late Musa Sebadduka; there is no evidence to how the deceased gave the suit land to the defendant as a gift inter vivos;

Court's analysis

18. The position of the law is that he who alleges must prove if a decision is to be made in their favour;(see sections 101 and 103 of the Evidence Act;(see the case of *Nsubuga vs. Kavuma [1978] HCB 307*). It is incumbent on the plaintiffs to prove that the defendant obtained letters of administration to the estate of the late Musa Sebadduka fraudulently; while on the other hand the counterclaimant who is the defendant must prove that she validly got letters of administration;
19. Evidence shows that the plaintiffs together with 3 others, were granted letters of administration on 16/3/2001 vide High Court Administration Cause No. 937 of 2000; the defendant later on obtained a grant of letters of administration to the same estate on 30/9/2013 vide High Court Administration Cause No.313 of 2013;
20. Both parties profess to be widows to the deceased and beneficiaries to the estate of the deceased; the plaintiffs claim that the defendant is not a widow of the late Musa Sebadduka; while the defendant disputes the plaintiffs' allegations to be widows and beneficiaries to the estate.
21. **Section 2 (w) of the Succession Act** defines the word; "**wife**" to mean a person who at the time of the intestate's death was validly married to the deceased according to the Laws of Uganda. The plaintiffs did not adduce evidence in proof of their marriage to the deceased; the claim by the defendant to have been married to the deceased was not proved either because no witness to the marriage was presented since the letter from the Imam was narrative rather than evidential; in the absence of a marriage certificate or testimony of witnesses to the marriage I find no sufficient evidence to prove the defendant's marriage to the late Musa Sebadduka



22. On how the plaintiffs obtained letters of administration, PW1 informed court that prior to the grant, there was a family meeting and a number of 30 beneficiaries attended the meeting; the plaintiffs were appointed to become administrators; some beneficiaries who were out of the country consented to the appointment; PW1 stated that all the property was distributed and shared among the beneficiaries; and the suit property was shared among the widows.
23. On the procedure that the defendant followed to obtain letters of administration; a look at a copy of the family meeting minutes dated 20/3/2013 admitted and marked **DExb.10**; shows that during the meeting, the defendant was seconded to administer the estate; attached to the minutes is a list of 3 (three) beneficiaries to the estate of the late Sebadduka Musa; the beneficiaries are listed as Nakibirango Hawa Jalaba (the defendant), Senoga Ibrahim Ahmed and Nabulya Madina; the three beneficiaries respectively signed against their names; there is also a copy of a report in respect to the estate of the late Sebadduka dated 22/3/2022 admitted as DExb.11; written by the sub-county chief to the Chief Administrative Officer; where it is reported that the deceased left three beneficiaries to wit; a widow and two children; it is on that basis that the defendant was issued with a certificate of no objection; and the subsequent letters of administration to administer the estate of the late Musa Sebadduka.
24. Fraud and allegations of fraud are serious because they impact on a person's integrity and name; there is alleged distortion of the truth so unless fraud is specifically pleaded and proved to the letter, half baked decisions will likewise be made on alleged distortion of truths and facts;(see In **R.G Patel -V-Lalji Makanji [1957] EA 314**; **F.K Zaabwe V. Orient Bank Ltd & Others SCCA No. 4 of 2006**);
25. I have considered the defendant's counterclaim, at paragraph 19 (d); she states that the deceased has only one surviving son who is Musa Sebaduka Junior; in her witness statement admitted as her evidence in chief; under paragraph 32, 33,34,she admits that before the grant of letters of administration, she had met some of the children of the late Musa Sebadduka; she states and I quote paragraph 32; *"Before my getting letters of administration to my late husband's estate, his daughters, Ntanya Sebaduka and other came and introduced themselves saying they had been sent by Musa Sebaduka Junior."*
26. The above is contradictory to the information that the defendant disclosed during the family meeting, while she was pursuing a certificate of no objection from the Administrator General; she reported that there are only two children of



the deceased; upon cross examination, she confessed that the two listed Senoga Ibrahim Ahmed (DW2) and Nabulya Madina are not children of the deceased; that she and the deceased only had one child (Mariam Nambowa) whom she alleged to have died during the liberation war but no grave exists ; DW2 during cross examination himself confessed that he is not a son to the late Musa Sebadduka; and that the late Musa Sebadduka was the paternal uncle to his late sister Nambowa Mariam; this contrary to the testimony of Dw1 that the deceased was the biological father to the said Mariam Nambowa.

27. The law relating to contradictions and inconsistencies is known; when they are major and intended to mislead or tell deliberate untruthfulness, the evidence may be rejected. If, however, they are minor and capable of innocent explanation, they will normally not have that effect. See **Oryem David V. Omory Phillip, H.C.C.S No.100 of 2018; Makau Nairuba Mabel v. Crane Bank Ltd., HCCS No. 380 of 2009 per Obura J.; Okecho Alfred v. Uganda, S.C.Crim. Appeal No24 of 2001; Alfred Tarjar v. Uganda Crim. Appeal No 167 of 1969(EACA).**

28. It is trite law that parties are bound by their pleadings and a party shall not be permitted to depart thereof; (see: **Order 6 rule 7 of the Civil Procedure Rules** and the case of **Struggle Ltd versus Pan African Insurance Co. Ltd (1990) ALR 46-47**);

29. The issue as to who are the beneficiaries to the estate of a deceased person before the grant of letters of administration is essential; any deliberate information that seeks to allege that certain persons are lineal descendants of the deceased and others are not must be treated with uttermost care; contradiction and inconsistency in that aspect is grave because it determines entitlement to a deceased's estate; the evidence now before court is that the defendant who had already met some of the biological children of the deceased before petitioning for letters of administration; she intentionally excluded the said children of the deceased by reporting that her other two children including herself were the only beneficiaries to the estate which is not the true position since evidence shows they are not fathered by the deceased; is in no doubt fraud.

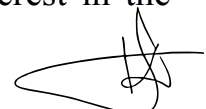
30. The defendant's further inconsistency is also in her affidavit in lieu of a death certificate for Musa Sebadduka, dated 25/1/2013 exhibited and marked as DExb.16; where she contends under paragraph 3 that the deceased died on 1st February, 1974 at home contrary to her averments in the witness statement where she states that the deceased died in 1979 and she only learnt of his death in 1982 after his disappearance during the liberation war; this evidence concerning when

the late Musa Ssebaduka died by an alleged wife is material and any contradiction therein unless sufficiently explained would substantially dent the evidence;

31. In the premises the defendant by excluding the deceased's children from the list of beneficiaries and instead indicating her children who were not fathered by the late Sebaduka and presenting them as beneficiaries would in my considered view amount to fraud, thereby making the process of acquiring letters of administration flawed; the letters of administration were obtained illegally and fraudulently to the detriment of the rightful beneficiaries to the estate of the late Musa Sebaduka.
32. Leave alone that letters of administration which were illegally and fraudulently acquired can not be allowed to stand pursuant to section 234 of the Succession Act; there is the issue of the existence of two grants to the same estate of the late Musa Sebaduka; In **Makula International V. His Eminence Cardinal & Another [1982] HCB 11** It was held that; "a court of law cannot sanction what is illegal once brought to the attention of court, because it overrides all questions of pleadings including admissions made thereon.
33. Letters of administration are a court order; in this case once court pronounced itself by granting letters of administration for the estate of the late Ssebaduka to the plaintiffs on 16/3/2001 vide High Court Administration Cause No. 937 of 2000; unless set aside they are the valid letters to the estate; any other letters acquired after that for the same estate are void ab initio;(see: **Otto Aya and others Vs. Okwera William CA 36 of 2013**; and **Stella Maris Amabilis & Another v. Esther Nabusakala [2009] UGHC 21**);
34. The letters of administration to the estate of the late Ssebaduka granted to the defendant on 30/9/2013 vide High Court Administration Cause No.313 of 2013; are illegal and in any case void ab initio; .Issue 1 is therefore answered in the affirmative.

Issue No.2; **Whether the Defendant is a trespasser on the suit land:**

35. Trespass was described in **Justine E.M.N. Lutaaya vs Sterling Civil Engineering Co. SCCA No.11 of 2002** as "when a person makes an unauthorized entry upon land, and thereby interfering, or portends to interfere, with another person's lawful possession of that land"; A claim against trespass to land can only succeed where the claimant proves that the disputed land belongs to him/her; that the defendant had entered upon it; the entry was unlawful in that it was made without permission or that the defendant had no claim or right or interest in the



disputed land. (see also *Sheikh Muhammed Lubowa V Kitara Enterprises Ltd. CACA No.4/1987;*)

36. The plaintiffs contend that the defendant is a trespasser on the suit estate land comprised in Block 73 plot 18 land at Nkerenge. The defendant asserts that it was on the instruction of the late Musa Sebadduka that she distributes Block 73 plot 3 to the late Idd Amin Dada and plots 6 to 17 to Musa Sebadduka Junior; and plot 18 was given to her by the deceased as a gift inter vivos; it is the same information that she reported in the inventory filed in this court on 4/2/2016, marked as DExb.4;
37. Originally, the estate of the late Musa Sebadduka at Nkerenge is said to have comprised of Block 73 plots 3,6,7,8,9,10,11,12,13,14,15,16,17 and 18 land at Nkerenge. The facts indicate that Block 73 plot 3 was given by the deceased to the late Idd Amin Dada; which fact is not disputed by either party to this suit; the defendant by her own admission states that she was a caretaker of plot 3 on behalf of the estate of the Idd Amin Dada; this is supported by a letter dated 13/11/2013 written by the late Idd Amin Dada's son (Gen. Taban Amin Igwee) marked DExb.17.
38. During cross examination, the defendant informed court that she used to stay on plot 3 with her mother in a three bedroomed house constructed thereon by the late Musa Sebadduka, before Taban Dada chased them from the property; PW1 told court that there was no house on plot 18 as it is farm land; that the defendant used to stay in the neighbouring plot 3 belonging to the late Idd Amin Dada as a caretaker; evidence shows that Block 73 plot 3 is registered in the names of the late Idd Amin Dada; this is confirmed by a copy of the search report from the Ministry of Lands, admitted and marked as Dexb.2.
39. The 1st plaintiff together with another caveated Block 73 plots 6-17 land at Nkerenge registered in the names of the late Musa Sebadduka; however, they did not caveat plot 18 which is the subject of contention; initially, plot 18 was registered in the names of the late Musa Sebadduka; but evidence as per the exhibited certificate of title marked 'DExb15' shows that the defendant was in 2015 issued with a special certificate of title on the basis of being an administrator to the estate of the deceased.
40. The evidence shows that the suit land comprised in Block 73 plot 18 at Nkerenge measuring 11.8600 Hectares was initially registered in the names of the late Musa Sebadduka; I have found that the defendant illegally and fraudulently obtained letters of administration to the estate of the late Musa Sebadduka.

41. Section 191 of the Succession Act 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.'* Section 192 provides that *'Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death'*.

42. The land comprised in Block 73 plot 18 at Nkerenge measuring 11.8600 Hectares which was originally registered in the names of the late SSebaduka therefore was subject to the letters of administration granted to the plaintiffs; as found above the defendant illegally got registered on the suit land using the fraudulently obtained letters of administration;

43. I have not found any connection between the defendant and the late SSebaduka as a wife or as a mother of his children who would be beneficiaries to his estate; consequently, I hold that the defendant is a trespasser on the suit land and the estate of the late Musa Sebadduka;

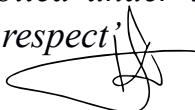
Issue 2 is answered in the affirmative.

Issue No.3; **What remedies are available to the parties?**

44. The plaintiffs prayed for revocation of letters of administration. I shall reproduce section **234 of the Succession Act**;

'(1) The grant of probate or letters of administration may be revoked or annulled for just cause.

(2) In this section, "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'



45. Having found that the defendant obtained letters of administration to the estate of the late Musa Sebadduka by concealing from the Administrator General and court the truth concerning that the deceased had biological children some of whom she had on previous occasions met before the grant; the estate of late Ssebadduka already had the letters of administration, the letters of administration issued to the defendant vide High Court Administration Cause No.313 of 2013 are henceforth revoked.

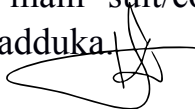
The plaintiffs prayed for any other relief as this court deems fit.

46. The defendant is the current registered proprietor of the suit land Block 73 plot 18 land at Nkerenge. According to section 59 of the Registration of Titles Act Cap.230; a certificate of title by a registered person is conclusive evidence of ownership of the land described therein; **Section 64 (1) of the Registration of Titles Act Cap 230**; provides that the title of a registered proprietor is indefeasible except in case of fraud; Section 176 (c) of the Registration of Titles Act (*supra*) provides that a registered proprietor of land is protected against an action for ejection except on ground of fraud. (this position was considered in ***Kampala Bottlers versus Damanico (U) Ltd, S. C. Civil Appeal No. 22 of 1992***)

47. Section 177 of the Registration of Titles Act (*supra*) provides that; “*Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the registrar shall give effect to that order.*”

48. The defendant’s registration on the special certificate of title on plot 18 Block 73 land at Nkerenge has been found to have been fraudulent; the registration of the defendant on the special certificate of title to land comprised as above can not be left to stand;

49. Costs follow the event (section 27 of the Civil Procedure Act); since they are tagged on the actual costs incurred in the prosecution of the case they ought not be denied unless the successful party has himself/herself been guilty of misconduct; (see Wambugu vs Public service Commission [1972] EA 296; the plaintiffs are entitled to costs; costs to the main suit/counter claim are awarded to the estate of the late Musa Sebadduka.



In the premises the suit succeeds, the counterclaim is dismissed. I make the following orders;

1. The letters of administration granted to the defendant for the estate of the late Musa Sebadduka under Administration Cause No. 313 of 2013 are void ab initio but in any case they were illegally and fraudulently procured so they are hereby revoked.
2. The defendant is declared a trespasser to the estate land comprised in Block 73 plot 18 land at Nkerenge.
3. The Commissioner for Land Registration is ordered to cancel the certificate of title in the names of the defendant and all other entries on the special certificate of title in Block 73 plot 18 land at Nkerenge and maintain the plaintiffs/administrators to the estate of the late Musa Sebadduka as the registered proprietors thereof.
4. Costs are awarded to the plaintiffs for the benefit of the estate of the late Musa Ssebadduka.



Ketrah Kitariisibwa Katunguka

Judge

27/02/2023

Delivered by email to: zaweddelukwago@gmail.com, nnakyewa@gmail.com

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