

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(FAMILY DIVISION)  
CIVIL SUIT NO. 153 OF 2017**

**NOORDIN KAWEEESI  
ABDU MAGID SEMPIJJA  
MUSA SSERUWUGEE  
AISHA NABAKOOZA  
SARAH NATOORO NAKATO  
ZULAIKA BABIRYE.....PLAINTIFFS**

**VERSUS**

**MUYINGO EDIRISA  
HAJJI ISHAQ BYANGWA  
(Co-Administrators of the  
estate of the  
late Haji Hamis Ddungu).....DEFENDANTS**

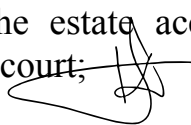
**Before: Lady Justice Ketrah Kitariisibwa Katunguka**

**Judgment**

**Introduction.**

1. Noordin Kaweesi, Abdu Magid Sempijja, Musa Sseruwugee, Aisha Nabakooza, Sarah Natooro Nakato and Zulaika Babirye (herein called the Plaintiffs), Muyingo Edirisa and Hajji Ishaq Byangwa (herein called the defendants); together with 42 others are children of the late Hajji Ddungu formerly resident of Kitintale Kampla city (herein called the deceased); who died intestate on 9<sup>th</sup> January 2009; he was survived by 2 widows each living at Kitintale- Kampala and Kasana in Masaka respectively;

2. The defendants together with the deceased's four other children namely Haji Twaaha Maalo, Juma Katongole Ddungu, Nampijja Jameo and Ntesiba Ramdhan were granted letters of administration vide HCT-00-FD-AC-275-2009 to administer the estate; the deceased being a practicing muslim, the administrators called upon the Sharia Court Department of Masaka District Muslim Council which distributed the estate according to Sharia law and subsequently an inventory was filed in court;



3. The distribution has partly been effected apart from land with a residential house comprised in Kyadondo Block 243 Plots 2555 and 2561 at Luzira, land with a residential house comprised in Buddu Block 324 Plot 32 at Kasana; land comprised in Buddu Block 437 Plot 17 at Nyenge, Mbirizi; land comprised in Buddu Block 324 Plots 32,9,35,1,19, 8,26,40,20,16,37,13 at Kasana-Mulema;

4. Originally the suit was against all the administrators but four (4) co-administrators and the Plaintiffs entered into a consent judgment agreeing to dispose of land comprised in Kyadondo Block 243 Plots 2555 and 2561 at Luzira with a residential house; and land comprised in Buddu Block 324 Plot 17 at Nyenga; and also to part with the possession of the certificates of title for the land comprised in Buddu Block 324 Plots 32,9,35,1,19, 8,26,40,20,16,37,13 at Kasana-; and also execute the necessary documents to effectively distribute the said pieces of land among the beneficiaries; hence now this suit against the two co-administrators who did not consent;

5. The plaintiffs seek for orders for revocation of letters of administration of the estate of the late Haji Hamis Ddungu, a declaration that the Plaintiffs and other beneficiaries are fully entitled to their respective shares in the estate of the late Haji Hamis Ddungu, a grant of letters of administration of the estate of the late Haji Hamis Ddungu to the Plaintiffs and/or to any other children/beneficiaries of the estate, a permanent injunction restraining the defendants from undertaking any further dealings with the estate of the late Haji Hamis Ddungu, and costs of the suit.

6. The Plaintiffs claim that all the beneficiaries of the estate of the late Hajji Hamis Ddungu on 25<sup>th</sup> March 2017 resolved: to entirely sell the estate properties at Luzira and Nyenga- Mbirizi so that each beneficiary gets his/her respective share as per the distribution by Masaka District Muslim Council and the filed inventory (P exb 3); that part of the estate land at Kasana and Mulema be distributed among the beneficiaries and the remaining part with a residential house be maintained as ancestral and/or burial grounds; the same has been distributed though the Defendants have neglected to surrender the duplicate certificate of title to give effect to the actual distribution; in spite of the resolution by the beneficiaries, the Defendants as administrators have adamantly, deliberately, and/or negligently failed to give effect to the distribution of the said properties in accordance with the resolution.

7. The Defendants contend that the estate of the late Haji Hamis Ddungu at Kampala Luzira was distributed and the Certificates of Title were created in favour of different beneficiaries who have since transferred their interests to 3<sup>rd</sup> parties; the residue of the land at Luzira on Kyadondo Block 243 plots 2555 and

2561 was reserved as a residential and memorial home of the late Hajji Hamis Ddungu; the land comprised in Buddu Block 437 Plot 17 at Nyenga Mbirizi Town, Lwengo District was shared among the beneficiaries and the residual of land measuring 270 acres; that the land on Buddu Block 324 Plot 32 was distributed among 7 beneficiaries and the residual was reserved as ancestral home and not subject to further distribution; that they did not have any knowledge of the meeting on the 25<sup>th</sup> March 2017; that the Plaintiffs have no locus standi to apply for revocation of the Defendants' grant of letters of administration as they already extinguished a bigger part of the estate.

## **8. Representation:**

The Plaintiffs were represented by Counsel Ronald Bogezi from M/S Kabega, Bogezi & Bukenya Advocates while the Defendants were represented by Counsel Tom Odeke from LUX Advocates.

9. The issues for determination are:

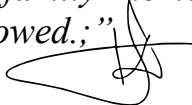
- i. Whether the Plaintiffs and other beneficiaries of the estate of the late Hajji Hamis Ddungu are entitled to their full shares in the deceased's estate;*
- ii. Whether the distribution scheme by Masaka Muslim Council preserved the estate properties: land with a residential house thereon at Kyadondo Block 243 plots 2555 and 2561 at Luzira; Land with a residential house thereon comprised in Buddu Block 324 Plot 32 at Kasana; land with a residential house thereon comprised in Buddu Block 437 Plot 17 at Nyenga;*
- iii. What remedies are available to the parties?*

Both counsel filed written submissions which I have considered.

## **Determination**

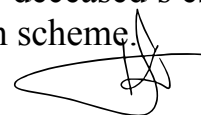
***Issue 1. Whether the Plaintiffs and other beneficiaries of the estate of the late Hajji Hamis Ddungu are entitled to their full shares in the deceased's estate.***

10. Letters of Administration for the estate of late Hajji Hamis Ddungu were granted to six (6) of the deceased's children namely; Musingo Edirisa, Hajji Ishaq Byangwa, Haji Twaha Maalo, Juma Katongole Ddungu, Nampijja Jemeo and Ntesibe Ramadhan; the Defendants, in their written submissions on page 4, stated that, *"the sheikhs from the department of sharia could only advise a family where there was consensus on applying sharia law to some aspects of distribution and where some family members objected to the application of sharia then it could not be followed.;"*



11. At Paragraph 10 of the 2<sup>nd</sup> Defendant's Written Statement of Defence he states and I quote: "That before we conducted the distribution as administrators with the help of the sheikhs of Masaka.....'(emphasis supplied); the distribution was done by the administrators including the defendants so they are bound by the mode and the scheme they all chose. they agreed to invite the Masaka District Muslim Council; there is no proof that the defendants did not agree; if they agreed to subject the distribution scheme to sharia law they can not now turn around; they can not approbate and then reprobate; (see **Seruwagi Kavuma vs. Barclays bank (U) Ltd miscellaneous application number 634 of 2010 cited in Ken Group Of companies Ltd v Standard Chartered Bank (U) Ltd & 2 Ors (Civil Suit 486 of 2007) [2013] UGCommC 171 (11 October 2013);**)where it was stated that the principle is based on the doctrine of election that nobody can accept and reject the same instrument and that a party cannot say at one time that a transaction is valid and thereby obtain some advantage from it to which it could only be entitled on the footing that it is valid and then turned round and said it is void for purposes of securing some other advantage;
12. **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. The defendants did not lead any evidence to show that they objected to the distribution being done under Islamic law; if they had then they would have a case since the Succession Act provides for how the estate of an intestate should be distributed; but once the beneficiaries including the defendants agreed to apply the Sharia law it is an election which can not be denied by the defendants especially since the deceased was a practicing muslim;
13. This intention is also evident in the adoption of the said scheme as the inventory **P.Exb.3** that was later filed in court. The distribution scheme **P.Exb.2 (a) & (b)** and inventory **P.Exb.3** both indicate that the entire estate was distributed among the beneficiaries, including what were referred to as "residential homes" at Kasana, Mbirizi and Luzira.
14. Before I take leave of this issue I have found it prudent to state that in an estate where there are more than 45 beneficiaries including the defendants, two members (out of six administrators )just because they are administrators can not bog down and delay distribution of the estate simply because they do not agree on the mode of distribution; unless it can be proved that their personal interests have been ignored, which is not the case in the instant suit.

The beneficiaries therefore are entitled to their full share in the deceased's estate as detailed in the inventory according to the agreed distribution scheme.



15. Issue 1 is resolved in the affirmative.

**Issue 2. Whether the distribution scheme by Masaka Muslim Council preserved the estate properties described as;**

***i. Land with a residential house thereon at Luzira comprised in Kyadondo Block 243 Plots 2555 and 2561 at Luzira.***

***ii. Land with a residential house thereon at Kasana comprised in Buddu Block 324 Plot 32 at Kasana.***

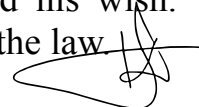
***iii. Land with a residential house thereon comprised in Buddu Block 437 Plot 17 at Nyenga.***

16. The gist of the issue is whether the distribution scheme preserved the residential homes at Luzira, Kasana and Nyenga-Mbirizi. Both the distribution scheme **P.Exb.2 (a) & (b)** and inventory **P.Exb.3** show that the residential homes were distributed among the beneficiaries and not preserved. The Defendants in their written submissions on **page 4** stated that, *“the proposed partitioning of sale proceeds from residential homes was contrary to existing and express provisions of the Succession Act.”*

17. Even if this could be taken as a point of law, it is a well established principle that the law does not have retrospective force. In the case of ***Bishanga Silagi vs Bataha Joseline HCT-05-CV-CA-0015-2011***, Justice Bashaija stated that, *“as a general rule all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective and retrospective effect is not to be given to them unless by express words or necessary implication, it appears that this was the intention of the legislative.”*

18. The law that requires that a residential home is reserved from distribution of an intestate's property was introduced under section 36 of the **Succession (Amendment) Act of 2022**. The distribution scheme is dated 30/11/2010 and the inventory is dated 21<sup>st</sup> November 2011. The distribution of the deceased's estate was done before the 2022 amendment can not be subjected to the 2022 amendment law.

19. The Defendants raised the issue of the **deceased's wishes** to maintain his homes; However, it is an agreed fact that he died intestate and there is therefore no evidence that was adduced to prove that this was indeed his wish. The Defendants are relying on sentiments that are not supported by the law.



20. The Defendants have also raised concern for one of the deceased's daughters that is of unsound mind; no evidence was led in this respect; but even if it was, unless it is proved that such person of unsound mind was excluded from the distribution it would not warrant disregard of the agreed distribution scheme; the same position would apply to the four unmarried daughters and fifteen (15) grandchildren that are said to currently reside in the Luzira home.

21. No objection was raised by anyone claiming that they were excluded from the distribution. Therefore, the daughters should use their allocations to resettle themselves along with the grandchildren. Regarding the sister of unsound mind, who also received a share, the Mental Health Act of 2018 provides the procedure for appointing a legal representative to manage the affairs of a mentally ill person. This option remains open to the family;

22. In regard to the Defendants' refusal to effect the distribution of the estate in accordance with the distribution scheme and the inventory that was filed, the role of an administrator is that of a trustee; he holds the estate for the time until it is given to the beneficiaries; it is not his mandate to determine when to do so; the functions of the administrator were laid out in *Anecho Haruna Musa (Legal Representative of Adam. Kelili) vs. Twalib Noah, Adam Juma and Maliyamungu Majid Civil Suit No. 009 of 2008*, to be ; to pay the just debts and testamentary expenses of the deceased; to marshal or collect and realise the assets of the deceased and to distribute the assets of the estate; and not to take a lifetime to discharge or to be unnecessarily prolonged. It is intended to be a short-lived process.

The Defendants seem to invoke sentiments that are not supported by law;

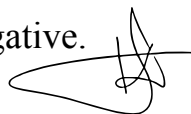
23. The distribution scheme by Masaka Muslim Council did not preserve the estate properties described as;

i.Land with a residential house thereon at Luzira comprised in Kyadondo Block 243 Plots 2555 and 2561 at Luzira.

ii.Land with a residential house thereon at Kasaana comprised in Buddu Block 324 Plot 32 at Kasaana.

iii.Land with a residential house thereon comprised in Buddu Block 437 Plot 17 at Nyenge.

I therefore resolve the second issue in the negative.





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

The Plaintiff made the following prayers:

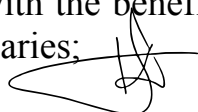
- i. An order for revocation of letters of administration of the estate of the late Haji Hamis Ddungu.
- ii. A declaration that the Plaintiffs and other beneficiaries are fully entitled to their respective shares in the estate of the late Haji Hamis Ddungu.
- iii. A grant of letters of administration of the estate of the late Haji Hamis Ddungu to the Plaintiffs and/or to any other children/beneficiaries of the estate.
- iv. An order that the Defendants release the certificates of title for the land comprised in Buddu Block 324 Plots 32,9,35,1,19,8,26, 40,20,16,37 and 13 at Kasaana-Mulema for purposes of effecting the distribution of the said land amongst the beneficiaries.
- v. A permanent injunction restraining the defendant from undertaking any further dealings with the estate of the late Haji Hamis Ddungu.
- vi. Costs of the suit.

24. Having resolved the first issue in the affirmative and the second in the negative, I find that there are no grounds for revocation of the grant of Letters of Administration. **Section 234** of the Succession Act Cap 162 of the Laws of Uganda provides that a grant of Probate may be revoked for just cause under the following circumstances; if it is proved that the grant was obtained through **substantially defective proceedings**, or obtained by **fraudulently making a false suggestion, or by concealing from the court something material to the case**; 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; that the grant has become useless and inoperative through circumstances; or 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.

None of the above grounds have been proven in this case.

On costs since both parties are siblings it is not in the interest of reconciliation that this court grants costs.

25. Letters of administration are a court order therefore the defendants must comply and carry out their duties. They can not refuse simply because they do not agree with the beneficiaries since the estate does not belong to them but to the beneficiaries;



The suit succeeds.

I hereby make the following orders;

1. The Plaintiffs and all other beneficiaries are entitled to their respective shares in the estate of the late Haji Hamis Ddungu.
2. The distribution scheme by Masaka Muslim Council did not preserve the estate properties described as; Land with a residential house thereon at Luzira comprised in Kyadondo Block 243 Plots 2555 and 2561 at Luzira; Land with a residential house thereon at Kasaana comprised in Buddu Block 324 Plot 32 at Kasaana and Land with a residential house thereon comprised in Buddu Block 437 Plot 17 at Nyenge.
3. The administrators of the estate of the late Hajji Hamisi Ddungu shall distribute and effect the distribution of the estate in accordance with the distribution scheme and inventory that was filed in court within 60 days from this judgment.
4. The defendants shall within 30 days from this judgment release the certificates of titles for the land comprised in Buddu Block 324 Plots 32,9,35,1,19,8,26, 40,20,16,37 and 13 at Kasaana-Mulema for purposes of effecting the distribution of the said land amongst the beneficiaries.
5. Each party shall meet their own costs.



Ketrah Kitariisibwa Katunguka

Judge

16/03/23

Delivered by email  
to:prince.erik76@gmail.com,josephndawula49@gmail.com

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