

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
CIVIL SUIT NO. 258 OF 2016.

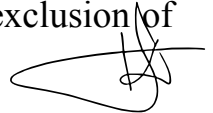
1. **KINENE EDWARD**
2. **KASOZI FREDRICK :::::::::::::::::::: PLAINTIFFS**
VERSUS
1. **SIMON KAGGWA**
2. **MARGARET NABUKENYA NAMUSISI**
3. **ROBINAH NALUBEGA**
4. **DAVID MATOVU :::::::::::::::::::: DEFENDANTS**

Before: Justice Ketrach Kitariisibwa Katunguka.

Judgment.

Introduction:

1. The plaintiffs (Kinene Edward and Kasozi Fredrick) jointly filed this suit against the Simon Kaggwa, Margaret Nabukenya Namusisi, Robinah Nalubega and David Matovu (herein called ‘the defendants’) seeking orders for: - revocation of letters of administration granted to the defendants vide Nakawa High Court Administration Cause No.877 of 2013; the grant to be made to the plaintiffs, only to administer the deceased’s estate afresh; alternatively Margaret Nabukenya and David Matovu to be substituted with Kinene Edward Mutaawe and Kasozi Fred to jointly administer the deceased’s estate with Simon Kaggwa and Robinah Nalubega; costs of this suit to be paid by the defendants.
2. The plaintiffs’ claim is that together with the defendants they are grandchildren and beneficiaries to the estate of the late Samwiri Lwanga Bawakana (herein called ‘the deceased’); the beneficiaries of the deceased’s estate unanimously selected and nominated the plaintiffs, 1st, 2nd and 3rd defendants to get a certificate of no objection from the Administrator General to enable them get a grant of letters of administration to the estate of the deceased; the defendants maliciously processed the grant of letters of administration to the deceased’s estate with the exclusion of



the plaintiffs; since the grant, the defendants have not procured the title deeds to the deceased's land; and neither have they distributed the estate nor filed an inventory; so they are not fit to administer the estate of the deceased;

3. The defendants filed a joint written statement of defence denying the plaintiffs' averments and assert that they adhered to all the necessary required procedures and were issued with the certificate of no objection by the office of the Administrator General together with the 2nd plaintiff as the would be administrators of the estate of the deceased; the 1st plaintiff at the time having been a suspect in a murder case, the family members or beneficiaries including the 2nd plaintiff unanimously substituted him with the 4th defendant; the defendants together with the 2nd plaintiff having been issued with a certificate of no objection, petitioned for letters of administration but in due process the 2nd plaintiff left for Rwanda and court in its mandate excluded the 2nd plaintiff granting the letters of administration to the defendants;
4. The defendants contend that the 1st plaintiff has intermeddled with the deceased's estate by selling part thereof to 3rd parties; they are in the process of obtaining duplicate certificates of title of the deceased's land; and subsequently subdivide the land and distribute the estate to the respective beneficiaries; through the children of the deceased, all the beneficiaries are in possession of their respective shares to the estate of the deceased; they pray that the suit be dismissed with costs.
5. When the matter came up for further hearing on 9/9/2020, by consent of the 2nd plaintiff and the defendants, in the presence of their respective counsel; it was agreed that the 2nd plaintiff reconciles with the defendants; the 2nd plaintiff consented to withdrawal all his claims in this suit (HCCS No.258 of 2016) against the defendants; that the 2nd defendant like the rest of the beneficiaries shall respectively receive his beneficial share or interest out of the estate property; on that basis, court entered a consent judgment on 9/9/2020; the 1st plaintiff is therefore the sole plaintiff against the defendants.



Representation:

6. Counsel Richard Adubango of M/s Lwere Lwanyaga & Co. Advocates represented the plaintiffs while the defendants were represented by counsel Yusuf Kagere of M/s Nyanzi, Kiboneka & Mbabazi Advocates.

At locus on 9/11/2022 counsel were given schedules to file submissions but did not; court shall go ahead and determine the matter.

Issues:

In the course of scheduling memorandum, Issue were agreed upon as follows:

1. *Whether or not the exclusion of the 1st plaintiff from the administration of the estate of the late Samwiri Lwanga Bawakana was fraudulent?*
2. *Whether the plaintiff has intermeddled with the estate of the late Samwiri Lwanga Bawakana?*
3. *Whether the defendants have mismanaged the estate?*
4. *What remedies are available to the parties?*

The Case:

7. The plaintiffs and the defendants are grandchildren of the late Samwiri Lwanga Bawakana who died testate in 1958; the deceased's biological children are said to have passed away leaving behind children some of whom are the parties to this suit; the plaintiff claims that he is the heir of the late Eriabu Wamala Bawakana who is one of the biological children of the late Samwiri Lwanga Bawakana; the grandchildren of the deceased reported his death to the office of the Administrator General vide Mengo Administration Cause No.2066 of 2003 for purposes of obtaining a certificate of no objection to administer the deceased's estate; the estate property in contention is located at Busakya Gombe sub-county.
8. On 6/1/2011 the beneficiaries convened a meeting before the Assistant Administrator General where the plaintiff, Kasozi Fredrick, the 1st, 2nd and 3rd defendants were unanimously elected by the family members for the grant of the certificate of no objection; it is the plaintiff's case that the defendants without his knowledge and consent substituted him with the 4th defendant and were issued with a certificate of no objection after which they proceeded to apply for the grant of letters of administration to the deceased's estate; the defendants as administrators have mismanaged the deceased's estate.

9. The defendants admit that the plaintiff was initially among those chosen by the beneficiaries to the deceased's estate to apply for a certificate of no objection; it was discovered that the plaintiff was a suspect in a murder case and had previously illegally disposed of some of the estate properties prompting the family to convene another meeting on 7/8/2011 chaired by the Assistant Administrator General where they resolved that the plaintiff be substituted with the 4th defendant; the defendants deny mismanaging the estate and instead claim that they have since distributed the estate to some beneficiaries who have received certificates of title for their respective shares; the plaintiff has intermeddled with the estate of the deceased and is frustrating the administrators from performing their duties.

Court's determination.

Issue No.1: *Whether or not the exclusion of the 1st plaintiff from the administration of the estate of the late Samwiri Lwanga Bawakana was fraudulent?*

10. Evidence on record shows that the plaintiff and 4 others were chosen by the family of the deceased to apply for a certificate of no objection in the meeting held on 6/1/2011; later in a family meeting held on 7th August 2011 members resolved to replace the plaintiff with the 4th defendant as part of the would be administrators to the estate; on the 18/2/2013 the certificate of no objection was issued to the defendants excluding the plaintiff;
11. The plaintiff testified as PW1 that he was not notified of the 2nd family meeting held on 7th August 2011 at the deceased's residential home at Busukya, Gombe Luwero district; Mazinga Jackline Semakula (the Assistant Administrator General) testified in court as DW1, that PW1 was invited for that meeting but no evidence was led as proof that he was called to attend the 2nd family meeting and he refused to attend; DW1 admitted that as an agent of the Administrator General, she did not give a hearing to PW1 before he was removed from those to be granted a certificate of no objection; she testified that the office called for a second meeting based on the complaints about the plaintiff's disposal of the estate property from a one Jesca Nabukenya who is also a beneficiary to the estate; no proof of the complaint was adduced; clause iii of the 7/8/2011 family meeting minutes compiled by the Administrator General, on the endorsement of administrators reads, and I quote; *"I informed members that initially their file was a complaint*

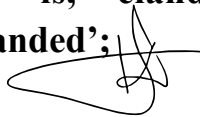


against KINENE. However, they appointed him for a certificate of no objection yet he has been intermeddling. I intimated the legal implications of KINENE being one of those appointed for a certificate as he has a case to answer.” ; the plaintiffs relied on a list dated 7/8/2011 where 52 family members resolved that the plaintiff be substituted with the 4th defendant and each member signed against their names.

12. **Section 101 of the Evidence Act** provides that: “Whoever desires 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 burden of proving fraud in this case, therefore, lies on Plaintiff: See *Miller v Minister of Pensions* {1947} 2 ALLERL 372, 373. **Black’s Law Dictionary 8th edition page 1950** defines fraud as; “A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment’;
13. The Supreme court decision in the **Fredrick J.K Zaabwe V. Orient Bank Ltd & Others SCCA No. 4 of 2006**; defined fraud as: “an intentional perversion of truth for purpose 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 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.” Court further defined fraud to mean; “Anything calculated to deceive, whether by a single act culmination, or by suppression of truth or suggestion of what is false, whether it is by a single, direct falsehood or the innuendo by speech or silence, word of mouth, or look or gesture ... a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get the advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling any unfair way by which another is cheated...”.
14. **Order 6 rule 6 of the Civil Procedure Rules** stipulates; “The defendant or plaintiff, as the case may be, shall raise by his or her pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings,

as, for instance, fraud, limitation act, release, payment, performance, or facts, showing illegality either by statute or common law.”; Order 6 rule 7 prohibits departure from pleadings by the parties and the court.

15. Court in **J.W.R Kazora V. M.L.S Rukuba SCCA No.13 of 1992** held that; It is a well-established principle of law that a party relying on fraud must specifically plead it and that particulars of the alleged fraud must be stated on the face of the pleading; and the standard is higher than a mere balance of probabilities but not beyond reasonable doubt; court quoted **Bullen and Leake and Jacobs, Precedents of Pleadings,12th Edition page 452, wherein** as follows: “*Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word “fraud” should be used the facts must be so stated as to show distinctly that fraud is charged; (Wallingford v. Mutual Society (1880) 5 App. Cass. 685 at 697, precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrence v. Lord Norreys (1890) 15 Appl Cas. 210 at 221); It is not allowed to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and distinctly proved. (Davy v. Gannet (1878) 7 Ch. D. 473 at 489)*”. In *B.E.A. Timber Co. v. Inder Singh Gill (1959) E.A. 463 at 469*);
16. The seriousness of the repercussions of fraud, if proved, requires he who alleges it to bring it out clearly and link it to the alleged culprit to avoid any ambiguity since court only considers what the parties have stated in their pleadings; courts have held that to succeed in claiming fraud, the plaintiff not only needs to plead but also particularize it by laying out evidence upon which the court would make such finding. (see ***Struggle(U) Limited vs Pan African Insurance Co. Ltd (1990) KALR 46-47; and Kasule v Makerere University [1975) HCB 376;***)
17. I have carefully examined the pleadings of the plaintiff; at paragraph 7 of the plaint the plaintiff used the words attributed to the defendants as ‘**stealthily processed the grant of Letters of Administration**’; the dictionary definition of the word ‘stealthy’ is, ‘clandestine’, ‘covert’, ‘furtive’, ‘secret’, ‘surreptitious’, ‘underhanded’;



18. Mazinga Jackline of the Administrator General testified that she did not have proof that the plaintiff had been invited for the meeting where he was removed from the list of those to apply for a certificate of no objection; she conceded that she removed him from the list of would be administrators without according him a hearing; the defendants allege that the plaintiff was excluded because he was a suspect in a murder case and also because he was intermeddling in the estate; for whatever reason the plaintiff having first been appointed ought to have been given a hearing before removal from the list;
19. Having said the above ;the majority of the family members agreed to replace the plaintiff with David Matovu the 4th defendant, who according to the evidence adduced, shares the same parents with the plaintiff and therefore would protect the interests of the plaintiff; the plaintiff testified that David Matovu could not represent his interests but he neither denied that they share parents nor did he elaborate why he thought that his interests would be at risk. Administration of an estate should not be bogged down by disagreement on who should administer the estate because it being a fiducially position, should never be imposed unless the beneficiaries have totally failed to agree on a specific person; as much as possible choice of an administrator is based on the interests of the beneficiaries and not personalties;
20. Section 202 of the Succession Act provides; *‘Subject to section 4 of the Administrator General’s Act, administration shall be granted to the person entitled to the greatest proportion of the estate under section 27’*; section 204 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’*; section 205 provides: *‘Those who stand in equal degree of kindred to the deceased are equally entitled to administration.’*;
21. In *Kampororo & 6 Ors v Administrator General* (Miscellaneous Cause No. 10 of 2014) [2015] UGHCFD 21 (25 June 2015); Tuhaise J as she then was stated: *‘It is my considered opinion that delaying or refusing to issue a certificate of no objection where amicable settlement of the matter has failed or is not taking off, or where there is a deadlock on who is to administer the estate, is irrational, unfair, and unreasonable, if not a procedural impropriety’*

22. The plaintiff did not specifically plead that the defendants fraudulently excluded him from the administration of the estate of the deceased; as to whether the removal was fraudulent has not been proved; while I agree that the removal was irregular and unfair because the plaintiff was not accorded a hearing for whatever reason, I have not found any fraud because it appears the host of beneficiaries and with knowledge of the local council 1 attended the meeting and unanimously agreed to remove him; he was replaced by his brother and I have not found any injury to his interests.

Issue one is answered in negative.

23. Issue No. 2: *Whether the plaintiff has intermeddled with the estate of the late Samwiri Lwanga Bawakana?*

24. **Section 268(2) of the Succession Act (as amended)** states that; “*A person is taken to intermeddle with the estate of a deceased person where that person, while not being the Administrator General, an agent of the Administrator General or a person to whom probate or letters of administration have been granted to by court — (a) takes possession or disposes of the property of a deceased person; or (b) does any other act which belongs to the office of executor or administrator.*”

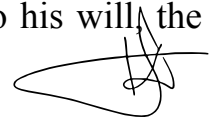
25. In *Namirimu v Mulondo & 2 Others (High Court Civil Suit 27 of 2011) [2014] UGHCFD 48 (23 December 2014)* Court defined intermeddling to include assuming authority to administer the estate of another when a person does not have such authority’; I hold the same view.

26. All defence witnesses testified that the plaintiff has intermeddled with the estate of the deceased by selling portions out of the estate property; they relied on copies of sale agreements DExb 44(b) and DExb 45(b) ; dated 28/01/2014 and 14/02/2014, showing that the plaintiff sold land at Busakya Block 59 plot 12 to a one Mulangira Moses Walugembe and Nalugo Hamidah; sale agreements one dated 21/08/2006 (DExb.47 and Dxb 46(b) show that the land was sold by Lubega Mudembe James to Tugumizeemu Victor; however the plaintiff signed as witness not as a vendor;

27. Court visited locus on 9/12/2022; the 2nd defendant (DW3) led court to the portion of land which the plaintiff sold to Hamidah Nalugo;the plaintiff did not deny that he together with the 4th defendant sold the land. DW3 then showed court other four

plots of land allegedly sold by the plaintiff and claimed that the plaintiff sold part of the land comprised of a family graveyard to a one Mariam; no sale agreements were tendered; on cross examination DW3 stated that the land sold by the plaintiff does not constitute the 32 acres which the plaintiff claims as a beneficiary, later she stated that part of the land sold falls under the 32 acres; that the plaintiff and 4th defendant connived and sold land to Walugembe and Hamidah without the consent of other beneficiaries;

28. In his evidence in chief under paragraph 7 of the witness statement, PW1 testified that he sold kibanja land which he inherited from his late father to a one Nasanayiri, Kambagira John, Hamida Nalugo, Meddie Ziwa and Billy; During cross examination, he testified that his late father Eriab Wamala inherited property from the estate of the late Samwiri Lwanga Bawakana by virtue of the late Samwiri's will; that before the grant of letters of administration to the defendants; he was permitted to open boundaries and survey land by the heads of clan; that plot 9 was divided into halves; 16 acres were distributed to family members of Eriab Wamala and James Kinene; he accuses the other beneficiaries of also selling off portions of land;
29. Further that some of the deceased's grandchildren have disposed of portions of the estate; he relied on a kibanja agreement dated 6/4/2014 (PExb 11(b)); showing the vendors as Nalubula Robinah and Ssembo Daniel who in the agreement state that they have sold part of their late mother Namukasa Eriva's Kibanja at Busakya; a look at Samwiri Lwanga Bawakana's (the deceased) will shows amongst the list of girls born to the deceased is a one Erivansoni Namukasa; on court record is also a copy of the Will of the late James Bukenya Kinene dated 20/10/1999; the late James Bukenya Kinene was also a son to the deceased; in his will, he mentions that the deceased left 16 acres of land which are to be shared by the families of James Kinene and Eriab Wamala; on locus visit, it was established that the plaintiff and the 4th defendants shared the above 16 acres of estate land;
30. While at locus, PW1 led court to a piece of land purportedly sold by DW3; DW3 admitted that she also sold land forming part of her late father's share to a one Mariam before the grant of letters of administration; It is not in dispute that the late Samwiri Lwanga Bawakana left a valid Will dated 17/7/1957; admitted and marked PExb.1(a) and its English version marked as PExb1(b); according to his will, the



deceased did not distribute his land to his children; he instead entrusted the land into the hands of his three children to wit; James Bukenya Kinene, Geresomu Sendiose Musoke and Eriab Wamala (the appointed heir); he directed that each child will be a Kibanja holder wherever they construct; all the parties to this suit are direct grandchildren of the deceased;

31. The pleadings and evidence on record show that; following the death of the late Samwiri Lwanga Bawakana; based on his will, his children took possession of various portions of land comprising the estate; no evidence was adduced that the estate was ever distributed to the deceased's children; some sale agreements on record show that the grandchildren sold land which was previously held and occupied by their parents; by admission PW1, DW3 and 4th defendants told court that they sold off land which their late fathers inherited from the late Samwiri Lwanga Bawakana;
32. Letters of administration to the estate of the deceased were granted on the 26/6/2014 vide High Court Administration Cause No.877 of 2013; the sale agreements; dated 28/01/2014, 14/02/2014 executed by the plaintiff as a vendor predate the letters of administration; therefore the plaintiff intermeddled with the estate of the late Samwiri Lwanga Bawakana; although it is noted that its not only the plaintiff who intermeddled with the estate of the deceased since other beneficiaries including the 2nd and 4th defendants by their own admission sold estate land before the grant of letters of administration;
33. Before I take leave of this matter I find it prudent to state that where a will states that the children of the deceased stay where they have already settled during the lifetime of the deceased as kibanja owners the will is simply declaratory of the status quo; the descendants of the children of the deceased would only be entitled to what their parents were settling on; in such a situation like what court observed during the locus visit is that even before the letters of administration were procured the boundaries amongst the grandchildren of the late Bawakana were known for they were guided by where their parents had settled; it appears the letters of administration were secured for purposes of registration of interests which were already known. The proved sale by both the plaintiff and the defendants before the letters of administration would call for the restatement of the doctrine that *'he who*

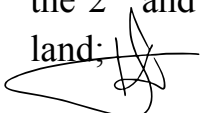


comes to court must come with clean hands'; In this case I would add, then who has clean hands?

34. Having so stated the plaintiff brought the accusation so the doctrine would apply to and against him in which case I would answer the issue in the affirmative.

Whether the defendants have mismanaged the estate?

35. The plaintiff's case is that the defendants as administrators to the estate of the late Samwiri Lwanga Bawakana have mismanaged the estate; by disposing off some portions of the estate to third parties; they have witnessed sale agreements where beneficiaries' land is being sold unlawfully; that the defendants have never called for any consultation meetings with the beneficiaries nor have they ever filed any inventories in this court to show that they distributed the deceased's estate. On the other hand, the defendants contend that all beneficiaries on the ground know and are in possession of their respective shares of the estate.
36. DW3 admitted in her evidence in chief having been granted letters of administration, that she together with the other administrators started processing certificates of title for the deceased's properties which include Block 59 plot 12, 9, 11,10,1,7 and Kibuga Block 10 plot 863; and were accordingly issued with certificates of title; save for plots 10,1 and 7 which were returned under the instruction of the Commissioner for Lands as they were in excess of what the deceased was entitled to; that Kibuga Block 10 Plot 863 was transferred to third parties without the knowledge of the administrators, which prompted them to caveat the land; at paragraph 16 of her witness statement she states: "*We the administrators have since subdivided and distributed part of property comprised in Kyadondo Block 59 plot 12 and 9 to some respective beneficiaries of the estate of the late Samwiri Lwanga Bawakana. The 1st plaintiff is among the beneficiaries who are in possession of their respective shares on plot 12 and 9.*"
37. DW1 told court that following the issuance of letters of administration to the defendants, most of the beneficiaries have received their respective shares; that he has acquired plot 40; as children of the late James Kinene a son to the deceased, they received plot 51 which they subdivided and shared amongst themselves; that the 2nd and 4th defendants including other relatives are in occupation of the estate land;



38. In cross examination, DW3 stated that before distributing the estate, all heirs to the children of the deceased were called for a meeting including the plaintiff who attended; that land was sub divided according to what the late children of the deceased occupied; that the plaintiff was given what his late father was entitled to; that as a result of the caveat lodged by the plaintiff, the other remaining properties cannot be distributed.
39. I have perused the sale agreements presented by the plaintiff; none of the agreements reflect that any of the defendants participated in the disposal of the estate land as vendors; while visiting locus, PW1 led court to land purportedly sold by the 2nd defendant, still no agreement was presented as proof of the sales; the plaintiff and the 4th defendant confirmed to court that after grant of letters of administration, the beneficiaries shared the estate; and the sharing was documented; the plaintiff admitted during the locus visit that he got 7 and half acres from the estate;
40. An inventory marked Dexb.13 shows the distribution scheme of the estate properties; it shows that property was distributed to the deceased's late children one of whom is the late Eriab Wamala the father of the plaintiff; DW3 told court that before they distributed, they called all heirs to the deceased's late children to attend; the plaintiff was among those who attended; land was subdivided according to what the deceased's late children occupied. This was not disputed by the plaintiff.
41. A deceased person no longer has use for his/her property so whoever takes his/her position takes over for purposes of ensuring that beneficiaries to the deceased get their shares. The role of an administrator to the estate of a deceased person is provided for by **Section 180 of The Succession Act** which provides that an administrator of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such; this position was enunciated in **Anecho v Twalib & 2 Ors (Civil Suit 9 of 2008) [2018] UGHCLD 30 (9 April 2018)** where it was held that; *“At that point in time the beneficial interest passes and all assets are then held by the administrator on bare trust for the beneficiaries, since the administrator's role is merely distribution...The personal representative generally is under a legal duty to*



account for the assets, distribute them to the beneficiaries, and wind up the affairs of the estate.”

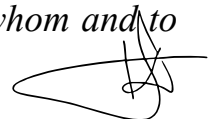
42. Evidence shows defendants took steps to procure certificates of titles to the estate; according to DW3 some beneficiaries have since received certificates of titles for part of their respective shares while others were about to receive but the process was halted by court following an injunction issued on 3/12/2018; exhibits **DExb.18-DExb.43** are copies certificates of titles and on each of them is a written and signed acknowledgments of receipt of title by the respective beneficiaries to the estate; the defendants have caveated land comprised in Kibuga Block 10 plot 863 which allegedly was intermeddled with by third parties; the plaintiff did not with proof sufficiently contradict the defence evidence; therefore, it is my finding that the defendants as administrators to the estate of the late Samwiri Lwanga Bawakana have not mismanaged the estate.

Issue three is answered in negative.

Issue 4. Remedies- Costs

43. The law governing the issue of costs in litigation or suits is provided for in section 27 of the Civil Procedure Act (cap.65), which states: "**27 (1)**. *Subject to such conditions as may be prescribed, and to the provisions of any law for the time being in force, the cost of any incident to all suits shall be in the discretion of the court or judge and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court or judge has no jurisdiction to try to the suit shall be no bar to the exercise of such powers*’;

44. **In Impressa Ing. Fortunato Federice: vs Irene Nabwire - (Suing By her next Friend Dr. Julius Wambette; SC APPEAL NO. 3 OF 2000; ODER - JSC.** held that : *‘In my view, the effect of the provisions of section 27 in question of the Civil Procedure Act is that the judge or court dealing with the issue of costs in any suit, action, cause or matter has absolute discretion to determine by whom and to*



*what extent such costs are to be paid. Of course, like all judicial discretions, the discretion on costs must be exercised judiciously. How a court or a judge exercises such discretion depends on the facts of each case. That is the basis on which in my view the **discretions in the numerous** cases to which the learned counsel on both sides have referred in this appeal were decided by the courts or judges concerned. The factors which determine the exercise of the discretion in favour of one party and against another in a case do not necessarily apply to any other case. If there were mathematical formula, it would no longer be discretion’;*

45. I have considered the fact that: the parties are relatives all descended from the late Bawakana; the final and quick administration/distribution of the estate benefits them all and that both parties have intermeddled with the estate; I therefore find that condemning the plaintiff to costs will not be in the interests of reconciliation;

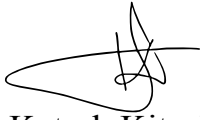
46. In conclusion I find that the plaintiff has not pleaded or proved that his exclusion from the administration of the estate of the late Samwiri Lwanga Bawakana by the defendants was fraudulent; the plaintiff together with other beneficiaries including the 2nd and 4th intermeddled with the estate of the late Samwiri Lwanga Bawakana before the grant of letters of administration; the plaintiff has not proved that the defendants have mismanaged the estate of the deceased;

In the result, this suit fails and I make the following orders:

1. The exclusion of the 1st plaintiff from the administration of the estate of the late Samwiri Lwanga Bawakana was not fraudulent.
2. The plaintiff and other beneficiaries intermeddled with the estate of the late Samwiri Lwanga Bawakana.
3. The defendants as administrators have not mismanaged the estate of the deceased.
4. The defendants shall finalise the distribution of the estate of the late Samwiri Lwanga Bawakana and file an inventory within six months from the day of this Judgment failure of which the letters of administration shall automatically lapse.



5. The suit is dismissed.
6. Each party shall bear their own costs.



Ketrah Kitariisibwa Katunguka

Judge

6/06/2023

Delivered by email to: Lladco@yahoo.com, kagereyusufkharim@gamil.com

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