

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

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CIVIL SUIT NO.122 OF 2015

NTUNGWA ATHANAS.....PLAINTIFF
(Administrator of the Estate of the late Alex Rutaragira)

VERSUS

LUKANGIRA PATRICIA INGABIRE.....DEFENDANT
(Administrator of the estate of the late Lukangira Philip)

JUDGMENT

BEFORE: HON JUSTICE HENRY I. KAWESA

1. Recovery of land **comprised in Bulemezi Block 704 Plots 11 and 16, and Block 706 Plot 11 at Kabanyi** *(hereinafter referred to as the suit land)*.
2. Cancellation of certificates of title in the name of the late Philip Lukangira and substituting the aforementioned names with the Plaintiff as administrator of the estate of the late Alex Rukarangira.
3. A permanent injunction against the Defendant restraining her from evicting the Plaintiff and other beneficiaries of the estate of the late Alex Rukarangira Alex from the suit land.
4. General damages for fraudulent transfer of the suit land.
5. Costs of the suit.

The brief facts of the case are. The parties herein are in-laws. The Plaintiff is a brother to the late Lukangira Philip (*hereinafter deceased 2*). Their father is the late Rukarangira Alex (*hereinafter deceased 1*); and the Defendant is a widow to deceased 2. The suit land is registered in the name of the late Lukangira Philip, but a large part of it is occupied by the beneficiaries of deceased 1's estate, and to some extent the Defendant or her agents. Both deceased persons were buried on the suit land in 1992, and 2010 respectively. The suit land measures approximately 196.4 hectares.

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There has been a protracted contention regarding the ownership of the suit land between the parties, with the Defendant accusing the Plaintiff and the beneficiaries of deceased 1's estate of trespassing thereon.

It is the Plaintiff's claim that the suit land belongs to the estate of deceased 1. That suit land is an aggregate of several Bibanja which deceased 1 purchased from various persons between 1974 to 1989. That when deceased 1 became sick in 1991, and later died in 1992, deceased 2 took over the management of family affairs and bought more bibanjas using proceeds obtained from the sale of deceased 1's cows. That because deceased 2 was deceased 1's heir, their mother handed over to the former all purchase agreements relating to the suit land for management. That deceased 1 having died before the suit land was registered in his name, deceased 2 used the deceased 1's family resources and

became registered as proprietor of the suit land without their consent but, for the benefit of deceased 1's family members.

That sometime in April 2010, deceased 2 informed the Plaintiff that all documents concerning the purchase of the suit land and certificates of title had been hidden by the Defendant prompting him to lodge a complaint at Police. That later September, 2010, deceased 2 passed on before retrieving the said documents from the Defendant. Page | 3

On the other hand, the Defendant denied all the aforesaid allegations and she asserted that after the death of deceased 2, the Plaintiff started claiming ownership of the suit land. That deceased 2 solely acquired the Bibanja forming the suit land, and later became registered thereon without deceased 1 or his family's support. That deceased 2 only allowed deceased 1 and his family members to temporarily live on land comprised in Bulemezi Block 704 Plot 16 in 1992; and that majority of deceased 1's family members vacated the said land upon reaching majority age.

That the Plaintiff had ill intentions of depriving her family of the suit land and thus incited deceased 2, who was ill at the time, to complain against her at Police that she was hiding documents of title relating to the suit land.

At scheduling, the parties agreed on the following issues:

1. Whether the suit is *res judicata*?
2. Who owns the customary interest (bibanjas) on the land?

3. Whether the late Philip Rukangira's registration of mailo interest of the suit land is tainted with fraud and consequently ought to be cancelled in favor of the estate of the late Alex Rukarangira?

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4. What additional remedies are available for the parties?

To prove their allegations at trial, the Plaintiff called six (6) witnesses, that is: PW1 (Christine Mukamusoni), PW2 (the Plaintiff), PW3 (Flavia Mutesi), PW4 (Godfrey Kibirige), PW5 (Christopher Mugisha), and PW6 (ASP Amonyo Mary); and the Defendant called two (2) witnesses, that is: DW1 (the Defendant), and DW2 (Batumuliza Winnie). Counsel for both parties filed written submissions, which I shall consider accordingly.

According to **Kampala Bottlers Ltd versus Domanico Brothers SCCA 22 of 1992**, fraud must be attributed to transferee, to a standard heavier than one of balance of probabilities generally applied in civil cases. The transferee in this case is deceased 2. The Plaintiff, therefore has to attribute fraud to deceased 2.

The Plaintiff's evidence suggests that the deceased 1's family members were okay with deceased 2 conducting the former's affairs, which allegedly included acquiring portions of Bibanja forming part of the suit land. PW1, PW2, and PW3, revealed that they confided in deceased 2 having been deceased 1's heir, and that PW1 surrendered all the relevant documents to him. PW2 also testified that when he was informed in 2010 by deceased 2 that the Defendant had hidden documents of title of the suit land, he

encouraged him to pursue a Police action or seek to mediate the matter, with the help of friends or elders.

The certificates of title indicate that deceased 2 was registered thereon in 1997, 2001, and 2002 respectively. For all that time until 2010, the Plaintiff and deceased 1's family members probably knew of it but, were certainly not concerned of it for the confidence they had in him.

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It appears that their grievance is only that the Defendant withholds their alleged certificates of title, and claims deceased 2's estate to be solely entitled to the same. The Plaintiff would probably not complain had deceased 2 retrieved the documents of title from the Defendant, and dealt with them to his expectation, assuming that his registration thereon was for the benefit of deceased 1's family. With this in mind, my impression is that the Plaintiff allegation that deceased 2 was fraudulently registered as proprietor on the suit land is an afterthought. The issue of *res judicata* is also misplaced since no suit has ever dealt with the subject matter at hand.

Having addressed myself to the law, the pleadings and the evidence on record, I found it proper to reframe the issues, pursuant to **O.15 r1 (5) of the Civil Procedure Rules S.I 71-1**, as amended, as here below:

- 1. Whether deceased 2 holds the suit land in trust for the beneficiaries of the estate of deceased 1?**
- 2. What remedies are available to the Plaintiff?**

Resolution

Issue No.1:

Whether deceased 2 holds the suit land in trust for the beneficiaries of the estate of deceased 1?

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PW2 testified that deceased 1's mother, his grandmother, stayed in Uganda at Nsozibili in the 1930s. That she reared about 40 cattle, and carried out agriculture. That his parents lived with her for a year when he was born; and that the said parents were employed as herdspersons by a one Kabuuka who lived at the neighbourhood village of Kibanvu. That when his parents accumulated wealth, they bought their own cows which they grazed with those of Kabuuka. That he left his grandmother's home to stay with his parents at Kibanvu in 1969. That in 1972, his grandmother died prompting his parents to leave Kibanvu for Nsozibili in order to look after his grandmother's property.

That when his grandmother and deceased 1's cows joined at Nsozibili, they become too many for the land there, and it caused deceased 1 sell his grandmother's land and some cows to buy land at Kabanyi to which they relocated. That he completed primary six in 1974, a time when his parents had acquired land at Kabanyi, and that its at Kabanyi where complete primary seven at Kasala Primary School. That deceased 1 bought the land at Kabanyi from a one Kalanzi and another Senkatuba, and that this now forms part of the suit land. He explained that deceased 1 established a well for his cows on the land he bought from Senkatuba.

It was his evidence that he resided on this land from 1974 to 1981, save during school time. That around 1981, there was insecurity that culminated into the National Resistance Army civil war; and that towards the end of 1981, deceased 1 and his family shifted from Kabanyi to Lake Wamala area, and its deceased 2 who helped him to shift, because he resided with deceased 2 at Kajjansi at the time. It was his evidence also that he used to visit deceased 1 and his family at lake Wamala area where they stayed until 1984; and that when insecurity started in that area also, they again shifted to Kyaka in Tooro. Page | 7

That after the NRA war in 1986, and upon deceased 1's request, they [him and deceased 2] went to assess the situation at the land in Kabanyi, which they found deserted. That the said land was intact but, bushy although the homestead had been destroyed. That while there, a one Nekemia Gavamukulya, their neighbour, asked him about deceased 1, and requested him to inform deceased 1 that he [Gavamukulya] intends to sell his Kibanja. It was his evidence that in 1989, deceased 2 phoned and told him that deceased 1's family shifted back to Kabanyi; and that on visiting them, deceased 1 told him that he had purchased Gavamukulya's land and was already using it for grazing his cows.

Further, that he saw their other neighbours from West Nile returning to their respective lands; and that because of their fear for insecurity, they also sold their bibanjas to deceased 1. That in the same year, his siblings Langira (and his family), Ngazare,

Karagire, Abatoni Kobusingye, and Dona were also residing on the suit land.

It was his evidence that in 1991, deceased 1 was diagnosed with cancer, and was in the process of transferring the land he acquired from Nekemia Gavamukulya into his name, while being assisted by deceased 2. That in 1992, deceased 1 and was buried on the suit land, and deceased 2 was appointed as his heir.

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He testified that deceased 2 took all documents relating to the lands deceased 1 had so far purchased, and continued to purchase more bibanjas and titling the whole land but, using money he derived from selling deceased 1's cows, with the permission of PW1 (deceased 1's widow). That deceased 2 informed him of all this in 1997 while he was in Rwanda at the time.

PW2 further testified that he retired in 2010, and permanently settled on the land at Kabanyi; and that deceased 2 took him around all of it, and he noticed that the cows grazing thereon had reduced in number since they had been sold by deceased 2 to buy more land and secure land titles. That one day in April the same year, deceased 2 came to Kabanyi and informed him that all documents relating to the suit land had been hidden by the Defendant, and who refused to return them.

It was his evidence that the Defendant has no knowledge of acquisition of the suit land especially since she knew deceased 2 in 1987. That prior to deceased 2's death and except on burials, deceased 1's family members never saw her at Kabanyi. That she

has in her possession sale agreements made by deceased 1 in 1974 to 1975, and those made between 1989 to 1992 because she took them away from deceased 2's custody. That part of Bulemezi Block 704 Plot 16 is where deceased 1 bought a customary interest in 1974 and he established thereon a homestead which was destroyed during the 1981-1986 war but rebuilt upon return; and that it is also where PW1, Rukangira's family, and his house are situated.

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Further, that land in Block 704 Plot 11 is where deceased 1 bought mailo interest from Gavamukulya in 1989 to 1992; and that Block 706 Plot 11 is where deceased 1 bought a kibanja from Senkatuba and established wells for his cows.

It was his evidence that deceased 2's family never stayed on the suit land during deceased 1's lifetime; and that like any other child, deceased 2 was constructing a village house on the suit land which he left incomplete and, built a home in Banda. Further, that he never incited deceased 2 to report the Defendant to Police during his sickness because he abroad, in Rwanda, and that deceased 2 was sick for only three (3) days afterwhich he died.

PW1 (the PW2's mother) and PW3 (his sister) corroborated PW2's testimony by reiterating almost the above statements. I need not reproduce the same.

PW4 (the area L.C1 Chairperson since 1992) also corroborated PW2's testimony by narrating something similar to the above statements. He however, added that deceased 2 bought Senkatuba's legal interest from a Greenland Bank (foreclosure) which gave him the 1st option of purchase because deceased 1's

farm was situated thereon. That as L.C.1., Chairperson, he received copies of offer letters in deceased 2's favour from Greenland Bank's Auctioneers.

It was his evidence also that in 1997, there was a debate in Parliament of land law, and landlords feared giving away their land to squatters and hence sold it to them, which opportunity deceased 2 used to obtain legal interest but after selling deceased 1's cows. Further, that the legal interest deceased 2 bought in particular were of a one Eliphazi Kizza, Christopher Kasozi, and Amina Nakalanzi. Additionally, that he was a witness to the agreements whereof deceased 2 bought from the aforesaid persons. His testimony was well corroborated by PW5 (*a born of the village and the R.C. 1 of the area during the 1980s*), and I need not to reproduce it.

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Lastly, PW6 testified that on the 22nd of July, 2010, deceased 2 came to the Police Family Office complaining of domestic violence in his family, particularly with the Defendant. That he formally entered deceased 2's complaint and recorded his statement, which he signed. *A copy of the statement was admitted as PEXH5.* That he summoned the Defendant on the 23rd July, 2010, who responded but the parties failed to reach a settlement, and deceased 2 requested for a forwarding letter to Court.

On the other hand. DW1 testified that after deceased 2' death, the Plaintiff started claiming ownership of the suit land which deceased 2 bought using his hard earned money, with her support and knowledge. That the Plaintiff only sneaked onto the suit land in 2010 to exploit her vulnerability as a widow. It was her

testimony that the Plaintiff's attempt to revoke her Letters of Administration vide Originating Summons No.8 of 2011 was dismissed, and his appeal against the same miserably withdrawn. That the suit land is owned by deceased 2 in whose name it is registered.

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Copies of certificates of title of the suit land were admitted as DEXH3. That during deceased 2's lifetime and now, she has been in possession of the aforesaid certificates of title. She also stated that deceased 2 built a family home on the suit land, where they lived and spent holidays while tending their cows and harvesting crops.

It is her evidence that in 1990, deceased 2 moved his weak aged parents, and siblings from Kyaka settlement to Kabanyi village on part of the suit land. That deceased 1 lived on the suit land with nothing else other than his cows which were later distributed by the Plaintiff's uncle amongst his children, including deceased 2. She further, she testified that there is proof of purchase of the suit land by deceased 2 from Nekemia Gavamukulya, Charles Magembe, and the administrator of the estate of the late Samson Kalanzi. It was his testimony also that she has no objection availing thirty (30) acres of the suit land to PW1 and her dependents for their occupation until PW1's demise.

DW2 also testified that the suit land belonged to deceased 2, her father; and that her father informed her that PW1 and her relatives were only using it.

For the Plaintiff to succeed on this issue, he must first show that deceased 1 acquired an unregistered interest on the suit land which preceded deceased 2's registration thereon.

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PW2 asserted that deceased 1 purchased several bibanjas forming part of the suit land, in addition to the bibanjas bought by deceased 2 using deceased 1's resources. It was his evidence that purchase agreements relating to the first purchases are being possessed by the Defendant having withheld them against deceased 2's or his will. This evidence was disputed by the Defendant.

According to **Sections 60 and 63 of the Evidence Act Cap 6**, contents of documents must be proved by production of the original document save in exceptional circumstances. The exception circumstances, according to **Section 64(1) (a) of the Act** include situations where the original document appears to be in the possession of the person against whom the document is sought to be proved, and when, after the notice mentioned in section 65, that person does not produce it. According to **Section 65(c) of the Act**, party has notice to produce a document in his or her possession when it appears that the adverse party has obtained possession of the original by fraud or force.

PEX6 indicates that deceased 2 ever complained to Police about the Defendant withholding sale agreements and certificates of title relating to the suit land. At some point the Defendant asserted that deceased 2's complaint to Police was incited by his relatives, although nothing much was added to substantiate this claim. I cannot also infer from the Plaintiff's evidence, especially PW6's

testimony that deceased 2 was operating under pressure or malice to make such a complaint. With such a possibility ruled out, it is improbable that deceased 2 could have made such a complaint against the Defendant without cause.

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There was a reason, and it is probably as the Plaintiff's evidence suggests that the Defendant withheld purchase agreements relating to the suit land against his will.

Accordingly, I find that the Plaintiff has demonstrated that the original purchase agreements of the suit land by deceased 1 are in the Defendant's possession having obtained them from deceased 2, and continues to withhold them by force. Consequently, the Plaintiff is entitled to prove their contents by another way other than production of the same.

According to **Section 62(e) and 63 of the Evidence Act Cap 6**, the other way through which the Plaintiff can prove the contents of the said agreements is by oral evidence of a person who saw the agreements.

PW5 testified that deceased 1 bought Bibanja from his neighbours from West Nilers, and that as R.C.1., of the village at the time, he wrote the agreements and the parties signed.

PW5's evidence regarding the contents of the said sale agreements was corroborated by PEXH6, the testimony of PW1 and PW2 to the effect that the said agreement were taken by deceased 2, from whom the Defendant obtained them. Of particular emphasis, in PEXH6, deceased 2's complained that the Defendant had hidden

his land title “which is the land of the family of our late father Rukangira Alex of which when he died as I am the elder boy of his I put the land title in my names....”

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I already found no reason to doubt deceased 2's statement to Police. The Defendant testified that it is deceased 2 who purchased all the unregistered interests in the suit land, and even adduced some purchase agreements in his name although admitted only for identification cases. Notwithstanding the latter assertion, I found it difficult to believe her evidence especially in view of deceased 2's statement in PEXH6. It needful to also refer to PW2's testimony which detailed a whole account of deceased 1 and his family's stay on the suit land since 1974.

This evidence was consistent, and without contradiction from the rest of the witnesses especially PW4, and PW5 who testified that deceased 1 and his family resided on the suit land since 1980s. I am not forgetting PW2's testimony that when deceased 1 was sick and after he died, deceased 2 bought more bibanjas using the former's resources. This evidence was also ably corroborated especially by PW1 and PEXH6.

Looking at the evidence as a whole, I find the Plaintiff's evidence believable. Consequently, I find that it is more probable that deceased 1 bought bibanjas prior 1992, and deceased 2 bought more afterwards on behalf of deceased 1 and his family. The aggregate of the said bibanjas is what now constitutes the suit land. The said land is registered in the name of deceased 2. The

question now is, whether deceased 2 holds the said land in trust for deceased 1?

In determining this question, the expression deceased 1 and deceased 2 is used to respectively represent the Plaintiff, and Defendant in their representative capacities, with necessary modifications.

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According to the “*Pallant versus Morgan equity*”, if parties agree that one will acquire some specific property for the joint benefit of both of them on terms yet to be agreed, and one, in reliance on another’s agreement, is thereby induced to refrain from attempting to acquire the property, equity will not permit the other, when he acquires the property, to insist on retaining the whole of the benefit for himself to the exclusion of other. This principle derives life from the case of *Pallant versus Morgan [1953] Ch., 43.*

In that case, the agents of two neighbouring landowners orally agreed in the auction room that the Plaintiff’s agent would refrain from bidding at auction and that the Defendant, if his agent’s bid was successful, would divide the land according to an agreed formula, the details of which were to be agreed later. The Defendant’s agent was successful, but when the parties failed to agree on the details of division the Defendant retained the whole of the land for himself. It was held that although the agreement was incomplete in its detail and too uncertain to be specifically enforceable, the Defendant held the land on trust for himself and the Plaintiff jointly, and that it would amount to sanctioning a fraud on the Defendant’s part to allow him to retain it.

The principle was reviewed by the Court of Appeal in **Banner Homes PLC versus Luff Developments Ltd [2000] 2 WLR 772**. In that case also, two rival bidders made an arrangement concerning the purchase of property. The Defendant conducted himself in a way inconsistent with the agreement, and in an inequitable manner. It was held that a constructive trust (*or a duty to account*) arose in the circumstances. It was essential that the circumstances made it inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party had acted. **Chadwick L.J.**, observed that:

“The equity is invoked where the Defendant has acquired property in circumstances where it would be inequitable to allow him to treat it as his own, and where, because it would be inequitable to allow him to treat the property as his own, it is necessary to impose on him the obligations of a trustee in relation to it”.

The type of trust on which the aforesaid principle is based is a constructive trust. In **Gissing versus Gissing [1971] AC 886**, **Diplock L.J.**, observed that;

“A constructive trust is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the property.”

He added that the trustees;

“Will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.”

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Constructive trusts are a creature of the jurisdiction of equity; and implied by the Courts when it is unconscionable for a Defendant with the legal title to property to claim that property or some part beneficially to the prejudice of the claimant.

The trust is created independently of the intentions of the parties. It is the conduct of the parties, and in particular the Defendant, that governs the jurisdiction of the Court to impose it.

Principles of constructive trusts are not alien to this jurisdiction. Their foundation is **Section 14(2) (b) (i) of the Judicature Act Cap 13**, which empowers this Court to apply rules of equity.

I need to emphasis that the aforesaid principles have once been applied in a similar situation by my learned brother; **Justice Egonda Ntende in Stanbic Bank Uganda Ltd versus Joseph Aine & Others H.C.C.S No. 0314 of 2005**, wherein he rightly observed that;

“A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate)

to assert his own beneficial interest in the property and deny the beneficial interest of another.”

From the above, it can be deduced that a constructive trust is formed whenever, (1) there is a common intention between the parties that the claimant has a beneficial interest in the property; and (2) the claimant acted to his or her detriment in the reasonable belief that by so acting he or she was acquiring a beneficial interest in the land—in other words, it must be inequitable to allow the Defendant to insist on retaining the whole property to the exclusion of the claimant. Where a common intention is not expressly stated, it can be implied by Court when good conscience demands. See; **Grant versus Edwards [1986] Ch. 638; and Deane J in Muschinski versus Dodds (1985) 160 CLR 583 at 614. Millet L.J., in Lonrho PLC versus Fayed (No 2) [1992] 1 WLR 1**, makes the matter plain when he stated that:

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It is... the independent jurisdiction of equity as a Court of conscience to grant relief for every species of fraud and over unconscionable conduct. When appropriate, the Court will grant a proprietary remedy to restore to the Plaintiff property of which he has been wrongly deprived, or to prevent the Defendant from retaining a benefit which he has obtained by his own wrong.

I found the aforesaid principles persuasive, and I deem it fit to apply them to the instant case.

The disposition of the question above starts from my finding above. I have already referred to PEXH6 wherein deceased 2 is quoted to have stated that the suit land “*is the land of the family*

of our late father Rukangira Alex of which when he died as I am the elder boy of his I put the land title in my names....”

It is provided by **Section 20(a) of the Evidence Act Cap 6**, that an admission may be proved on behalf of the declarant ***“when it is of such a nature that if the person making it were dead, it would be relevant as between third persons under section 30.”*** Under **Section 30(c) of the Act**, an admission for a dead declarant is relevant as between third parties *“when the statement is against the pecuniary or proprietary interest....”* of declarant.

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In this case, deceased 2 himself admitted, in PEXH6, that notwithstanding his registration as proprietor of the suit land, the same remained for deceased 1’s family. This evidence is as good as any against the Defendant. It goes along to corroborate all what the Plaintiff asserts. The sum total of all this evidence leads to an inference that there is a common agreement between deceased 2 and deceased 1’s family members whereby, deceased 2 would be registered as proprietor of the suit land for the joint benefit of all of them. However deceased 1’s family members appear to have acted to their own detriment in the reasonable belief that by so doing they were acquiring a beneficial interest in the suit land.

Unfortunately, as it has now played out, the deceased 2 is not the one insisting on retaining the whole suit land but, his administrator. The truth of this scenario is however that the Defendant and deceased 2 are deemed to be the same person in law. (See Section 2(k) of the Civil Procedure Act Cap 71 for definition of a legal representative). By insisting that the suit land

is solely for the estate of deceased 2, the Defendant is being unconscionable.

For the reasons expressed above, Court finds that deceased 2 is a constructive trustee of the suit land, and the Defendant is not permitted to claim ownership of the same to the exclusion of the Plaintiff.

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In the result, this Court finds issue one in the affirmative.

Issue No.2:

What remedies are available to the Plaintiff?

Where a constructive trust is inferred by Court, it is left to it to determine what share the Plaintiff is entitled to. Where there is an express common agreement, the Plaintiff is obviously left to claim a share based on what was agreed. *See Eves versus Eves [1975] 1 WLR 1338.*

On the other hand, where the common agreement is implied, like in this case; the Court is required to make an assessment of the Plaintiff's share by looking at the whole course of dealing between the parties. *See Midland Bank versus Cooke [1995] 2 FLR 915; Oxley versus Hiscock [2004] EWCA Civ. 546.* The rationale for this is to bring the matter to its conclusion as fairly as possible. Often Courts have allowed the parties to negotiate and determine their shares, although only in circumstances where this is possible. In the present case, the prospects of negotiations are rare. The parties have exhibited a long history of rivalry starting from 2010.

There has always been intervention by several authorities and their efforts to mediate them had failed when the suit was instituted.

When faced with a similar situation in *Pall ant versus Morgan (supra)*, *Harman J said:*

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“The Plaintiff and the Defendant have failed to agree on a division, and the Court cannot compel them to agree. The best it can do is to decree that the property is held by the Defendant for himself and the Plaintiff jointly, and if they still fail to agree on a division the property must be resold, either party being at liberty to bid, and the proceeds of sale divided equally after repaying to the Defendant the £1,000 which he paid”.

I find the above reasoning persuasive, and deem it fit to adopt and apply it to the instant case. In view of the reasoning above I hold that the Plaintiffs partially succeeds in this claim.

Accordingly, the following orders are hereby made:

1. A declaration that the estate of the late Alex Rukarangira has a beneficial interest in land comprised in Bulemezi Block 704 Plots 11 and 16, and Block 706 Plot 11 at Kabanyi.
2. That the estate of the late Rukangira Philip holds the suit land in trust for land comprised in **Bulemezi Block 704 Plots 11 and 16, and Block 706 Plot 11 at Kabanyi.**
3. The Plaintiff and Defendant are ordered to liase with the official government representative in the office of the administrator General who should convene a meeting of all beneficiaries to the said estate in order to have the land

amicably divided between them in accordance with the beneficial interests of the parties as discussed herein within 6 months of this Judgment.

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4. If they still fail to do so amicably, the said land shall be divided in equal proportions amongst the immediate beneficiaries of the estate of the late Alex Rukarangira who were living at the time of his death, including Lukangira Philip.
5. In the meantime, parties are ordered to maintain the status quo on the aforesaid land until order 3-4 above is actualized.
6. The parties being related, this Court orders each one of them to bear its own costs to avoid straining their already tense relations.

I so order.

.....

Henry I. Kawesa

JUDGE.

26/03/21

26/03/21:

Daisy Oketcho holding brief for Tibamanya A for the Plaintiff.

Susan Nabatte from FIDA for the defendant.

Plaintiff present.

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Court:

Matter for judgment.

Judgment delivered to the parties above.

Sgd:

Kakooza Elias

AG. DEPUTY REGISTRAR

26/03/2021