

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CIVIL SUIT NO. 324 OF 2021

1. ZUERIA NAMUTEBI
2. NAMUSISI RUTH
3. NDAGIRE BAGAMBANI
4. MUSISI BOSCO ::::::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. NANKYA MARGARET KIZITO
2. SSEMISAMBWA ERISA
3. KAWADWA TWALI
4. KIWANUKA MAYAMBA DAN::::::::::::::::::::::::: DEFENDANTS
(ADMINISTRATORS OF THE ESTATE OF THE LATE
NDI WALANA MAYAMBA IGNATIO)

BEFORE HONOURABLE MR. JUSTICE DAVID MATOVU

JUDGMENT

Introduction

1. The plaintiffs brought this suit against the Defendants jointly and severally for an order to have the defendants registered onto the certificate of title for land comprised in Kyaggwe Block 138 Plot 212 Land at Katogo measuring approximately 20 acres, as administrators of the Estate of the Late Ignatio Ndiwalana Mayamba and cause the said land to be divided among the 9 beneficiaries, an order to account for all the properties or proceeds received from the sale of any property that formed or forms part of the Estate of the Late Ignatio Ndiwalana Mayamba, general damages, interest and costs of the suit.

Background

2. Zueria Namutebi, Namusisi Ruth, Ndagire Bagambani and Musisi Bosco hereinafter referred to as plaintiffs brought this suit against Nankya Margaret Kizito, Ssemisambwa Erisa, Kawadwa Twali, Kiwanuka Mayamba Dan (Administrators of the Estate of the Late Late Ignatio Ndiwalana Mayamba) hereinafter referred to as Defendants seeking for the following orders; -

- i. an order to have the defendants registered onto the certificate of title for land comprised in Kyaggwe Block 138 Plot 212 Land at Katogo measuring approximately 20 acres, as administrators of the Estate of the Late Ignatio Ndiwalana Mayamba and cause the said land to be divided among the 9 beneficiaries,**
 - ii. an order to account for all the properties or proceeds received from the sale of any property that formed or forms part of the Estate of the Late Ignatio Ndiwalana Mayamba,**
 - iii. General damages,**
 - iv. Interest and**
 - v. Costs of the suit.**
3. The plaintiffs contend that themselves and the Defendants are beneficiaries to the Estate of the Late Ignatio Ndiwalana Mayamba, together with a one Ndiwalana George, who is not a party to this suit.

4. The plaintiffs state that the Defendants are the Administrators to the above estate having obtained the grant in 2019.
5. The plaintiffs further content that land comprised in Kyaggwe Block 138 Plot 212 Land at Katogo measuring approximately 20 acres is still registered in the names of the deceased.
6. That the deceased died intestate and as such, the beneficiaries are supposed to share the said land equally but the Defendants have failed and/ or neglected to cause the distribution as administrators.
7. That the Defendants have been unilaterally dealing with the estate without informing the Plaintiffs and therefore there is need for an order of accountability.
8. Wherefore the Plaintiffs prayed for judgment against the Defendants for orders as mentioned above.
9. The defendants did not file their written statement of defence and the suit proceeded ex-parte against them.

Representation

10. At the hearing, the Plaintiffs were represented by Mr. Nsubuga Kenneth.

Submissions

11. Counsel for the Plaintiff filed written submissions wherein he raised three issues for determination by this Court. These are: -
12. Whether the Defendants/ Administrators can cause the land/ and or estate of the Late Ignatio Ndiwalana Mayamba to be equally divided among the 9 beneficiaries?

13. Whether the Defendants can account for all proceeds received from the sale of any property that formed / forms part of the estate of the Late Ignatio Ndiwalana Myamba?
14. What remedies are available to the parties?
15. This Court has read the submissions of the Plaintiffs and the same have been considered while writing this judgment.

Decision of Court

Issue one

16. **Whether the defendants / administrators can cause the land/ and or estate of the Late Ignatio Ndiwalana Mayamba to be equally divided among the 9 beneficiaries?**
17. The Succession Act provides for the duties of an administrator of an estate of a deceased to include inter alia; holding the property of the deceased in trust for the beneficiaries and distributing and/ or disposing of the said property to the beneficiaries in accordance to the law and in the best interest of the beneficiaries of the estate.
18. Section 27 and 28 of the Succession Act, as amended provide for the distribution of the estate of an intestate.

27. Distribution on death of intestate

(1) Subject to sections 29 and 30, the estate of an intestate, except for his or her residential holding or other residential holding, shall be divided among the following classes in the following manner-

(a) where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir-

(i) ...

(ii) ...

(iii) the lineal descendants shall receive 75 percent; and

(iv) the customary heir shall receive 1 per cent; of the whole of the property of the intestate.

(b) where the intestate leaves no surviving spouse or dependent relative under paragraph (a) (i) or (ii) capable of taking a proportion of his or her property the-

(i) lineal descendants shall receive 99 percent; and

(ii) customary heir shall receive 1 percent;"

19. One of the core duties / mandate of the administrators of an estate is transfer property to the beneficiaries in accordance with the law or in accordance with any agreement amongst the beneficiaries.

20. It is important to note that being an Administrator is not a title and as such letters of administration are not to be held in perpetuity.

21. In the case of **Anecho Haruna Musa (Legal Representative of Adam Kelili) Vs. Twalib Noah, Adam Juma and Maliyamungu Majid Civil Suit No. 009 of 2008**, Justice Stephen Mubiru observed and held that;

1. 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 means that all assets are then held by the administrator on bare trust for the beneficiaries since the administrator's role is merely distribution.

2. An administrator must keep the estate assets totally separate and apart from his own. An administrator should not intermingle the estate assets with his or her personal assets, or use them for his or her purpose.

3. The duties of an administrator were never designed to take a lifetime to discharge or to be unnecessarily prolonged. It is intended to be a short-lived process.

22. In the instant case, the Defendants were granted letters of administration on the 06th day of February, 2019 by this Honourable Court.

23. However, it is the Plaintiff's evidence in Paragraph 10 of her witness statement that the Defendants have deliberately refused and/ or neglected to distribute the estate of the Late Ignatio Ndiwalana Mayamba and more particularly the land comprised in Kyaggwe Block 138 Plot 212 Land at Katogo measuring approximately 20 acres, which the Plaintiffs contend is even still registered in the names of the deceased.

24. It is on this basis that they seek an order to have the Defendants registered thereon as Administrators so that the same can be shared amongst the beneficiaries.

25. This Court finds that indeed the said land is still registered in the names of the deceased as per the Certificate of title attached.
26. Further, when the matter came up for hearing on the 5th day of October, 2022, Court had the opportunity of hearing from the 1st Defendant, Ms. Nankya Margaret Kizito, who indeed confirmed that the said land was still in the names of the deceased and it is undistributed to date due to financial constraints.
27. Issue 1 is therefore answered in the affirmative.

Issue two

28. **Whether the Defendants can account for all proceeds received from the sale of any property that formed / forms part of the estate of the Late Ignatio Ndiwalana Mayamba?**
29. Section 278 of the Succession Act provides for Inventory and account and is to the effect that; -
- (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may**

from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.

30. It is important to note that the use of the word shall is an imperative command, usually indicating that some actions are mandatory and not permissive.

31. It therefore follows that as provided by law, that the filling of an inventory and account is mandatory.

32. It is the evidence of the Plaintiff that ever since the said grant was issued to the Defendants/ Administrators, they have been dealing with the estate of the deceased, however, they have never accounted for the proceeds or filed an inventory in this Honourable Court.

33. Further, there is no proof of inventory or account ever received by this Honourable Court in respect of the Estate of the Late Ignatio Ndiwalana Mayamba.

34. This issue is also answered in the affirmative.

Issue 3

35. **What remedies are available to the parties?**

36. The Plaintiffs prayed for general damages, interest and costs of the suit.

37. As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and

prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

38. In the instant case, the Plaintiffs have not proved any damages or injuries/ loss suffered.

39. This court therefore makes no orders as to general damages.

Conclusion

40. In the result, this suit succeeds with the following orders; -

- i. The Defendants, who are the Administrators should have the said land registered into their names for purposes of distribution to all the beneficiaries, in accordance with the law.
- ii. The Defendants, who are the Administrators of the Estate of the Late Ignatio Ndiwalana Mayamba should file an inventory and/ final account in this Honourable Court within three months from the date of this Judgement.
- iii. No order is made as to costs.

Dated at Mukono this 24th day of October, 2022



David Matovu
Judge