

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CIVIL SUIT NO. 76 OF 2021

1. KABUGO HARUNA
5 2. ASUMANI MULINDA PLAINTIFFS
3. BADRU MUWEBYE
4. JAMILU MULINDA

VERSUS

1. HASIF NAMAGEMBE
10 2. SIRAJ NSEREKO DEFENDANTS
3. HAJI ERIAS MULIMILA
4. THE ADMINISTRATOR GENERAL

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Judgment

The plaintiffs brought the instant suit against the defendants jointly and severally for; a declaration that land comprised in mailo Register Butambala Block 130 Plot 32 forms part of the estate of the late Ahmadah Senkaayi; declaration that the 4th defendant applied for Letters of Administration of the estate of the late Yusufu Kato fraudulently; revocation of the Letters of Administration granted to the 4th defendant; an order compelling the 4th defendant to file a comprehensive statement of account of dealings with the estate of the late Yusufu Kato; an order of cancellation of the 1st defendant's name from the duplicate Certificate of Title of land comprised in Butambala Block 130 Plot 32; an order compelling the 4th defendant to execute his duties and or obligation as the administrator of the estate of the late Yusuf Kato; special damages; general damages and costs of the suit.

Brief facts:

It is the plaintiffs' case that the suit land is comprised in mailo Butambala Block 130, Plot 32 land at Nakasozi measuring approximately 8 acres registered in the name Kasifa Namagambe formerly registered in the name of the late Yusufu Kato.

That the Late Yusufu Kato died intestate on 8/3/1989 and before his demise had sold the suit land on the 17/04 /1983 to his only son the late Ahmadah Senkaayi who took immediate possession.

Upon the demise of the late Senkaayi Ahmadah on 1/12/1988, a family meeting was held and the 3rd defendant was given the land title for safe custody. That unfortunately, also late Yusufu Kato died on 8/3/1989 before he could transfer the suit land into Senkaayi's name whose family remained in possession of the suit land to date.

Consequently, the 1st defendant petitioned the 4th defendant to administer the estate of the late Yusufu Kato, which it did and Letters of Administration were granted to it in 1994. However, it is alleged that some information was fraudulently concealed and the suit land included as part of the estate of the late Senkaayi.

That the 3rd defendant conspired with the 1st defendant and handed over the duplicate certificate of title to the 2nd defendant in order to mortgage the suit land to Equity Bank which advanced the UGX 16,000,000/=.

That the 1st, 2nd and 3rd defendants shared the said loan and did not pay the same until the bank wanted to sell the suit land to recover the loan. That the plaintiffs being sons of the late Senkaayi Ahmadah agreed with the bank to pay the loan with its interest. The plaintiffs then engaged Musoke Ismael who helped them to pay the loan.

The 1st – 3rd defendant's did not file Written Statements of Defence despite being served.

It was the 4th defendant's case that it is the administrator of the estate of the late Yusufu Kato who was the original proprietor of the suit land comprised in Butambala Block 130 Plot 32 land at Nakasozi. That the report of death of the late Yusufu Kato was made to the 4th defendant by the 1st defendant on 3/12/1993 who indicated that the deceased had two children to wit Kasifa Namagembe and Ahmadah Senkaayi, the latter having since died. That this information was confirmed by the deceased's heir Muhamudu Lutakome a.k.a Lutakome Abdu.

That following the report of death, the 4th defendant conducted preliminary investigations to establish the true, number of beneficiaries through interviewing a clan leader, the heir and making announcements in the media. That no adverse claims were ever registered hence the 4th defendant's resolution to administer the estate under intestacy in 1994.

That from all the 4th defendant's preliminary investigations, none revealed that the deceased ever sold the suit land to his son Ahmadah Senkaayi. The 4th defendant resolved to administer the estate under the rules of intestacy because even after summoning Mustapha Nsonzi the clan head, no will was ever produced.

- 5 That upon the 4th defendant obtaining Letters of Administration it went ahead and distributed the estate to the known beneficiaries that is Namagembe Hasifa (daughter) and Muhamudu Lutakome a.k.a Lutakome Abdu (customary heir).

That in 2021, 27 years after administration of the deceased's estate, the 4th defendant was sued allegedly for recovery of the suit land purportedly purchased
10 by the late Ahmadah Senkaayi, father to the plaintiffs.

Representation:

At the hearing Mr. Kabanda Umar Sebaduka appeared for the plaintiffs while Mr. Kuloba Wesaka Henry represented the 4th defendant. Both parties filed written submissions.

15 Issues for determination:

1. Whether or not the acts and or conduct of the defendants amount to fraud?
2. Whether or not land comprised in mailo Register Butambala Block 130 Plot 32 forms part of the estate of the late Ahmadah Senkaayi?
- 20 3. Whether or not land comprised in mailo register Butambala Block 130 Plot 32 was wrongly included as part of the estate of the late Kato Yusufu?
4. Whether or not the 4th defendant failed to do due diligence before applying for Letters of Administration of the estate of the late Kato Yusufu?
5. Whether or not the 4th defendant failed to file an inventory as required by law?
- 25 6. Whether the plaintiffs had locus to bring this suit?
7. Whether the suit is not barred by limitation?
8. What are the remedies available to the parties?

Six issues were framed in the scheduling Memorandum filed on 25/3/2022. During scheduling, the 4th defendant in agreement with counsel for the plaintiffs
30 proposed to add two preliminary objections as issues. The 4th defendant then abandoned the issue on limitation claiming that the suit land is no longer in the name of the 4th defendant as administrator but in the name of the 1st defendant who is party to the suit. The 4th defendant maintained the issue on locus standi.

The law:

- 35 According to **Section 10 (1) (2)** of the Evidence Act, it is provided that;

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts, which he or she asserts must prove that those facts exist.

5 *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”*

Section 102 of the Evidence Act goes on to provide that;

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

Section 103 of the Evidence Act provide that;

10 *“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that proof of that fact shall lie on any particular person”*

In the case of Nsubuga v. Kavuma [1978] HCB 307 it was held that;

15 *“In civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities.”*

It is therefore the duty of the plaintiffs in this case to prove their claims against the defendants at a balance of probability.

Submissions:

20 Issues 1 and 4 are discussed jointly, 2 and 3 are also discussed jointly, issues 5, 6, 7 are discussed each separately.

Issues 1 and 4:

1. Whether or not the acts and or conduct of the defendants amount to fraud?

4. Whether or not the 4th defendant failed to do due diligence before applying for Letters of Administration of the estate of the late Kato Yusufu?

25 Counsel for the plaintiffs quoted the case of Fredrick J. K. Zaabwe v. Orient Bank & 5 Others, S.C.C.A No. 04 of 2006 on the definition of fraud.

30 Counsel went on to submit that the petition (DEX3) as filed in court by the 4th defendant did not mention that the late Yusufu Kato had two children but only mentioned that the late Yusufu Kato was survived by one child who is the 1st defendant. That the late Ahmadah Senkaayi was not mentioned anywhere in the documents the 4th defendant exhibited. That this indicates that there was fraud on

the part of the 4th defendant because DW1 during cross examination told court that the 4th defendant was aware that the late Yusufu Kato had two children.

Counsel for the plaintiffs added that DW1 told court that they never inspected the suit land before applying to administer the same. That this conduct was fraudulent as the 4th defendant failed to do due diligence before applying for Letters of Administration.

That it was the testimony of PW2 and PW3 that the duplicate certificate of title was in the custody of the 3rd defendant, so it was fraudulent for the 3rd defendant to give the duplicate certificate of title to the 1st defendant who presented the same to the 4th defendant.

Counsel for the 4th defendant on the other hand submitted that the plaintiffs in their submissions particularized fraud committed by the 4th defendant as;

- Failing to do due diligence before applying for Letters of Administration.
- Stating in the petition for Letters of Administration that Yusufu Kato was survived by one child whereas not.
- Failure to inspect the suit land which was under her administration.

And yet in the plaint two particulars of fraud were framed to wit;

- Failure to do due diligence before applying for letters.
- Transferring the suit land to the 1st defendant without knowing who was in possession.

Counsel argued that it is trite law that parties are bound by their pleadings. That particulars of fraud ought to be expressly pleaded and strictly proved. Therefore, the introduction of new particulars of fraud in the submissions ought to be rejected. Counsel contended that no fraud has been proved against the 4th defendant.

In regard to failure to do due diligence counsel for the 4th defendant submitted that it did due diligence before applying for Letters of Administration as laid out in its facts and went ahead to define due diligence as;

“A measure of prudence, activity, or assiduity, as is property to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances, not measured by any absolute standard, but depending on the relative facts of the special case”. (See: Black’s law Dictionary (1968), 4th Edition at page 544).

That if at all there was something to hide or conceal, why would the 4th defendant invite claims through a public advert in a National Newspaper such as Sunday Vision. That as a public trustee charged with a national mandate of administering estates of deceased persons, the above efforts meet the due diligence test.

5 Counsel for the plaintiffs in rejoinder submitted that there were no new particulars of fraud introduced by the plaintiffs but the plaintiffs only pleaded and proved fraud. That the 4th defendant did not mention that the late Kato Yusufu had two children but rather one child that is the 1st defendant. DW1 during cross examination admitted that they were aware that Kato had two children but only
10 mentioned one which omission amounts to fraud.

Analysis of court:

I will associate myself with the definition of fraud as laid out in the case of **Fredrick J. K. Zaabwe v. Orient Bank & 5 Others**, S.C.C.A No. 04 of 2006 which defined fraud to mean the intentional perversion of the truth by a person for the purpose
15 of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

20 In the case of **Kampala Bottlers Ltd v. Damanico (U) Ltd**, SCCA No.22 of 1992, it was held that;

“ Fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters, it was further held that;

25 *‘The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.’*

30 Counsel for the 4th defendant submitted that the plaintiffs cited cases on fraud that did not aid them.

Counsel for the plaintiffs argued that the title was fraudulently presented to the 4th defendant by the 3rd defendant who it was given for safe custody.

However, upon perusal of PEX5, it clearly indicates that the petition for Letters of Administration by the 4th defendant stated that Yusufu Kato had only one child that
35 being the 1st defendant. This goes to say that the 4th defendant was aware of the

existence of the two children but went ahead and gave court false information which amounts to fraud. The 4th defendant concealed information from court while applying for Letters of administration and this is a ground for revocation of Letters of Administration provided for under **Section 234 (2) (b)** of the Succession Act.

DW1 also mentioned that they never inspected the suit land they administered which is an indication of failure to conduct due diligence. If indeed the 4th defendant had conducted due diligence, it would have known that Yusufu Kato bought the suit land and it was being occupied by his family as testified by PW2 and PW3. DW1 having admitted that they never visited the suit land that they intended to administer.

It is my finding and holding that the conduct of the 4th defendant amounted to fraud, they concealed information as they applied to court to administer the estate of the late Yusufu Kato and did not conduct any due diligence before applying for the Letters of Administration.

Issues 1 and 4 are hereby resolved in the affirmative.

Issues 2 and 3:

2. Whether or not land comprised in mailo Register Busambaga Block 130 Plot 32 forms part of the estate of the late Hamada Senkaayi?

3. Whether or not land comprised in mailo register Butambala Block 130 Plot 32 was wrongly included as part of the estate of the late Kato Yusufu?

Counsel for the plaintiffs submitted that since the 4th defendant did not conduct any due diligence it was maybe the reason why the estate of the late Ahmadah Senkaayi was wrongly included in his father's estate.

Counsel argued that under **Section 90** of the Evidence Act any document that is 30 years old, proved duly to be executed is presumed to be authentic. That in the instant case, PEX3 a sale agreement date 7/4/1983 is authentic under **Section 90** of the Evidence Act.

Counsel noted that it was the evidence of PW3, the widow to the late Ahmadah Senkaayi that they took immediate possession of the suit land in 1983 and that she still occupied the suit land whose duplicate certificate of title was in the custody of the 3rd defendant. That this piece of evidence was corroborated by PW2 who attended the meeting when the certificate of title was handed to the 3rd defendant. That the evidence of PW2 and PW3 was direct evidence on who kept the title and its admissibility is covered under **Section 59 (a)** of the Evidence Act. Thus, the late Ahmadah bought the suit kibanja from his father the late Kato Yusufu.

Counsel for the 4th defendant on the other hand submitted that the suit property did not form part of the estate of Ahamadah Senkaayi. That in regard to the sale agreement, it is not one whose authenticity can be presumed under **Section 90** of Evidence Act since it was never signed by the buyer and seller. That documents alluded to under **Section 90** of the Evidence Act are those that were in custody that the court considers proper such as those registered with the registrar of documents or wills kept in a legally gazetted place. That the purported sale agreement in this case had no verifiable place of custody.

Property wrongly included:

It was submitted for the 4th defendant that the original proprietor of the suit land was Yusufu Kato followed by the 4th defendant and finally the 1st defendant. That the certificate of title is conclusive proof of ownership. That in the instant case at the time of death of Yusufu Kato in 1989 he was still the registered proprietor and no caveat was ever lodged. That the 4th defendant got registered in 2006 pursuant to **Section 134** of the Registration of Titles Act and the plaintiffs' intents were brought to the attention of the 4th defendant in 2021. That all the evidence indicates that the suit land was originally belonging to Yusufu Kato's estate.

Counsel for the plaintiffs submitted in rejoinder that despite counsel for the 4th defendant stating that the sale agreement was suspect since it was not signed by the seller, he did not cite any law that invalidates it.

Analysis of court:

Counsel for the plaintiffs argued that agreement in the instant case was authentic by virtue of the provisions of **Section 90** of the Evidence Act which provides that;

“When any document, purporting or proved to be thirty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of that document, which purports to be in the handwriting of any particular person, is in that person's handwriting and, in the case a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.”

Counsel for the 4th defendant on the other hand argued that the sale agreement in the instant case is not one whose authenticity can be presumed since it was never signed by the buyer and seller.

Secondly, that the documents the court considers proper are those registered with the registrar of documents or wills kept in a legally gazetted place.

Whereas, it is true that the buyer did not sign on the sale agreement, the seller did sign so did the witnesses. It was however, the evidence of PW2 and PW3 that they had been on the suit land since 1983 when the land was bought to date without anyone challenging their occupation. PW3 further told court that she was even
5 given the title for the suit land to keep which she gave to the 3rd defendant for custody a day after the death of her husband for safe custody. This is all evidence admissible under **Section 59** of the Evidence Act as direct oral evidence.

In regard to authenticity of the document, I would like to note that counsel for the 4th defendant's argument is misguided. The explanation of **Section 90** of the
10 Evidence Act clearly states that;

*“Documents are said to be in proper custody if they are in the place in which, and under the case of the person with who, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an
15 origin probable.”*

It is therefore, not true that for a document to be considered authentic under the above Section, it should have only been kept in a gazetted place. Custody in this case includes, being kept in a place or by a person who would naturally be with the document or proof of a legitimate origin in case of no proper custody.

20 In the circumstances, the sale agreement in this case does qualify as an authentic document, however, this court will not rely on it for the lack of proper execution that is the failure of the buyer to sign on the same. Execute may mean to carry out, perform, or complete as required, usually to fulfill an obligation, such as executing a contract or order; or to sign or complete all formalities necessary to make a
25 contract or document effective, such as signing, stamping or delivering. In the instant case the sale agreement as presented in court was an incomplete document for lack of the signature of the buyer.

Property wrongly included:

Counsel for the 4th defendant submitted that the original proprietor of the suit land
30 was Yusufu Kato followed by the 4th defendant and finally the 1st defendant. That the certificate of title is conclusive proof of ownership as per **Section 59** of the Registration of Titles Act. That the 4th defendant was registered in 2006 and all the evidence indicates that the suit land belonged to the late Yusufu Kato.

It is my considered view that there is evidence indicating that the plaintiffs' father
35 bought the suit land by virtue of the occupation of the PW2 and PW3 on the same from 1983 to date without any complaints or challenges or third party claims. PW3, widow to Ahmadah Senkaayi also told court that she had in her custody the

title to the suit land before she passed it on to the 3rd defendant for safe custody. It was therefore, erroneous to include the estate of Ahmadah Senkaayi under the estate of Yusufu Kato.

In the case of Maria Ciabaitaru
5 M'mairanyi and Others v. Blue Shield Insurance Company Limited, 2000
[2005] 1 EA 280, it was held that:-

10 *“Whereas under section 107 of the Evidence Act, (which deals with the evidentiary burden of proof and is equivalent to our section 102 of the Evidence Act), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”*

15 The plaintiffs in this case ably discharged their burden in proving that the suit land belonged to the estate of the late Ahmadah Senkaayi and was erroneously added to the estate of the late Yusufu Kato.

Issues 2 and 3 are hereby resolved in the affirmative.

Issue 5: Whether or not the 4th defendant failed to file an inventory as required by law?

20 Counsel for the plaintiffs submitted that DW1 confirmed to court that no inventory was ever filed in court and that the impugned grant of Letters of Administration ought to be revoked since the 4th defendant has failed to exhibit an inventory and an account required by the provisions of **Section 234(2) (e)** of the Succession Act.

25 Counsel for the 4th defendant on the other hand submitted that it is ironical that the plaintiffs prayed for the 4th defendant to be ordered to execute his mandate yet they do not by their pleadings bring their claim as beneficiaries of the estate of Yusufu Kato. That in their pleadings they claim that the suit land does not belong to the estate of Kato. So they are bound by their pleadings and an administrator is only obliged to account to the beneficiaries.

30 **Analysis of court:**

Whereas it is true that the plaintiffs do not claim to be beneficiaries of the estate of the late Yusufu Kato, the law is clear that an Administrator has a duty to file an inventory and provide accountability to the court that granted the Letters of Administration.

35 **Section 234** of the Succession Act provides as follows;

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

(2) In this section, “just cause” means—

(a) That the proceedings to obtain the grant were defective in substance;

5 (b) That the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;

10 (d) That the grant has become useless and inoperative through circumstances; or

(e) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

15 In this case the 4th defendant does not deny not filing an inventory ever since it became the Administrator of the suit property in 1994 to date without any reasonable explanation which is a contravention of **Section 234 (2) (e)** of the Succession Act.

20 Since the 4th defendant does not deny not filing an inventory as required by the law, this issue is resolved in the affirmative.

Issue 6: Whether the plaintiffs had locus to bring this suit?

Counsel for the plaintiffs noted that the position of the law is that a beneficiary of an interest does not need Letters of Administration to sue on the estate. (See: **Kabwa v. Martin Banobwa**, S.C.C.A No. 52 of 1997). Counsel also cited the case of **Dima Domnic Pro v. Inyani Godfrey & Another**, H.C.C.A No. 17 of 2016, which quoted the case of **Solo David & Mutoto Moses v. Bagali Abdu & Tukei Anthony**, H.C.C.A No. 27 of 2009 where it was held that;

“...it is imperative that a person who has an interest in an estate takes steps to protect the estate even before grant of Letters of Administration.”

30 Thus, the plaintiffs have locus to bring this suit.

Further, that PW2 was not cross examined on the issue of being a son to the Late Ahmadah and according to the case of **William Mukasa v Uganda Revenue Authority**, [2013] 1 H.C.B 68, it was held that;

“If a testimony is not challenged at all in cross-examination by the respondent, it is implied to be true.”

That in the instant case, it was the undisputed evidence of PW2 and PW3 that they are in occupation of the suit land that they paid off the mortgaged suit property with the help of PW1 who acknowledged to have helped the family to redeem the suit land from Equity Bank (U) Limited. PW3 is a widow to the late Senkaayi Ahmadah who was a son to the late Yusufu Kato. That this is direct evidence admissible under **Section 59(a)** of the Evidence Act.

Counsel for the 4th defendant on the other hand submitted that the plaintiffs admitted that they had no Letters of Administration for the estate of the Late Ahmadah Senkaayi and cited **Section 191** of the Succession Act and argued that the instant case is distinguishable from that of **Kabwa** as in the latter case, the beneficiary was undertaking steps to obtain Letters of Administration and had obtained a Certificate of no objection.

Counsel added that the plaintiffs are not direct beneficiaries for the estate of Yusuf Kato and are beneficiaries from the estate of Senkaayi Ahmadah which also has no Letters of Administration and it is therefore, difficult to tell what their status is. That in the circumstances they should have opened a file with the 4th defendant of the late Senkaayi for verification and ascertaining the true beneficiaries. That the suit is now registered in another name and not the 4th defendant and the status of the plaintiffs is highly contentious thus the need for Letters of Administration. That in the circumstances the suit should be dismissed for contravening the law.

Counsel for the plaintiffs in rejoinder quoted **Section 22(b)** of the Limitation Act which provides that;

“In the case of a foreclosure or other action by a mortgagee, the person in possession of the land or personal property or the person liable for the mortgage debt makes any payment in respect of it, whether of principal or interest the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.”

Counsel added that the plaintiffs are in occupation of the suit land which Equity Bank Uganda wanted to foreclose in 2020, whereof PW1 helped pay the mortgage, thus the plaintiffs have locus. Counsel argued that the case of **Kabwa** does not set out the procedures which the beneficiary should first take when suing to protect his/her interests. That PW3 a widow of Ahmadah clearly told court that the plaintiffs were her step sons, so, how else is one expected to prove that they are a beneficiary?

Analysis of court:

The plaintiffs in the instant case claim to be beneficiaries of the estate of the late Ahmadah Senkaayi and brought the suit as such to recover land that was wrongly included under the estate of the late Yusufu Kato. In the circumstances they have locus standi to bring the instant case. They are also entitled to benefit from the estate of Yusufu Kato by virtue of Senkaayi Ahmadah having been a son to the former.

The plaintiffs as beneficiaries of the estate of the late Senkaayi Ahmada therefore, do not need to have Letters of Administration in order to bring the instant suit.

Counsel for the 4th defendant argued that the **Kabwa** case as relied on by the plaintiffs is distinguishable from the instant case. That in the former they had taken steps to apply for Letters of Administration and had obtained a Certificate of no Objection whereas in the instant case no steps have been taken.

It is my considered view that at the end of the day in the instant case and the **Kabwa** case both parties cannot be said to have been having Letters of Administration when they instituted their suits, whether steps were taken or not to obtain letters of Administration. Therefore, the taking of steps to obtain Letters of Administration is not equivalent to obtaining Letters of Administration. The issue at hand is that do the parties as beneficiaries have Letters of Administration as they sue? The answer is no. The law provides that beneficiaries can take steps to protect their interests even before obtaining Letters of Administration as is the case in the present matter.

I therefore, find the case of **Kabwa** as cited by the plaintiffs applicable to the instant case and agree that beneficiaries can sue without having Letters of Administration.

This issue is resolved in the affirmative.

Issue 7: Whether the suit is not barred by limitation?

This issue was abandoned by the 4th defendant. It is hereby struck out.

Issue 8: What are the remedies available to the parties?

Counsel for the plaintiffs reiterated the remedies prayed for in the plaint and submitted on the law in regard to general damages as enshrined in the cases of **Kampala District Land Board v. George Mitaki**, S.C.C.A No 212 of 2007 and **Robber Coussens v. Attorney General**, S.C.C.A No. 8 of 1999 cited with approval in the case of **Norah Nassozi & Another v. George William Kalule**, H.C.T No. 5 of 2012 where the supreme court held that;

“It is trite law that general damages are the direct probable consequences of the act complained of such consequences of the act complained maybe loss of use of profit, physical inconvenience, mental distress, pain and suffering. Damages must be prayed and proved.”

5 *“The object of damages is to compensate a party for the damage, loss or injury suffered. They can be pecuniary or non-pecuniary. The former comprising of all financial and material loss of business profit and income, and the latter representing inroad upon a person’s financial or material assets such as physical pain or injury to feelings.”*

10 Counsel further submitted that since the 4th defendant failed to execute its duty and the estate was wasted by its acts and those of the 1st defendant. The plaintiffs prayed for damages to a tune of UGX 100,000,000/= in accordance with **Section 47** of the Succession Act and prayed for costs.

15 Counsel for the 4th defendant on the other hand submitted that the plaintiffs are not entitled to any of the remedies sought and no special damages were specifically proved against the 4th defendant. That the 4th defendant did due diligence and no loss or damage was occasioned. And that the plaintiffs having not proved that they are beneficiaries of Yusufu Kato’s estate they are not entitled to general damages.

Analysis of court:

20 It is trite law that general damages are awarded at 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 action.

25 The plaintiffs in this case have not proved to court any loss they have suffered that was as a result of the 4th defendant’s actions. I am mindful of the law on award of general damages it would therefore, be unfair and unreasonable to condemn the 4th defendant in general damages when no proof of loss or suffering has been adduced by the plaintiffs. I will thus, make no orders as to general damages since
30 I find no justification for the same.

The plaintiffs however, through PW1 proved that he paid the loan that had been obtained and shared by the 1st, 2nd and 3rd defendants, having mortgaged the suit land. PW1 himself told court that he has not yet taken legal action to recover the said money. The plaintiffs did not suffer any losses in this regard.

35 It is trite that special damages must not only be specifically pleaded but they must also be strictly proved (see: **Borham-Carter v. Hyde Park Hotel [1948] 64 TLR**).

Special damages therefore are to be specifically proved and pleaded however in the instant case no special damages were specifically proved, though pleaded they were not also specifically pleaded by the plaintiffs, so, I will make no orders as to the same.

5 The plaintiffs however, proved their case as against the defendants on a balance of probability to this court. Judgment is hereby entered in favour of the plaintiffs with the following orders;

- a. A declaration that land comprised in mailo Register Butambala Block 130 Plot 32 forms part of the estate of the late Ahmadah Senkaayi.
- 10 b. A declaration that the 4th defendant applied for Letters of Administration of the estate of the late Yusufu Kato fraudulently.
- c. A revocation of the Letters of Administration granted to the 4th defendant.
- d. An order compelling the 4th defendant to file a comprehensive statement of account of dealings with the estate of the late Yusufu Kato.
- 15 e. An order of cancellation of the 1st defendant's name from the duplicate Certificate of Title of land comprised in Butambala Block 130 Plot 32.
- f. Costs of the suit.

I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

01/12/2022

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