

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**LAND CIVIL SUIT NO. 61 OF 2016**

1. LULE MAXIMUS  
5      2. LWANGA LWASESIRASI SEKIMPUKU .....PLAINTIFFS  
3. NSANGI TEREZA  
4. MUTEBI GODFREY

**VERSUS**

1. NAJJEMBA MONICA  
10    2. SSEBALAMU CHARLES NKANGI  
3. KYOMUHENDO WILBERFORCE .....DEFENDANTS  
4. MUKULIRA WHITESTONE

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

**Ruling**

15    The defendants at the hearing of the case raised a preliminary objection to the effect that the suit was incompetent and that the plaintiffs are administrators of the suit land. That the plaintiffs are seeking for orders that they are the lawful and rightful owners of the suit land.

20    It was submitted for the defendants that in law administrators are trustees for the estate and not property owners of the estate they administer. Counsel cited **Order 31 Rule 1** of the Civil Procedure Rules in this regard and prayed that the suit be dismissed.

25    In reply counsel for the plaintiffs submitted that the suit land was registered in the plaintiffs' names as administrators of their father's estate and the objection by the defendants should be overruled. That this suit was brought by the plaintiffs in their capacity as Administrators of the estate of the late Bazekuketa Tanansi Lwanga who was the former owner of the suit land.

In rejoinder counsel for the defendants stated that parties are bound by their pleadings and that the plaintiffs had a right to seek for an amendment but they did not. That they can now not plead mistake of former counsel.

**Representation:**

- 5 Mr. Kibirige David appeared for the plaintiffs and Mr. Semugera Ronald represented the defendants. Both counsel made oral submissions in open court.

**Analysis of court:**

- I have carefully listened to the oral submissions of both counsel, perused the pleadings and looked at different authorities presented by counsel. Allow me to  
10 address the preliminary objection raised by counsel for the defendants.

I concur with the submissions for the defendants that the plaintiffs instituted this suit as administrators of the estate of their late father and prayed to be declared lawful owners of the same which is wrong.

- Administrators of an estate hold the property of said estate in trust of its  
15 beneficiaries and therefore cannot be declared lawful owners of the same. An administrator stands in fiduciary position to the trust property and beneficiaries.  
(See: **Hadadi Mohamed Rajab and 5 Others versus Muzamil Mohamed Rajab and 2 others, Civil Suit No. 188 of 2015**).

**Order 31 Rule 1** of the Civil Procedure Rules provides that;

- 20 *“Representation of beneficiaries in suits concerning property vested in trustees. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in the property and a third person, the trustee, executor or  
25 administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit but the court may, if it thinks fit, order them or any of them to be made parties.”*

The role of the Administrators therefore is to distribute the estate of the deceased amongst all the beneficiaries.

- In the instant case according to paragraph 3(a) of the amended plaint the 1<sup>st</sup>  
30 defendant is also said to be a beneficiary to the estate of the late Bazekuketa Tanansi Lwanga but in not an administrator as per the Certificate of title, who the plaintiffs are choosing to alienate since their names appear on the title and not

hers. In the case of **Anecho v. Twalib & 2 Others**, Civil Suit No. 0009 of 2008, it was stated that;

5       *“Although under Section 180 of the Succession Act 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 as such the grant, 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.”*

10       **Section 192** of the Succession Act gives the Administrator powers upon grant of Letters of Administration effective the time of the death of the deceased and provides;

*“Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.”*

15       I therefore find and hold that the plaintiffs’ suit is incompetent as they are administrators of the suit land and cannot again be registered as lawful owners alienating the other beneficiaries to wit: the 1<sup>st</sup> defendant; of the late Bazekuketa Tanansi Lwanga’ estate. The role of Administrators is to distribute the estate and not own the same disregarding the interests of the other beneficiaries.

20       The preliminary objection is hereby sustained and the suit accordingly stands dismissed with costs. I so order.

Right of appeal explained.

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25       **OYUKO ANTHONY OJOK**

**JUDGE**

**15/03/2022**