

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
CIVIL SUIT NO.027 OF 2019

1.ZEFANIYA LUKWAGO KATUMBA
2.NALUWOOZA RESTY
3.ALICE NAMPEERA
4.NANYUNJA FEDERESIPLAINTIFFS
5.TEOPISTA NAMUDDU
6.LUKWAGO BAKER
7.LUKWAGO JOSEPH

VERSUS

NABUNJO ZAMDEFENDANT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiffs brought this suit for a declaration that the defendant fraudulently obtained Letters of Administration in respect of the estate of Luwagga Vanansio, a declaration that the defendant was not a wife of late Luwagga who separated from him hence she is not a fit and proper person to administer his estate in which she has no interest.

The Plaintiffs further seek a declaration that land comprised in Busujju Block 116 Plot 2 is a family property of the Plaintiffs and does not form part of the estate of late Luwagga, an order seeking the revocation of the Letters of Administration granted to the defendant over Luwagga's



estate, an order directing the Commissioner Land Registration to cancel the defendant's name from the title, a Permanent injunction restraining the defendant from any further dealings in the estate of Luwagga Vanansio, General damages and Costs.

The defendant on the other hand claims to be the widow of late Luwagga and contends that she lawfully acquired the Letters of Administration to his estate but has since been frustrated from distributing it by the Plaintiffs. The defendant seeks the dismissal of the suit with costs.

Background.

The background to the suit as can be ascertained from the Joint Scheduling Memorandum filed on 27th February 2020 is that the 1st Plaintiff is a grandfather to the late Luwagga who died on 30th October 1988. The 2nd and 3rd Plaintiffs are sisters of late Luwagga and beneficiaries in the estate of their father late Yowana Nsiko. The 4th, 5th, 6th and 7th Plaintiffs are children and grandchildren of late Luwagga.

The Plaintiffs contend that the Late Luwagga got married to late Nakimera Yayeri in the 1940's and she died in 1971. In 1979 Luwagga started cohabiting with the defendant and they got three children but in 1988 the defendant got a child from a one Ssevume. The defendant left the house the late Luwagga had built for her and moved to settle with Ssevume who later died. She later got other children from various men.

On 15th October 1988 the defendant filed a complaint against the late Luwagga in the Local Council Courts claiming the kibanja and the house but she lost the claim. The defendant unsuccessfully lodged a complaint in the Probation Office at Mityana against the Plaintiffs to repossess the house and the kibanja. The Probation Office directed that the suit land and all property of the late Luwagga were to be managed by the 1st Plaintiff for the benefit of all beneficiaries.



In 2010 the defendant conspired with her son Ssentongo Vincent to steal the Certificate of title to the family land comprised in Busujju Block 116 Plot 2. In 2016 she fraudulently obtained Letters of Administration to Luwagga's estate, registered the land into her name and had not distributed the estate and filed an Inventory by the time the suit was filed.

The defendant claims to have customarily married Luwagga on 24th December 1978 and thereafter stayed with him. She denies having got children outside wedlock until Luwagga's demise on 10th August 1987. The defendant contends that Luwagga solely owned the land comprised in Busujju Block 116 Plot 2 and a plot of land at Sserinya village. That he kept the certificate of title with her before his demise.

It is contended by the defendant that she lawfully acquired Letters of Administration to the estate but the distribution was frustrated by some beneficiaries led by the Plaintiffs and she denies the allegations of fraud pleaded by the Plaintiffs.

Counsel for the parties framed the following issues for resolution by the court:

1. Whether the defendant is a lawful widow of the late Luwagga?
2. Whether the defendant is the most appropriate person to administer the estate of Luwagga?
3. Whether the grant of Letters of Administration to the defendant was procured through fraud?
4. Whether the defendant's registration on the certificate of title for the suit land was procured through fraud?
5. Remedies available to the parties.

Representation.

M/S Mbeeta, Kamya & Co. Advocates represented the Plaintiffs while M/S Ojulong Law Chambers & Advocates represented the defendant.

Counsel filed witness statements the deponents of which were cross examined and thereafter filed submissions which have been considered but not reproduced in the judgment.

The Law on the burden and standard of proof.

Section 101(1) of the Evidence Act provides that whoever desires the 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 duty therefore lies on either party to prove the allegations in the Complaint or Written Statement of Defence if he or she is to win the case.

The standard of proof is on a balance of probabilities which has been interpreted to mean that the claimant/Plaintiff must prove that it is more likely than not that his version of the facts is right.

Preliminary Objection.

Counsel for the defendant raised two preliminary objections in the filed submissions. It is submitted that the 1st, 2nd, 3rd and 7th Plaintiffs are not beneficiaries in the estate of late Luwagga and have no locus standi or any cause of action to sustain the suit against the defendant. It is also contended that the 1st Plaintiff lacked the competence to give evidence on behalf of other Plaintiffs.

Counsel argued that the 1st, 2nd, 3rd, and 7th Plaintiffs are not direct beneficiaries in the estate of late Luwagga since the 1st Plaintiff is a clan head while the 2nd, 3rd and 4th Plaintiffs were sisters to the deceased. It was further argued that the 7th Plaintiff who is a grandchild is not a first



line beneficiary to claim a stake in the estate. It was submitted that since the 1st Plaintiff who lacked the locus standi was the sole witness for the Plaintiffs, his evidence should be rejected and the suit dismissed.

In the second limb of the preliminary objections, Counsel argued that the 1st Plaintiff did not have the written authority of other Plaintiffs to testify on their behalf. Counsel cites Order 10 rule 12 of the Civil Procedure Rules for the contention that the 1st Plaintiff's evidence should on that account be rejected by the court and the suit dismissed.

It was argued by Counsel for the Plaintiffs that the 5th Plaintiff is a biological daughter of the deceased while the 7th Plaintiff is a grandson with sufficient interest in the suit. It was submitted in the alternative that the suit could be sustained in the names of the 5th and 7th Plaintiffs in the event that the court found other Plaintiffs incompetent to sue the defendant.

Decision.

The 1st Plaintiff and Ssebude Alex a son of the deceased filed witness statements and were cross examined by Counsel for the defendant on 30th March 2021. It is thus fallacious for counsel for the defendant to pray for the dismissal of the suit on account of its being premised on the sole evidence of the 1st Plaintiff who he claims to be a stranger to the estate of late Luwagga.

The term "***locus standi***" has been defined as the right to enforce a cause of action for the infringement of a legal right belonging to some definite person. Such a person must have '***sufficient interest***' in respect of the subject matter of the suit; the interest must not be remote; must be actual, not abstract or academic and the interest must be current, not hypothetical.



Lukwo & Another V Santa.HC Civil Appeal No.86 of 2018[2020] UGHC 164.

As correctly submitted for the defendant, the 1st, 2nd and 3rd Plaintiffs are not beneficiaries in the estate and thus had no locus standi to bring the suit. The claim to the 1st Plaintiff having kept the certificate of title that was allegedly stolen from him by the defendant in collusion with her son could have been brought to court in the capacity of a witness but not him as a litigant since the suit was not strictly about the stolen Land title.

The fact that the 2nd and 3rd defendant are sisters of the late Luwagga does not also make them beneficiaries in his estate in the absence of evidence that they were his dependants. The claim by the 1st Plaintiff to the effect that their father late Nsiko Yowana had transferred the land into the name of Luwagga to hold on behalf of his family/clan does not hold.

The land was not registered in a trust for the benefit of the Clan in which the 1st, 2nd and 3rd Plaintiffs would claim a stake but in the name of Luwagga as the sole registered proprietor which made it his personal estate under section 59 of the Registration of Titles Act.

The 4th, 5th, 6th and 7th Plaintiffs being children and grandchildren of the deceased are beneficiaries with sufficient interest in the estate to sustain the suit. PW2 a son of the deceased was a competent witness under section 117 of the Evidence Act and he gave evidence which directly concerns the interests of the remaining Plaintiffs in the suit.

It is not a requirement that all litigants must testify in court. A sole witness can prove any fact under section 133 of the Evidence Act. I thus find that the suit could be sustained by the remaining Plaintiffs and since it was not a representative action, they and PW2 did not require authority of other beneficiaries to prosecute the case.



I find no merit in the preliminary objections.

Resolution of issues.

Whether the defendant is the lawful widow of the late Luwagga Vanansio?

Whereas the Plaintiffs contend through PW1 and PW2 that the defendant was never lawfully married to the late Luwagga, she contends that she got customarily married to him on 24th December 1978 at her parents' home at Kizimizo Village, Sserinya Parish, Maanyi Sub county in the present day Mityana District.

It was the defendant's evidence that she was born on 11th June 1963 and was 15 years at the time the customary marriage was executed by her brother giving her away to the late Luwagga during the ceremony celebrated at her step father's home. Nabirye Habiba(DW2) claimed to have witnessed the function and asserted that the key players are the aunties, brothers, sisters and uncles of the bride who however were not at the ceremony.

Kalaki Bulasiyo(DW3) claimed to have seen gifts being brought but admitted that he was not familiar with the marriage rites in Buganda. The alleged marriage ceremony was not documented in any way and was not registered as was the requirement under the **CustomarMarriages(Registration)Decree** the applicable Law at the time.

The late Luwagga died intestate. **Section 2(w)(i) of the Succession Act, (CAP 162) as amended** defines a "wife" to mean "*a person who at the time of the intestate's death was **validly** married to the deceased according to the laws of Uganda....*"

Section 11 of the Customary Marriage Registration Act (CAP.248) provides that;



"A customary marriage shall be void if-

- (a) the female party to it has not attained the age of sixteen years.*
- (b) the male party to it has not attained the age of eighteen years.*
- (c) one of the parties is of unsound mind.*
- (d) the parties to it are within the prohibited degrees of kinship specified in the 2nd schedule to the Act; or*
- (e) the marriage is prohibited by the custom of one of the parties to the marriage;or*
- (f) one of the parties has previously contracted a monogamous marriage which is still subsisting.*

The defendant being the female party to the alleged marriage to the late Luwagga had not attained the legal age of sixteen to contract a valid marriage on 24th December 1978 as provided **in section 11(a) of the Customary Marriages (Registration) Act.** The alleged marriage was therefore void and unenforceable.

The Black's Law Dictionary, 11th Edition at Page 1885 defines the word **"void"** to mean ***"of no legal effect."*** It is further stated that ***'whenever technical accuracy is required ,void can properly be applied to only those provisions that are of no effect whatsoever-those that are an absolute nullity.'***

In **De Reneville V De Reneville(1948)1 ALL ER 56** the court defined a void marriage as;

" one that will be regarded by every court in any case in which the existence of a marriage is in issue as never having taken place and can be treated so by both parties to it without the necessity of any decree annulling it."

In **Bujara V Bujara .Civil Appeal No.81/2002[2001-2005] HCB Vol.3 at Page 62** the court emphasized that a customary marriage is complete if



the customary practices of the community/tribe have been complied with or performed and it does not offend the provisions of section 11 of the Customary Marriages (Registration) Act.

It follows from the above analysis that the defendant was never validly married to the late Luwagga and was thus not his wife under the Laws of Uganda. The defendant does therefore fit into the category of a widow as defined by the Succession Act to lawfully administer the estate of the late Luwagga.

In view of the holding of the Court in the 1st issue, it is not necessary to delve into the 2nd, 3rd and 4th issues save for the determination of the remedies available to the parties to ensure a lawful distribution of the estate to the beneficiaries.

Remedies available.

Section 33 of the Judicature Act empowers this court to grant such remedies on such terms and conditions it thinks just, as any party is entitled to in respect of any legal or equitable claim, so that matters in controversy may be completely or finally determined and to avoid a multiplicity of suits.

The Plaintiffs sought for a revocation of the Letters of Administration granted to the defendant. The defendant who is not a widow, child or dependant of the deceased intestate cannot be a fit and proper person to administer his estate. **Section 47(5) of the Succession (Amendment) Act. Act No.3 of 2022** provides:

"Court may, in the same process for revocation of letters of administration, grant letters of administration to another person where court determines that such a person is a fit and proper person to be granted letters of administration under this Act."



The late Luwagga passed on in 1988 and some of his children have since died without benefitting from his estate. In the course of this trial the 2nd, 3rd, 4th and 6th Plaintiffs also passed on. The 4th and 6th Plaintiffs who were beneficiaries in the estate did not get their legal entitlement which is still held by the defendant. The only remaining beneficiaries and who were a party to the suit are the 5th and 7th Plaintiffs.

I find no reason not to appoint the 5th and 7th Plaintiffs to administer the estate of the late Luwagga Vanansio.

The Plaintiffs suit succeeds in part. I make the following orders including the consequential one to be effected by the Commissioner Land Registration :-

1. The defendant is not a widow of the late Luwagga Vanansio.
2. The Letters of Administration issued to the defendant vide Administration Cause No.101 of 2016 are revoked.
3. A Permanent Injunction restraining the defendant from any further dealing in the estate of late Luwagga Vanansio is hereby issued.
4. Letters of Administration to the estate of late Luwagga Vanansio are hereby granted to **TEPOPISTA NAMUDDU** and **LUKWAGO JOSEPH** who shall distribute the estate and file an inventory within six months from the date of this judgment.
5. The land comprised in **Busuju Block 116 Plot 2** belonged to and forms part of the estate of Luwagga Vanansio and does not belong to the wider Nkiima clan.
6. The Certificate of title for the land comprised in **BUSUJU BLOCK 116 PLOT 2** shall within 14 days from the date of the judgment be surrendered to Counsel for the Plaintiffs for the Commissioner Land Registration to cancel the defendant's name and register **TEOPISTA NAMUDDU** and **LUKWAGO JOSEPH** as the Administrators of the estate.



7. The defendant shall pay General damages of Shillings 15,000,000. to the estate coffers.
8. Costs of the suit shall be paid by the defendant.



Moses Kazibwe Kawumi

Judge

20th September 2023