

CIVIL APPEAL NO. 35 OF 2021

- 6. MUKASA AUSI ::::::::::::::::::::APPELLANTS**

VERSUS

ISAAC MUSISI NANZUUKA ::::::::::::::::::::RESPONDENT
(Administrator of the estate of the late Nsubuga Kamanya Musa)

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction:

1. This judgment is in respect of an appeal filed against the judgment and orders of Her Worship Mbabazi Edith Mary, a Magistrate Grade I sitting at Chief Magistrates Court of Makindye at Makindye delivered on the 17th June 2021 in favour of the respondent.

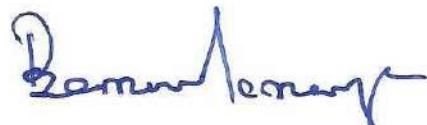
Background:

2. Nsubuga Kamanya Musa died on the 10th February 2001. Following his death, the respondent (Isaac Musisi Nanzuuka), the son of the deceased, was chosen as his heir, and obtained letters of administration of the estate of the deceased on the

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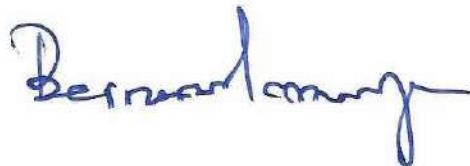
28th April 2004 (Exh.P1). The late Nsubuga Kamanya Musa was survived by a widow PW2 (Hajjati Mariam Nabiku) who is a step mother of the 2nd to the 5th appellants and the respondent. Hajjati Mariam Nabiku was 80 years old at the time of hearing of the suit in the lower court.

3. The 2nd to the 5th appellants (Haruna Nsubuga, Abdu Ganiya Mutebi, Mohammed Sekalega and Hussein Semuwemba) are children of the late Nsubuga Kamanya Musa. The 2nd to the 5th appellants and the respondent together with their biological mother, Sarah Nakiwala were raised at Kabimbiri, Kasawo, Mukono where their mother lives. During his lifetime, the deceased separated with Sarah Nakiwala (the biological mother of the 2nd to the 5th appellants and the respondent), and at the time of his death, he lived in a house situated at Katwe, Musoke Zone, Makindye Division (hereinafter "the suit property") together with PW2 (Hajjati Mariam Nabiku).
4. On the 21st June 2002, following the death of Nsubuga Kamanya Musa, the 2nd to the 5th appellants purported to sell the suit property where the deceased lived together with his wife PW2 (Hajjati Mariam Nabiku). They sold it to the 1st appellant (Nalongo Sebyala, also wife of the LCI chairman of the area) (Exh.D1). The 1st appellant in turn sold the suit property to the 6th appellant (Mukasa Ausi) (Exh.P4). The widow PW2 (Hajjati Mariam Nabiku) was evicted from the suit property sometime in 2001. On the 27th May 2011, the 6th appellant (DW5 Mukasa Ausi) purported to sell the suit property to a one Shamim Birungi.
5. Aggrieved that the 2nd to the 5th appellants had sold the suit property and evicted the widow, PW2 (Hajjati Mariam Nabiku), the respondent sued the appellants in the lower court for trespass. The respondent sought the following reliefs inter



alia: i) a declaration that the sale of the suit property by the 2nd to the 5th appellants was illegal; ii) an eviction order; iv) permanent injunction against the appellants; v) general damages; vi) punitive damages; vii) interest on the general and punitive damages; and viii) costs of the suit.

6. The following issues were framed for determination of the suit in the lower court:
 - i). Whether or not the sale of the said plot and house was lawful?
 - ii). Whether the defendants are trespassers to the suit property?
 - iii). Remedies available to the parties?
7. At the trial, the plaintiff/respondent called 3 (three) witnesses, and the respondent called three witnesses. The plaintiff's/ respondent's witnesses were, Isaac Musisi Nanzuuka (PW1), Hajjati Mariam Nabiku (PW2), and Nalongo Nantongo Norah (PW3). The defendants'/appellants' witnesses were, Nalongo Ssebyala (DW1), Nsubuga Haruna (DW2), Ssekalega Muhammad (DW3), Semuwemba Hussein (DW4) and Mukasa Ausi (DW5).
8. The trial court carried out a locus in quo visit to the suit property on the 9th day of April 2020.
9. The learned Magistrate decided the matter in favour of the respondent. She granted the following reliefs:
 - i). A declaration that the sale of the suit property was unlawful;
 - ii). A declaration that the 1st to the 6th appellants are trespassers on the suit property;
 - iii). A permanent injunction issues against the appellants;
 - iv). An eviction order against the appellants;



- v). General damages of shillings 10 million; and
- vi). Interest at court rate (8 % per annum) on general damages from the date of judgment until payment in full.

10. Dissatisfied with the judgment of the learned Magistrate, the appellants filed the instant appeal on grounds that:

- i). The learned Magistrate failed to properly evaluate all the evidence on record and therefore arrived at a wrong decision;
- ii). The learned trial Magistrate erred in law and fact when she found that the suit fell under civil customary law and she therefore had jurisdiction to determine the same;
- iii). The learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and found that she was competent to determine matters relating to administration of an estate of a deceased muslim under the Succession Act;
- iv). The learned Magistrate erred in law and fact when she failed to properly evaluate evidence on record and found that the defendants were trespassers on the suit land; and
- v). The learned trial Magistrate erred in law and fact when she awarded general damages of Uganda shillings 10 million to the respondent which amount was not backed by evidence of loss suffered by the respondent.

Representation:

11. At the hearing of the appeal, the appellants were represented by M/s Kirumira & Co. Advocates while the respondent was represented by M/s Mpagi Sunday &



Co Advocates. Both parties filed submissions which I have considered in the determination of this appeal.

Duty of the first appellate court:

12. The duty of the first appellate court was stated in the case of Uganda Revenue Authority v. Rwakasaija Azarious & 2 Others, Court of Appeal Civil Appeal No. 8 of 2007 as:

“This being the first appellate court, it is the duty [of court] to re-appraise the evidence on record as a whole and come to its own conclusion bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in that regard.”

13. I shall keep the above principle in mind while considering and disposing of, this appeal.

Consideration and determination of grounds of the appeal:

14. I shall consider the grounds of the appeal in the following manner. I shall address ground 2 first, followed by ground 3. I shall then address grounds 1 and 4 jointly. and lastly ground 5.

Ground 2: The learned trial Magistrate erred in law and fact when she found that the suit fell under civil customary law and she therefore had jurisdiction to determine the same



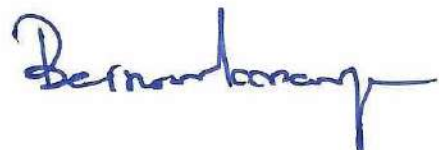
15. The gist of this ground of appeal is that the Magistrate Grade I entertained a matter with a value of subject matter of 50 million shillings yet her pecuniary jurisdiction under the law is limited to 20 million shillings.
16. Counsel for the appellant submitted that in view of the lack of jurisdiction, the trial conducted by Her Worship Mbabazi Edith Mary (Magistrate Grade I, as she then was) is a nullity and her judgment and orders are of no legal effect.
17. At the hearing in the lower court, counsel for the appellant raised the same legal argument. The learned trial Magistrate decided that she was vested with jurisdiction to handle the matter arguing that the subject matter of the suit related to civil customary law and that a Magistrate Grade 1 has unlimited jurisdiction in matters of civil customary law.
18. I do not agree with the reasons advanced by the learned Magistrate for her decision that she had jurisdiction in the matter. In my opinion, the learned Magistrate Grade 1 had jurisdiction to handle the matter but for different reasons that I shall discuss below.
19. According to section 207(1)(b) of the Magistrate's Courts Act (Cap 16 as amended), a Magistrate Grade I shall have jurisdiction where the value of the subject matter does not exceed 20 million shillings.
20. The position of the law is that proceedings conducted by a court without jurisdiction are a nullity, and any award or judgment and/or orders arising from such proceedings are also a nullity. See the case of Wadri Mathias & 4 Others v.



21. Section 207 (3) of the Magistrate's Courts Act (Cap 16 as amended), provides that:

"(3) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the plaint for amendment."

22. It follows therefore, that the value of the subject matter for purposes of determining whether or not court has jurisdiction is determined by perusal of pleadings and evidence adduced by the parties before court.
23. I have perused the amended plaint filed in the Chief Magistrate's Court of Makindye at Makindye on the 11th September 2002. The plaint seeks declaratory orders, an eviction order, general and punitive damages, a permanent injunction, interest and costs of the suit. The value of the subject matter is not stated. However, attached to the amended plaint is a sale agreement dated 15th July 2002 (Exh.P4) between Nalongo Sebyala Kasozi (1st appellant) and Mukasa Ausi (6th appellant) that places the value of the subject matter at shillings 2.9 million.
24. The appellant purports to rely on a sale agreement for the suit land dated 27th May 2011 between Mukasa Ausi (6th appellant) and Shamim Birungi with a purchase price of shillings 50 million. According to counsel for the respondent, this



agreement was not exhibited in court during the hearing before the Magistrate Grade I. Counsel argues that it is not part of the evidence that should be expunged.

25. I have perused the record of proceedings, and I agree with counsel for the respondent that the sale agreement dated 27th May 2011 between Mukasa Ausi (6th appellant) and Shamim Birungi was not exhibited during the hearing before the Magistrate Grade I. The said agreement was attached to the appellants' written submissions before the Magistrate Grade I. It is not an exhibit in the case and cannot be relied upon. It is expunged from the court record and does not form part of the record of proceedings.
26. Having regard to the law and the evidence on record, it is my decision therefore, that Her Worship Mbabazi Edith Mary (Magistrate Grade I, as she then was) had pecuniary jurisdiction to entertain the matter and her judgment and orders are not affected by lack of jurisdiction.
27. Ground 2 therefore fails.

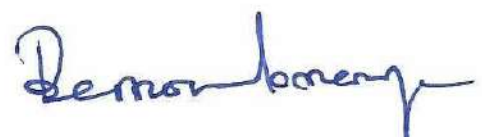
Ground 3: The learned Trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and found that she was competent to determine matters relating to administration of an estate of a deceased muslim under the Succession Act

28. Under this ground of appeal, counsel for the appellants faults the Trial Magistrate for entertaining a matter relating to administration of an estate of a deceased muslim yet according to counsel, jurisdiction for such matters is vested in Quadhi courts as per article 129 (1) (d) of the Constitution of Uganda. Counsel relied on



the cases of Sumaya Nabawanuka v. Med Makumbi, Divorce Cause No. 39 of 2011; and Darausí Tebandeke v. Lugolobi Saidat, Revision Application No. 6 of 2011.

29. The learned trial Magistrate considered this issue and decided that she was vested with jurisdiction to handle the matter arguing that the subject matter of the suit related to civil customary law and that a Magistrate Grade 1 has unlimited jurisdiction in matters of civil customary law.
30. I do not agree with the reasons advanced by the learned Magistrate for her decision that she had jurisdiction in the matter. In my opinion, the learned Magistrate Grade 1 had jurisdiction to handle the matter but for different reasons that I shall discuss below.
31. Article 129 (1) (d) of the Constitution of Uganda provides that:
- “(1) The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of— [...] (d) such subordinate courts as Parliament may by law establish, including qadhis’ courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.”
32. I have considered the cases of Sumaya Nabawanuka (supra) and Darausí Tebandeke (supra). Both cases dealt with dissolution of muslim marriages. The matter before court in this appeal and in the lower court concerns administration of an estate of the deceased who was a Muslim.



33. Administration of estates of deceased persons (including Muslims) is governed by the Succession Act (Cap 162), as clearly set out under section 1 of the Act which provides that:

"1. Act to constitute the law of Uganda in cases of succession

Except as provided by this Act, or by any other law for the time being in force, the provisions in this Act shall constitute the law of Uganda applicable to all cases of intestate or testamentary succession."

34. Accordingly, I find no merit in the submissions of counsel for the appellants that the Trial Magistrate had no jurisdiction to entertain the matter under the Succession Act (Cap 162) because the deceased, the late Nsubuga Kamanya Musa is a Muslim.

35. Ground 3 of the appeal fails.

Ground 1: The learned Magistrate failed to properly evaluate all the evidence on record and therefore arrived at a wrong decision

Ground 4: The learned Magistrate erred in law and fact when she failed to properly evaluate evidence on record and found that the defendants were trespassers on the suit

36. The gist of the appellants' evidence under these 2 grounds of appeal is that the sale of the land by the 2nd to the 5th appellants to the 1st appellant; and by the 1st appellant to the 6th appellant took place in 2002 before the respondent was granted letters of administration in 2004. They argue that by the time the respondent got letters of administration, the sale of land had already taken place



in 2002, and could not be affected by the subsequent grant. On the other hand, the respondent argued that the appellants dealt in the estate of the deceased without lawful authority, and that the purported sale of the suit property without letters of administration was null and void.

37. The Trial Magistrate considered this point and decided that the sale of the land carried out by the appellants was unlawful since they did so without letters of administration. She accordingly nullified the sale of the suit property.

38. I have considered this ground of appeal and it is determined in the following paragraphs.

39. Section 192 of the Succession Act (Cap 162) provides that:

“192. Effect of letters of administration

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”.

40. According to Section 192 of the Succession Act (Cap 162) actions done by an administrator prior to the grant of letters of administration are validated upon the grant. In the case of Joseph M. Nviri v. Palma Joan Olwoc & 2 Others, H.C.C.S No. 926 of 1998, Justice Bashaija K. Andrew held that:

“This provision invariably makes the grant of Letters of Administration in respect of actions of the administration to relate back to the time of death of the deceased. The effect is that the grant validates the actions of the administrator taken prior to the grant of the Letters of Administration in respect of the estate of the intestate.



In other words, actions which would ordinarily amount to intermeddling under the law are validated and hence ratified as having been legally done."

41. The Court of Appeal of Uganda (coram: Obura, Musota & Madrama., JJA), in the case of Saul Kirisibombo Rumanda v. Emmy Tumwine & 6 others, Civil Appeal No. 53 of 2017, while considering the effect of grant of letters of administration on actions of an administrator before the grant, held as follows:
- "The vesting of the property occurred as if the letters of administration were granted immediately after the death of the intestate according to section 192 of the Succession Act."*
42. The evidence on record shows that as early as December 2002, the respondent began to assert his rights as an administrator of the estate of the deceased. In this respect, it is noted that the respondent lodged a complaint regarding the illegal sale of the suit property with the Administrator General, who was by then, administering the estate of the deceased. The Administrator General, by a letter dated 19th December 2002 (Exh. P3), communicated to the LCIII chairman of the area requesting him or her to stop any transactions on the suit property.
43. Having regard to the law and evidence, it is clear to me that upon grant of letters of administration, the powers of the administrator of an estate of the deceased person relate back to the time of the death of the deceased, with the result that the administrator has power over the estate of the deceased person from the time of death. Consequently, it follows that the respondent was legally empowered to deal in the estate of the late Nsubuga Kamanya Musa upon his death in 2001, and



by 2002 when the appellants purported to sell the land, it is the respondent who had lawful authority over the suit land and not the 2nd to the 5th appellants.

44. The Trial Magistrate was right to decide that the appellants illegally dealt in the estate of the late Nsubuga Kamanya Musa since they did not have letters of administration in 2002 when they purported to sell part of his estate. The appellants' actions were contrary to the provisions of section 191 of the Succession Act (Cap 162). It is illegal to deal in the estate of a deceased person without authority as provided for in sections 268 & 269 of the Succession Act (Cap 162). The respondent who ultimately got letters of administration does not agree with the actions of the appellants. Consequently, the purported sale of the suit property was illegal. The learned Trial Magistrate rightly found that the 1st and 6th appellants and the current person in possession of the suit property are trespassers on the suit property.
45. I find no reason to interfere with the decision of the learned Trial Magistrate. Grounds 1 and 4 of the appeal fail.

Ground 5: The learned trial Magistrate erred in law and fact when she awarded general damages of Uganda shillings 10 million to the respondent which amount was not backed by evidence of loss suffered by the respondent.

46. There is abundant evidence that the appellants unlawfully dealt in the estate of the late Nsubuga Kamanya Musa. They interfered with the lawful duties of the respondent who is the administrator of the estate of the deceased. The appellants evicted the widow of the deceased, PW2 (Hajjati Mariam Nabiku) from a house where she had lived with her late husband for over 25 years. In his evidence



before the lower court, PW1 (Nanzuka Isaac Musisi) (the respondent) testified that:

"My late father was married to a one Sarah Nakiwala our mother [and] Hajati Nabiku. Hajati had no children but at the time of our father's death she [was] one of the wives to our father, in Musoke zone in Katwe [...] Hajati Nabiku my step mother is no longer in occupation of the land in Katwe [...] Hajati Nabiku called me and told me she had been chased out of the house by my brothers [...] Hajati Nabiku was married to our late father under Islamic marriage [...] I am in court to fight for the interest of the step mother who was thrown out [...] I saw my father living with Nabiku for more than 25 years. At the time of my father's death they were living together in Mukono zone."

47. PW2 (Hajjati Mariam Nabiku) testified that:

"I am about 80 years old [...] I got married to Musa Nsubuga when Amin was still ruling. I married him when Amin had just taken over power [...] I had gone to the market while there my daughter called me and told me that my things had been thrown outside [...] I know that as I was married to my husband, when my husband died I remained in the house we bought."

48. The illegal actions of the appellants have caused mental anguish and suffering to the respondent and the widow of the late Nsubuga Kamanya Musa, Hajjati Mariam Nabiku. The learned Trial Magistrate made a correct assessment and awarded general damages of shs 10,000,000 (Uganda shillings ten million). I



therefore, find no reason to interfere with the finding of the learned Trial Magistrate. Ground 5 of the appeal fails.

Conclusion:

49. As all the grounds of the appeal have failed, this appeal is dismissed. The appellants shall pay the costs of this appeal and in the lower court.

I SO ORDER.


BERNARD NAMANYA
JUDGE
31st March 2023

31 March 2023 at 11:51am.

Evelyn Namisango holding brief for Counsel for the appellants
Kirumira Adam of M/s Kirumira & Co.
Advocates

Cheptock Liz Court Clerk

Evelyn Namisango:

I am ready to receive the Judgment.

Court:

Judgment delivered in open chambers.


BERNARD NAMANYA
JUDGE
31st March 2023