

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**HCT-03-CV-MA-071-2022**  
**(ARISING FROM HCT-03-CV-CS-021-2018)**

**GULAALE FRED**.....  
**APPLICANT**

**VERSUS**

- 1. MUSUMBA ROBINAH**
- 2. DHOUGHLAS MUSUMBA**
- 3. THE ADMINISTRATOR**

**GENERAL**.....**RESPONDENTS**

*Citation Orders calling upon the Respondents to accept or refuse Grant of Letters of Administration /Grant of Probate to the Respondents or any of them regarding the Estate of the Late Musumba Martin.*

**Held:** Application Granted with Orders in this Ruling.

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

**RULING**

This Ruling follows an Application brought under **Section 206, 226 and 203 of the Succession Act Cap 162 (as amended), Section 4(4) and (5) of the Administrator General's Act, Section 33 of the Judicature Act, Section 98 of the CPA and Article 126(2) (e) of the Constitution and Order 52 rule 1 of the CPR SI 71-1** seeking for Orders that:-

1. The Respondents or any of them be issued with Citation Orders or any appropriate orders calling upon them, to accept or refuse Grant of Letters of Administration /Grant of Probate to them or any of them regarding the Estate of the late Musumba Martin.
2. Alternatively, the Applicant be granted Letters of Administration (in his capacity as creditor of the said deceased's Estate), in case none of the Respondents is willing to accept Grant of Letters of Administration /Grant of Probate in respect of the said Estate.
3. The Respondents or any of them be ordered to file an inventory or report to court indicating detailed particulars and or description of all the known assets of the Late Martin Musumba, the beneficiaries and the creditors and debtors of the said Estate, in order to facilitate

administration of the Estate, by the Applicant in case he is granted Letters of Administration over the same.

4. Costs of the suit.

The grounds upon which this Application are premised are that:-

1. That as per Sale Agreement dated 7/12/2012 **annexed as "A"**; the late Martin Musumba sold him one acre of land located at Mafubira Sub County, Buwekula village, Jinja District at UGX shs 30,000,000/=.
2. However, when he took over possession of the said land after the death of Martin Musumba in 2013, his widow (1<sup>st</sup> Respondent) sued him, under **Jinja High Court Civil Suit No.021 of 2018**, allegedly for trespassing on the said land, which she claims to be her sole property and not property of the late Martin Musumba (**see Plaint annexed hereto as "B'**)
3. The said suit, therefore turned him into a creditor of the late Martin Mulumba's Estate regarding the shs 30,000,000=, he paid to late Martin Musumba for purchase of the said land, and damages for breach of contract, yet he cannot enforce his claims or rights under the said land Sale transaction being challenged by the widow, for want of an Administrator for the said Estate hence the above Application to have an Administrator appointed by Court.
4. Unless this Application is granted he will be cheated by the Estate of the late Martin Musumba for lack of any avenues or enforcing his rights as a creditor of the said Estate arising from the said breached, land Sale Agreement.

**In reply**, the 1<sup>st</sup> Respondent **Musumba Robinah** filed an Affidavit in Reply in which she deponed that she had read and understood the Applicant's Affidavit and Annexures thereto and opposed the same on grounds that this Application and Affidavit in Support are both riddled with absolute falsehoods and contradictions and pure lies and wished to clarify some critical matters as follows:-

1. In reply to paragraphs 1 and 2, that it is untrue and a mere imagination to state that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are beneficiaries of the estate of the late Martin Musumba, to the contrary, that she bought the suit land in her personal capacity quite independent of her late husband, and even the transaction was effected during her late husband's life time including the registration of the same in her names; and therefore it did not in any way constitute the estate of the late.

2. In reply to paragraph 3, that it is illegal and inconceivable for the Applicant to enforce his claims by way of a suit or Counter Claims as a creditor of the estate of the late Martin Musumba since the suit land now in dispute is quite different, distinct and outside the estate of the late; and as such she has all the inalienable rights and legal capacity to sue in defense of her property.
3. In reply to paragraph 4, that whether or not there was a Citation in the Registry Book in respect of the estate of the late Martin Musumba, it was irrelevant and immaterial just because the land in question does not fall within the said estate.
4. She strongly averred and contended that the said suit land has at all material times been her personal property even during the life time of her late husband and the Applicant's purported dealings in the same or any part thereof was null and void.
5. That the Application is misconceived and a waste of Court's time to embark on the main suit; and this Honourable Court be pleased to disregard all that is contained in the Applicant's Affidavit as they are pure lies designed to delay justice and create unnecessary backlog and it merits and ought to be dismissed with costs.

In **further reply**, the 3<sup>rd</sup> Respondent **Bogere Robert** filed an Affidavit in Reply in which he deposed that he had perused the Applicant's Application, supporting Affidavit and Annexures thereto and opposed the same follows;-

- a) That he noted the contents of paragraph 2, 3, and 4 of the Affidavit in Support and makes no comment thereto.
- b) In reply to paragraph 1, that a file was opened up at the 3<sup>rd</sup> Respondent's Office in 2018, in the name of **Musumba Martin (deceased) Vide Ref. Busoga/AC/249 /2016.**
- c) The file has been archived since then and no one has ever followed up to date.
- d) He has never interacted with any of the co-Respondents or any other beneficiary or family member of the late Martin Musumba to seek views on whether they are interested in administering the estate.
- e) He doesn't have any information whatsoever regarding the late Musumba Martin estate the basis on which he cannot take on the administration.
- f) The information about the deceased's affairs is within the knowledge of the deceased's relatives who are thus better placed for nomination and grant of Letters of Administration.

- g) He is being required to administer an estate only for purposes of making him liable for matters of which he has no clue.
  - h) The Co-Respondents are adults of sound mind capable of administering the deceased's estate.
1. That he had perused the pleadings in the main suit (**CS. No. 021 2015**) relating to this estate, and noted that, the matters are complicated, highly controversial, and the 3<sup>rd</sup> Respondent is unlikely to get any cooperation from the widow or beneficiaries to the estate of late Musumba Martin; which will make the intended administration very complicated and likely to open the 3<sup>rd</sup> Respondent to more endless litigation.
  2. That the only disclosed asset allegedly belonging to the deceased is the land at Buwekula Village, Jinja District which is already being contested by the 1<sup>st</sup> Respondent; and the 3<sup>rd</sup> Respondent cannot be dragged into taking on administration for a non-existing estate, the same being contested in courts of law.

## **THE BACKGROUND**

The background according to learned counsel for the Applicant are that the 1<sup>st</sup> Respondent filed **Civil Suit No. 21 of 2018** against the Applicant for a declaration that the 1<sup>st</sup> Respondent is the lawful /registered owner of land comprised in FRV 307 Folio 24 and the Applicant's Defendants purported purchase of the suit land from Martin Musumba was null and void *abnatio*; and that the Defendant/Applicant forceful entry and actions on the suit amounted to trespass, an order for a permanent injunction against the Defendant /Applicant and costs of the suit.

That the 1<sup>st</sup> Respondent/ plaintiff acquired customary land at Buwekula, Mafubira Sub County Jinja District measuring approx. 3 acres, by purchase in 2011 and has since remained in physical possession of the same and planted therein cash and food crops to wit bananas, sweet potatoes, maize, beans, groundnuts, soybeans and vegetables. **A copy of the purchase agreement is hereto attached 'B'**).

The Plaintiff /1<sup>st</sup> Respondent later on went on to secure registration of the said land in her names vide FRVJJA 307 Folio 24 also known as Block (Road) 3 Plot Nos.4859, 3004 and 4858. **A copy of the certificate of title is hereto attached and marked "B"**; however on or about the 16<sup>th</sup> February 2018, the Defendant trespassed on the said land and unlawfully interfered with the 1<sup>st</sup> Respondent/ Plaintiff's lawful possession of part of said land (*herein after*

*referred to as "the suit land")*, by cutting down and taking away the 1<sup>st</sup> Respondent/Plaintiff bananas, dumping building materials onto part of the land and threatening to fence it off on grounds that he bought the said part (one acre) from the plaintiff's late husband Martin Musumba **(Photographs of the said actions are annexed collectively marked "C")**.

The 1<sup>st</sup> Respondent/ Plaintiff further averred and contended that she is the lawful owner of the suit land and the Defendant /Applicant has neither legal nor equitable interests therein, and his forceful entry and actions thereon were unjustified, illegal, unlawful and amounted to trespass. That she has on several occasions warned the Defendant from trespassing on her land, but the Respondent has to date ignored the said warnings by continuing to cut her plantation and/or ferry sand and other building and as result of the Defendant's actions aforesaid, she has suffered extensive loss, damage, inconvenience and mental anguish for which she claims for both special and general damages.

**On the other hand**, the Defendant/Applicant denied the contents of paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of the Plaint in toto and shall put the Plaintiff to strict proof thereof. In specific response to the contents of paragraph 3 of the Plaint, the he contended that the 1<sup>st</sup> Respondent/Plaintiff is not entitled to the any reliefs sought.

In reply to paragraphs 4 (a-d) of the Plaint, the Defendant/Applicant shall contend that in the Month of May 2012, he purchased one acre of land from the 1<sup>st</sup> Respondent/ plaintiff husband Musumba Martin, where the full payment was completed on 7<sup>th</sup> December 2012. **(A copy of the agreement is attached and marked Annexure "X")**.

In further reply to paragraph 4 (a-d) of the Plaint, he averred and contended that following the purchase, a surveyor was contracted to earmark the boundaries of one acre in the presence of the late Musumba Martin. That the 1<sup>st</sup> Respondent/ Plaintiff shall contend that the late Musumba Martin requested and was granted a period of six (6) months to hand over vacant possession.

In further answer to paragraphs 4(a-d) of the Plaint, the Defendant/Applicant shall contend that in February 2013, Musumba Martin died before expiration of the six (6) month within which to hand over vacant possession. That the Defendant/Applicant shall contend that he contacted the Plaintiff who appeared indifferent about giving vacant possession prompting him to utilize the land and subsequently fencing; and that he has never assaulted the

Plaintiff / 1<sup>st</sup> Respondent. The Defendant shall aver and contend that the Plaintiff reported him to Police where a meeting comprised of the District Police Commander Jinja, Wandera, Chairperson LC5, Kisambira Titus, the 1<sup>st</sup> Respondent/ Plaintiff was convened where the 1<sup>st</sup> Respondent/Plaintiff confirmed that the Defendant indeed purchased the land; and that since the meeting he continued to be in possession of one acre without any interruption.

The content of paragraph 5 of the Plaint is denied in toto and the 1<sup>st</sup> Respondent/Plaintiff shall be put to strict proof thereof; and in answer thereof, that the defendant shall contend that the 1<sup>st</sup> Respondent/ Plaintiff took advantage of her husband's weak health and refused to append her signature on the agreement.

The contents of paragraph 6, 7 and 8 of the Plaint are denied and in answer thereof, the defendant shall aver and contend that his interest is in respect of one acre, which he purchased from the late Musumba Martin before the 1<sup>st</sup> Respondent/ plaintiff secured a certificate of title; and that he is the owner of the crops and trees on one acre duly purchased from the late Musumba Martin before the plaintiff acquired a certificate of title for the entire land.

Further, that the Defendant/Applicant by way of Counter Claim averred that the 1<sup>st</sup> Respondent/ plaintiff has willfully and without reasonable cause refused to transfer one acre of land at Buwekula, Mafubira Sub-County in Jinja District; and prayed that he is declared owner of the suit land and an order for the 1<sup>st</sup> Respondent/ Plaintiff to transfer one acre of land at Buwekula, Mafubira Sub-County in Jinja District in favour of the Defendant/Applicant.

## **REPRESENTATION**

When this Application came before me for hearing, the Applicant was represented by Counsel Prince Munulo J. of M/S. Munulo & Co. Advocates, while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were represented by M/S. Zinsanze & Co. Advocates. The 3<sup>rd</sup> Respondent was represented by Counsel Grace Dusabe, a State Attorney in the Administrator Generals Chambers.

All the parties were directed to file Written Submissions and they all complied late. I have however analyzed the same and relied on them in this Ruling.

## **ISSUES**

1. Whether the Applicant is entitled to the Citation Orders or any appropriate Orders calling upon any of the Respondents to accept or refuse grant of Letters of Administration /Grant of Probate to them or any of them regarding the Estate of the late Musumba Martin?
2. Whether the Applicant can be granted Letters of Administration (in his capacity as creditor of the said deceased's Estate), in case none of the Respondents is willing to accept grant of Letters of Administration /Grant of Probate in respect of the said Estate?
3. What remedies are available to the parties?

## **THE LAW**

### **Section 206**

**Section 226 of the Succession Act, Cap 163 (as amended)**, provides that:-

**and**

**Section 203 of the Succession Act, Cap 163 (as amended)** provides for;-

***“Citation of persons entitled in priority to administer***

*Administration shall not be granted to any relative if there is some other relative or an appointed customary heir entitled to a greater proportion of the estate until a citation has been issued and published in the manner hereafter provided calling on that other relative or heir to accept or refuse letters of administration”.*

Further, **Section 4(4) of the Administrator General's Act**, reads as follows:-

***“Death to be reported to Administrator General, who may apply for grant of letters of administration***

...

*(4)The Administrator General shall be deemed to have a right to letters of administration, other than letters pendente lite, in preference to—*

*(a) a creditor;*

*(b) a legatee, other than a universal legatee; or*

*(c) a friend of the deceased, but the Administrator General may waive such right.*

**Section 5 of the Administrator General's Act**, reads that:-

**Section 33 of the Judicature Act** provides that:-

***"General provisions as to remedies.***

*The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided".*

**Section 98 of the Civil Procedure Act** which reads that:-

*"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".*

This section empowers the court to grant orders in all cases in which it appears to the court to be just and convenient to do so to restrain any person from doing certain acts. The main principle in this section is whether the dictates of justice so demand.

**Article 126(2) (e) of the Constitution of the Republic of Uganda 1995** reads that:-

**and**

**Order 52 rule 1 of the CPR SI 71-1** provides for the procedure Application of this nature should take.

## **RESOLUTION OF THE APPLICATION**

I have carefully analyzed this Application, the supporting Affidavits and Annexures thereto, Affidavits in Reply of both Respondents and the submissions of both sides. It was submitted by learned counsel for the Applicant that the Application sought to move Court, to appoint an Administrator to the Estate of the late Martin Musumba, in order to claim



from such Administrator, a debt of shs 35,000,000/= received from him by the said deceased for sale of land which sale is being challenged by the deceased's wife (1<sup>st</sup> Respondent) under the above main suit claiming that, the sold land is solely her personal property.

Further, that the Applicant having found himself in a dilemma for lack of an Administrator for the late Martin Musumba's estate against whom he can enforce the said Sale Agreement or claim for refund of his said shs. 35,000,000/= and being defeated by adverse claims of the very beneficiaries of the same estate *vis a vis* the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, he found himself with no other option than applying to Court to appoint Administrators of the said estate from among the same beneficiaries or any of them, or to appoint the Administrator General in case the said beneficiaries decline Letters of Administration; or in the alternative to appoint himself, as Administrator of the said estate by virtue of **Sections 206, 226 of the Succession Act in conjunction with Section 98 CPA, Section 33 of the Judicature Act and Art 126 (2) (e) of the Constitution of Uganda 1995.**

That **Sections 206 of the Succession Act** empowers court to grant Letters of Administration to a creditor in case the people entitled to the grant of Letters of Administration in respect of the deceased's estate are not willing to acquire Letters of Administration.

**Section 226 of the Succession Act (as amended)** provides that *"whenever the nature of the case requires, that an exception be made Letters of Administration, shall be granted subject to that exception"*.

That the exception, in the instant case, is that, the wife of the deceased (1<sup>st</sup> Respondent) who is entitled to administer her said husband's estate and is beneficiary of the same is the one challenging the Applicant under the above suit regarding money (shs.35,000,000/=) received by her deceased husband, as above, hence such precarious situation should be treated by Court, as an exception justifying grant of the Letters of Administration in respect of the said deceased to the Administrator General or to the Applicant himself to enable him, recover his said shs. 35,000,000/=, from the properties of the deceased's estate.

That unfortunately, the Administrator General, was served with the instant Application as per the Affidavit of the process server, Mr. Halid Mayambala filed in Court on 04<sup>th</sup> May 2022, but the Administrator General never responded at all to service of Court process to him, implying that he is not willing to take on Administration of the said estate.

On the other hand, that though the 1<sup>st</sup> Respondent filed an Affidavit in response to this Application, her pleadings therein were focused on assertions or averments in support of her main suit and she neither expressly objected to grant of Letters of Administration, in respect of her deceased husband's estate to the Applicant or to the Administrator General nor did she express any willingness to act as Administrator of her deceased husband's estate implying that she is not bothered whoever of those is appointed as Administrator of the same estate, while her son/heir of the said deceased.

That the (2<sup>nd</sup> Respondent) kept silent as he never filed any reply to the Application, implying he is not willing to act as Administrator of his said father's estate nor is he is he bothered by appointing of any party to the Application as Administrator of the estate.

That obviously the said elusive conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents speaks a lot about their determination to defeat the Applicant's claim for they said are beneficiaries, but would like to close doors for the Applicant's claim to Martin Musumba's estate of which claim for the same money against the estate, for lack of an Administrator to handle.

In addition, that this Honourable Court, should in law and equity, evocable by Court under **Sec 14 (2) (c) and (3) of the Judicature Act**, not allow the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to hide behind such mischief or tricks as a shield in order to defeat the Applicant's clear claim against the late Martin Musumba, who died before handing him, the sold land or refunding his money.

That in consequence whereof, Court should inevitably grant the Letters of Administration to the Applicant, hence, they humbly prayed so in view of the provisions of **Section 33 of the Judicature Act and Sec 98 of the CPA**.

Finally, that in order to facilitate the Administration of the late Musumba's estate, the Applicant asked Court under his instant Application to order the Respondents to file in Court a detailed Inventory of all the assets and debts of the deceased's assets, to enable any Administrator to be appointed by Court under this Application (if so) to, Administer the estate effectively for any lawful purposes, as may be directed by Court.

**In reply**, it was submitted learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the late Martin Musumba and the 1<sup>st</sup> Respondent were spouses and the 2<sup>nd</sup>

Respondent happened to be their issue. That before the demise of Martin Musumba, the 1<sup>st</sup> Respondent in her personal capacity had acquired the suit land through purchase and subsequently registered it under the **Registration of Titles Act** still in her own names.

Accordingly, that the land in question did not in any way constitute the estate of the late Martin Musumba as the two were quite distinct. That relying on **Section 206, 226 and of the Section 33 of the Judicature** is misconceived and it is calculated to divert the course of justice.

Further, that for the Applicant to seek for an order vide **Succession Act in conjunction with Section 98 CPA, Act and Article 126(2)(e) of the 1995 Constitution**, it is calculated to divert the course of justice; and for the same reason, it is uncalled for, and they called upon the Honourable Court to invoke **Section 14(2)(c) and 3 of the Judicature Act**.

In addition, that it is unconceivable for the Applicant to mix up the issues of the estate of late Martin Musumba and that of the 1<sup>st</sup> Respondent because the 1<sup>st</sup> Respondent acquired her said property in her personal capacity and it should be emphasized that it was not a joint acquisition between the couple.

That it is also a misconception on the part of the applicant because of the foregoing to seek for an order requiring the respondents to file detailed inventory of all the assets of the deceased's estate, simply because the land acquired by the first Respondent was distinct from that of her late husband. That the order if granted, it will deny the first Respondent in particular and the women folk generally to own property outside their marital homes and at the same time, such an order shall be in conflict with **Article 33 of the 1995 Constitution**.

They concluded that the Application is an abuse of court process, and it raises no plausible cause of action against the respondents whatsoever; has got no merit as it is a mere mask, fabrication and an afterthought gimmick to delay the hearing of the main suit and ought to be dismissed with costs.

**In order to resolve the issues framed in this Ruling**, I have carefully analyzed this Application taking into account the provisions of all the law as cited above and the submissions of both sides. The test for determining whether or not the Applicant is entitled to the grant of Letters of Administration was discussed by Hon. Justice Godfrey Namundi ***In the matter of An Application by Edward Matovu Mulubirizi, Hellen Kikwanganguyira, John Bwanika Ddungu & John Bagabirwa for Revocation of Letters of Administration granted to Jane Namayenga***

***Ndagire Gonzaga vide Miscellaneous Application No.566 of 2017*** in which he relied on the **Tristram and Coote's Probate Practice 23<sup>rd</sup> Edn. at page533**; defined citation;-

*"A citation is an instrument issuing from the principal probate registry under the seal of the court and signed by one of the registrar containing recital of the reason for its issue and the interest of party extracting it. Calling upon the party cited to enter appearance and take the steps therein specified with an imitation of the nature of the order the court is asked to and may make unless good cause is shown to the contrary. The statement of fact set out in the citation ought necessarily to be supported by either a statement on oath or an affidavit of the Plaintiff".*

In the instant Application, the evidence of the Applicant is that he bought land from the late Martin Musumba. This was not denied by the 1<sup>st</sup> Respondent in her Affidavit in Reply, but nevertheless, she avers that the land in issue does not form part of the estate of the deceased, but is her personal property. I have also evaluated averments in the affidavit sworn by the 3<sup>rd</sup> Respondent's representative, Mr. Bogere to effect that indeed a file was opened; and he states that;-

2...

*(b) "In reply to paragraph 1, a file was opened up at the 3<sup>rd</sup> Respondent's office in 2018, in the name of MUSUMBA MARTIN (deceased) Vide Ref. BUSOGA/AC/249/2016.*

*(c) The file has been archived since then and no one has ever followed up to date.*

...

*4. That the only disclosed asset allegedly belonging to the deceased is the land at Buwekula Village, Jinja District which is already being contested by the 1<sup>st</sup> Respondent."*

A critical analysis of the current Application reveals the Applicant in this case came into relationship with the Late Martin Musumba by virtue of a Sale Agreement between him and the deceased and this is a fact which is also acknowledged by the 1<sup>st</sup> Respondent in paragraphs 3 & 6 of her Affidavit opposing the Application where she acknowledges his buying of land from the deceased.

The above therefore gives the Applicant a legal interest as a creditor to the estate the Late Martin Musumba and this sums that the Applicant has a right to be considered as a beneficiary of the estate of the late Martin Musumba.

Having found that the Applicant for now has a valid claim as a recognized purchaser of land from the late Martin Musumba, it is therefore my finding and decision that the administration of the estate of the late Martin Musumba is at the center of resolving his claim.

Further, according to the averments of both sides in this Application, it is clear that there is a serious wrangle between the parties which have culminated into a criminal case **REF.58/16/02/2018** at Jinja Police Station on Assault and restraint emanating from ownership of the suit land. To me, this and **Civil Suit No.021 of 2018 by the 1<sup>st</sup> Respondent** against the Applicant cannot entirely be divorced from the current Application.

I have also critically analyzed the Affidavits in Reply of both Respondents in this matter opposing this Application. It is clear from most of the averments of the 1<sup>st</sup> Respondent that she is claiming the suit land as her personal property outside the estate of her late husband. It is also clear that instead of addressing the current Application, she is evasively dwelling on addressing the merits in the main suit that is still pending before court. **Civil Suit No.021 of 2018** as well can only be concluded after the Grant of Letters of Administration/ Grant of Probate is finalized because much as the 1<sup>st</sup> Respondent is claiming the suit land therein as her personal property, this cannot be handled without allowing the Applicant a chance to lead his evidence on how he came to get in possession of the same.

Much as she averred in her Affidavit in Reply and it was submitted on behalf of the Respondents that this suit is premised on Trespass to land and has no connection with the acquisition of the Grant of Letters of Administration by the Respondents or the current Application, I do not agree with this in view of the interconnectedness of the two Respondents to the estate of the late Musumba Martin and the uncontested sale of land that took place between the late Musumba Martin and the Applicant.

Secondly, while it is not proper for this Honourable Court in the current Application to delve into the merits of **Civil Suit No.021 of 2018** as the issues therein will be dealt with in due course after all the parties thereto have presented their evidence, but suffice it to state that by the 1<sup>st</sup> Respondent referring to it in her Affidavit in Reply to the current Application

proves that the issues emanating from that her suit cannot be divorced entirely from the current Application.

If anything, it is clear that the issues touching on the ownership of the title to the suit land which was apparently acquired after the Sale Agreement in question between the late Musumba Martin and the Applicant in the current Application and that 1<sup>st</sup> Respondent's **Civil Suit No.021 of 2018** are intertwined. As such, there is need for the estate of the late Musumba Martin to be properly brought under administration so that a multiplicity of proceedings is avoided.

In addition, the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' failure to follow up on the grant of Letters of Administration/Grant of Probate well knowing that there are some unresolved issues touching on the transactions entered into by the deceased before his death is an indicator that they are not willing to resolve the concerns of the creditors to the Estate the late Martin Musumba among whom is the Applicant in this matter.

It is also clear that there is a big threat to the interests of the Applicant who is undeniably a creditor to the estate of the Late Martin Musumba as confirmed by the Affidavit in Reply of the 1<sup>st</sup> Respondent. This implies that as long as the Grant of Letters of Administration/Grant of Probate to the estate of the Late Martin Musumba is not finalized, there is a high likelihood that the estate will be put at a risk of being wasted to the disadvantage of the creditors, key among them is the Applicant in this matter.

I have also found that although the 3<sup>rd</sup> Respondent is evading responsibility towards the estate of the Late Martin Musumba under the guise of avoidance of messy litigation of the Estate, it is clearly laid out under the Preamble and **Section 4 (4) of the Administrator General's Act**. If anything, it is for this very reason that the Office of the Administrator General are required to act and fulfill their core mandate as trustees of estates of all deceased person in Uganda.

I therefore find the reasoning given by learned counsel for the 3<sup>rd</sup> Respondent not only wanting, but shallow and devoid of merit. In view of the fact that the Administrator General is a Public Trustee, it is my finding that they are best placed to be granted the said Letters of Administration/Grant of Probate especially in view of the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are already beneficiaries to this estate stand are proving to be uncooperative (as can be seen by the file they abandoned with the Administrator General's Office as averred by the 3<sup>rd</sup> Respondent in paragraph 2); yet there is a very

big possibility that they will continue to deal with the estate in any way they deems fit, to defeat the Applicant's interests.

I have also found that it is unnecessary for this Court to order the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to file an inventory at this point or return the grant of Letters of Administration because they have not yet been granted Letters of Administration / Grant of Probate.

For all the reasons given in this Ruling, it is my decision that this Application has great merit and it succeeds with orders that the Applicant in his capacity as a creditor to the Late Martin Musmba is declared a beneficiary of that Estate and as a beneficiary, he is entitled to move Court to act in his favour.

The 3<sup>rd</sup> Respondent is hereby ordered to stand up to their core mandate and take steps to be appointed as Administrator of the Estate of the Late Martin Musumba for purposes of continuing with the pending suits including, but not limited to **Civil Suit No.021 of 2018** against that Estate to enable all the other matters that are related to this estate to be determined.

My decision is that Citation Orders are hereby issued calling upon the 3<sup>rd</sup> Respondent to expedite and accept grant of Letters of Administration /Grant of Probate to the Estate of the late Musumba Martin.

The Letters of Administration/ Grant of Probate shall be issued to Administrator General within fourteen (14) days of delivering this Ruling.

Finally, it is now well established law that costs generally follow the event. **See Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)** and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27**, it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant Application, the Applicant has succeeded in his Application against the Respondents. I also find no justifiable reasons to deny him the costs of this Application. He is therefore awarded full costs in this Application.

I SO ORDER

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**JUSTICE DR. WINIFRED N NABISINDE**

**JUDGE**  
**28/03/2024**

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**28/03/2024**