

UGANDA / JUDGMENT

**Bukenya Deo Sebyala v Nanyunja
Harriet (Civil Suit No. 52 of 2019)
[2025] UGHCFD 57 (14 July 2025)
[2025] UGHCFD 57**

COURT

HC: Family Division (Uganda)

BEFORE

Busingye, J

CASE / FILE NUMBER

Civil Suit No. 52 of 2019

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION) CIVIL SUIT NO. 52 OF 2019**

**BUKENYA DEO SSEBYALA ::::::::::::::::::::::::::::::::::: PLAINTIFF 10
[Administrator of the Estate of the Late Cotilda Nakafeero]**

VERSUS

NANYUNJA HARRIET ::::::::::::::::::::::::::::::::::: DEFENDANT

15 *Before: Hon. Lady Justice Immaculate Busingye Byaruhanga*

JUDGMENT

The plaintiff brought this suit against the defendant with a claim of fraud seeking for an order removing /discharging her as a co-administrator of the estate of the late 20 Lauresio Kafeero vide Administration Cause No. 1929 of 2008, a consequential

- order deregistering her as a co-owner of the land comprised in Mawokota Block 85 land at Bulansuku ,an order nullifying all the transactions entered by the defendant unilaterally affecting the above described land by way of sale or otherwise, an order declaring and appointing the plaintiff as the sole administrator of the estate of the
- 25 late Laurensio Kafeero and sole owner of the land comprised in Mawokota Block 85 Plot 83 land at Bulansuku as administrator of the estate of the late Cotilda Nakafeero, general damages and costs of the suit.

On the other hand, the defendant denied the plaintiff's allegations and pleaded as follows;

30 a) That the plaintiff's late mother Cotilda Nakafeero was a fraudster with ill motives intended to grab the defendant's property and as such is not entitled to the remedies prayed for in this Honourable court.

- 5 b) That it was agreed with the Late Cotilda Nakafeero that both parties sign papers to obtain certificate of title since both of them were administrators to the estate.
- c) The defendant contends that she never obtained letters of administration as a co-administrator without the late Cotilda's consent as this was mutually 10 agreed to easily administer and distribute the estate of the late Laurensio Kafeero equally.
- d) That that it was agreed that the late Cotilda Nakafeero and the defendant shall be co-administrators of the said estate and the grant was issued on 27th day of May 2009 hence showing that the defendant is a rightful co-administrator.
- 15 e) The defendant contends that she is also an administrator of the estate and a beneficiary who also has equal rights as her co-administrator.
- f) The defendant contends that any allegations and claims for general damages are unfounded, misguided and misconceived and the plaintiff would be put to strict proof of allegations.

20 Counsel legal representation

The plaintiff was represented by Counsel Kudiza Patience holding brief for Counsel Nuwagaba Wilfred of **M/s Niwagaba Advocates & Solicitors** while the defendant was represented by Counsel Nuriet Innocent and Counsel Alinda Jerry of **M/s Sebanja & Co. Advocates**.

25 In the Joint Scheduling Memorandum, the parties and their respective counsel agreed upon documents, witnesses, authorities and formulated issues for determination as follows:

Issues for determination

- 1. Whether the defendant fraudulently dealt in /with the estate of the late
- 30 Laurensio Kafeero.

5 2. Whether the plaintiff is entitled to the remedies sought.

Witness evidence

The parties also agreed to adduce evidence from several witness. The plaintiff adduced evidence from Bukenya Deo Ssebyala [Pw1] and Nassali Annet [Pw2], while the defendant adduced evidence **Nanyunja Harriet [Dw1]** and Mugerwa

10 Charles Ssali [Dw2].

Documentary evidence

The parties also relied on documentary evidence which was marked and exhibited. The plaintiff relied on the following documents;

- 1. *Letters of administration for the estate of the late Cotilda Nakafeero dated 25th* 15 *January 2023 exhibited and marked PExh.1.*
- 2. *Application for a special certificate of title for land comprised in Mawokota Block 85 plot 83 land at Bulansuku exhibited and marked PExh.2*
- 3. *Certificate of Title for land comprised in Mawokota Block 85 Plot 83 land at Bulansuku exhibited and marked PExh.3[a].*
- 20 4. *Letters of administration for the estate of the late Laurensio Kafeero dated 27th May 2009 exhibited and marked PExh.3[b].*
- 5. *Agreement of sale between the defendant, Nassali Annet, Nakafeero Betty and BIDCO (U) Limited dated 15th March 2016 exhibited and marked PExh.4.*

25 The defendant did not adduce any documentary evidence to be considered by this court.

Burden and standard of proof in Civil Cases

Section 101(1) and (2) of the Evidence Act Cap.8 (Revised) Laws of Uganda,

"*Whoever desires any court to give judgment as to any legal right or* 30 *liability dependent 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 and Section 10 *103 provides that "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"*

These principles have been reiterated in so many judicial precedents where it has

15 been decided that in civil matters just like the instant case, the burden of proof rests on whoever asserts a fact and the standard of proof is on a balance of probabilities. (See **Jovelyn Barugahare v. Attorney General SCCA No. 28 of 1993**)

Background of the suit

Following the demise of the Late Laurensio Kafeero, the defendant and the late

20 Cotilda Nakafeero purportedly petitioned this court for letters of administration and the same were granted to Nakafeero Cotilda (daughter) and Nanyunja Harriet (granddaughter) on the 27th day of May, 2009 by **Justice F. M. S EGONDA-NTENDE**. (PExh.3[b]).

Subsequently, on 25th February 2017, the administrators of the deceased's estate 25 lodged an application with the Registrar of Titles for the issuance of a special certificate for land comprised in Mawokota Block 85 Plot 83 land at Bulansuku, land formerly belonging to the Late Laurensio Kafeero (PExh.2) and the same was issued, wherein the defendant and the late Cotilda Nakafeero were registered on the same as co-administrators of the deceased's estate vide instrument number KLA00014943 on 18th July 2017 at 4:01 pm (PExh.3[a]). On the 15th 30 day of March 2016, the defendant purportedly executed a sale agreement with BIGCO (U) LTD

5 in respect of part of the estate land comprised in Mawokota Block 85 Plot 83 land at Bulansuku Blocks 85-86 Plot 83 at Luvumbula (PExh.4).

Resolution of issues

Issue No.1: Whether the defendant fraudulently dealt in /with the estate of the late Laurensio Kafeero.

10 At the commencement of submissions, counsel for the plaintiff cited the case of **Kampala Bottlers Ltd v. Damanico (U) Ltd SCCA No. 22 of 1992**, wherein fraud was defined to mean actual fraud or some act of dishonesty and the same was buttressed in **Waimaha Saw Milling Co. Ltd v. Waione Timber Co. Ltd (1962) A. C 101 at page 106**. Counsel for the plaintiff submitted that the defendant 15 fraudulently and with misrepresentations obtained letters of administration and also obtained a certificate of title for the said land which was missing at the material time unknown to the late Cotilda Nakafeero.

In addition, counsel for the plaintiff cited **Volume 17 of the Halsbury's laws of England, 4 th Edition, paragraph 1082 at page 562** which states that the 20 conveyance of real estate requires concurrence of all executors or administrators to be valid, therefore, a co-administrator has no authority to dispose of land on behalf of the estate without the authority or involvement of the other co-administrator jointly with him. Counsel further cited the case of **Silver Byaruhanga v. Fr. Emmanuel Ruvugwaho & Another SCCA No. 9 of 2014**, where it was held that 25 where probate or letters of administration have been granted simultaneously or all together to several people, they must act jointly at all times because Section 272 of the Succession Act does not allow them to act singly.

Counsel argued that it is the evidence of the plaintiff that the defendant single handedly executed the said sale to BIGCO Uganda Limited as a vendor since Pw2

5 denied ever participating in the said transaction presented in PExh.4 and denied ever signing this document. Counsel also contended that it was Pw2's evidence that the other vendor being Nakafeero Betty died in 2006 long before the execution of this agreement in 2016. Counsel also submitted that the defendant does nowhere in trial adduce evidence in proof of her allegation against the late Cotilda Nakafeero. 10 Counsel also argued that PExh.3 reflected the defendant and Nakafeero Cotilda as joint registered proprietors of the suit land in their capacity as administrators of the estate of the late Lurensio Kafeero which shows the existence of the suit land however, there is no proof of a mortgage thereon by Diamond Trust Bank but rather the only encumbrances reflected are caveats lodge by the late Cotilda Nakafeero 15 before her demise and a one Selubula Hassan on behalf of BIGCO (U) Limited,

In conclusion, the plaintiff contended that the defendant fraudulently dealt in the estate of the deceased and prayed that this court grants the prayers sought.

which facts were corroborated by Dw1's testimony in cross-examination.

Determination

- 20 It is the plaintiff's contention that the defendant fraudulently procured letters of administration of the deceased's estate and further disposed of estate property comprised in Mawokota Block 85 Plot 83 land at Bulansuku without the authorization of the deceased co-administrator Cotilda Nakafeero. Therefore, the plaintiff has the burden of proving the plaintiff's claim against the defendant.
- 25 It is trite law that fraud must be proved strictly on a burden slightly higher than that on a balance of probabilities as generally required in civil matters but not beyond reasonable doubt as would be required in criminal matters. (See **Kampala Bottlers Ltd v. Damanico (U) Limited**, SCCA No.22 of 1992) In the case of **Ntuulo Ediisa & 2 Ors v. Alice Nakazi**, Hon Lady Justice Ketrah Kitariisibwa Katunguka (as she

5 then was) while citing the case of **Struggle (U) Limited v Pan African Insurance Co. Ltd (1990) KALR 46-47** and **Kasule v Makerere University (1975) HCB 376** held that;

"The seriousness of the repercussions of fraud, if proven, requires he who alleges it to bring it out clearly and link it to the alleged culprit to avoid any* 10 *ambiguity; since court only considers what the parties have stated in their pleadings; courts have held that to succeed in claiming fraud, the plaintiff not only needs to plead but also particularize it by laying out evidence upon which the court would make such a finding".*

According to paragraph 5 of the plaint, the plaintiff particularized the facts relating

- 15 to fraud, and it is my observation that the plaintiff's claim of fraud rotates under two arms that is;
- *i. That the defendant fraudulently obtained letters of administration for the deceased's estate without the consent of the late Cotilda Nakafeero.*
- *ii. Secondly, that the defendant illegally executed a sale agreement for the sale*
- 20 *of part of the estate property without the knowledge of her late coadministrator and illegally appended the signature of Nakafeero Betty well knowing that she was deceased.*

In the case of **Kampala Bottlers Ltd v. Damanico (U) Ltd (supra)**, Wambuzi CJ (as he then was) defined the term '**fraud**' as an act of dishonesty. However, a more 25 expansive definition of the term fraud was made out in the case of **Fredrick Zaabwe v. Orient Bank & Others SCCA No, 4 of 2006** *as follows:*

"The intentional perversion of the truth by a person for the purpose 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 30 *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".*

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- 5 It is evident from the pleadings and the evidence presented before court that both the plaintiff's late mother Cotilda Nakafeero and the defendant obtained letters of administration in respect of the late Laurensio Kafeero's estate on 27th May 2009 from this court issued by Hon Justice F. M. S Engonda Ntende (**PExh.3[a]**) as co-administrators.
- 10 According to **Sections 176 and 188 of the Succession Act, Cap 268**, an administrator of the deceased is his or her legal representative for all purposes and all the property of the deceased person vests in him or her as such. It should also be noted that the letters of administration entitle the administrator to all the rights belonging to the intestate and therefore, it follows that after
- 15 such a grant, no other person to whom the same has been granted has the power to act as the deceased's representative until the said letters of administration have been recalled or revoked. (See **Katushabe Generous v. Turamuhebwa Godfrey High Court of Masindi Civil Suit No. 43 of 2021**)

According to the case of **Anecho Haruna Musa (Legal Representative of 20 Adam Kelili) v. Twalib & 2 ors H. C. C. S No. 9 of 2008 (Arua)**, it was noted that a grant remains valid until the same is revoked even in cases where a grant has been obtained by fraud. Therefore, for as long as the grant remains unrevoked, the grantee represents the deceased's estate.

In the instant case, the plaintiff contended in paragraph 4 of the plaint that the 25 defendant being a niece of the late Cotilda Nakafeero and a grand-daughter of the Late Laurensio Kafeero, under the guise of helping her as her auntie, approached the late Cotilda to obtain the certificate of title with had gone missing at the time and equally processed and obtained letters of administration in respect of the deceased's estate without her consent by 30 taking advantage of the late Cotilda's age, trust and limited education.

5 On the other hand, the defendant in her witness statement paragraph 12 thereof stated that following a family meeting, it was resolved that Cotilda Nakafeero and the defendant process letters of administration for the deceased's estate. The defendant testified as Dw1 and during cross-examination, she reiterated her deposition and further testified that her lawyer has the minutes of that 10 family meeting.

I have thoroughly perused the record Administration Cause No. 1929 of 2008, and according to the minutes of the deceased's family members meeting held on 11th April 2009 at Luwumbula-Kiringente, it is portrayed that the beneficiaries of the estate attended the meeting including the late Cotilda 15 Nakafeero who appended her signature to the said meeting and it was resolved that the former and the defendant apply for letters of administration on their behalf and a consent was signed to the effect. I have observed that the

- Administrator General issued a certificate of no objection on 4th February 2009 and consequently letters of administration were issued by Justice F. M. S Egonda Ntende on 27 20th May 2009. I have also observed that the late Cotilda
- Nakafeero appended her signature to the petition for letters of administration, Declaration and the affidavit in proof of death as well.

Having examined all these facts and accompanying evidence, I am of the considered opinion that the plaintiff has failed to discharge the burden of 25 proving that the defendant acquired letters of administration fraudulently for

Regarding the alleged illegal sale of the estate property by the defendant, it was earlier stated that the property of an intestate vests in his or her administrators as his legal representatives and according to **Section 25 of the**

30 Succession Act, all the deceased's property devolves upon his or her legal

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the estate of the Late Laurensio Kafeero.

5 representatives as trustees for all the persons entitled to the said property (beneficiaries).

In the case of **David Sejjaka Nalima v. Rebecca Musoke SCCA No. 12 of 1985**, it was held that a good title cannot be obtained from a grant that was fraudulently obtained. In the instant case, it is pleaded that the defendant 10 fraudulently executed a sale agreement with BIGCO (U) Ltd for the

sale of part of the estate property comprised in Mawokota Block 85 Plot 83 land at Bulansuku without the consent of the late Cotilda Nakafeero. The plaintiff adduced evidence as Pw1 and he testified during cross examination that his late mother did not sign the sale agreement (PExh.4). Pw1 further testified 15 that the passport photo attached to the application for a special certificate of title for the suit land did not belong to his mother since her face was round and her mother's neck always had a rosary around it.

I have critically studied PExh.4 which is a sale agreement between Nanyunja Harriet (defendant), Nassali Annet and Nakafeero Betty (as beneficiaries of 20 the Estate of the Late Kafeero Lawrence) and BIGCO Uganda Limited for land measuring approximately 8 acres. I have also noted that the agreement in question was executed on 15th March 2016. It is not in a contested fact that

the land in question was the deceased's estate property. According to the petition for letters of Administration, the deceased was survived by three 25 children namely; Nakafeero Cotilda, George William Kafeero and Edward Tamale, who are all currently deceased. In paragraphs 2- 3 of her witness statement, Dw1 stated that she is the biological daughter of George William Kafeero who was survived by five children including Nakafeero Betty and the defendant.

- 5 Pw2 testified in paragraph 6 of her witness statement that Nakafeero Betty who was one of the purported vendors in PExh.4 passed away in 2005. During cross examination, Dw1 testified that her sister Nakafeero Betty died in 2015. Despite the discrepancies in the year of demise of the late Nakafeero Betty, it is evident that Nakafeero Betty had long passed before PExh.4 was executed.
- 10 In addition, Dw2 confirmed testified during cross examination that the late Cotilda Nakafeero did not append her signature to PExh.4. It has already been established that the latter was a co-administrator in the deceased's estate and as the suit property being part and parcel of the estate property vested in the administrators of the deceased's estate. Pw1 testified that his mother passed
- 15 away in 2019 and the same was confirmed by the defence witnesses, therefore, the execution of PExh.4 was done while the late Cotilda Nakafeero was still surviving.

I am guided by the Supreme Court decision in **Silver Byaruhanga v Fr. Emmanuel Ruvugwaho & anor SCCA No. 9 of 2014** as cited by Counsel 20 for the plaintiff, wherein Hon. Lady Justice M. S. Arach Amoko JSC, stated at page 33 that;

"... However, in the case of executors or administrators who have jointly applied for Probate or Letters of Administration and obtained the grant simultaneously or all together, they must act jointly at all 25 *times because Section 272 of the Succession Act (now Section 268) does not allow them to act singly. Otherwise, it would defeat the purpose for appointing executors or administrators.*

In the case of transactions involving conveyancing of land of the of the deceased by executors or administrators, the law on the application of 30 *Section 272 of the Succession Act is settled. The Section must be read together with Section 134 of the Registration of Titles Act. Under Section 134 (3) thereof, in cases where probate is granted to several executors as is in the instant case, all of them must concur in every*

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5 *instrument, surrender or discharge relating to the land. The subsection reads as follows;*

Section 134. Succession on death

(3) If in any case probate or administration is granted to more than one , all of them for the time being shall join and concur in 10 *every instrument, surrender, or discharge relating to the land, lease or mortgage."*

It is unchallenged evidence that the late Nakafeero Betty, one of the vendors in PExh.4 died in or about 2015 before the execution of PExh.4 in 2016, which clearly points to the fact that the late Nakafeero Betty's signature was forged.

- 15 The law on failure to challenge evidence on a material or essential fact is that such evidence is deemed to be admitted and to be inherently credible and probably true. (see **Uganda Revenue Authority v. Stephen Mabosi SCCA No. 26 of 1995**). In light of all of these facts, I am convinced that the defendant fraudulently disposed of the estate property singularly without involving her
- 20 co-administrator (the late Cotilda Nakafeero) during her lifetime.

In the premises, the plaintiff has discharged her evidentiary burden of proving that that the defendant fraudulently disposed of estate property without the consent of her co-administrator.

Issue No.2: Whether the plaintiff is entitled to the remedies sought.

- 25 Having resolved that the defendant fraudulently dealt in the estate property of the decease, I shall proceed to consider the remedies sought by the plaintiff. According to the amended plaint, the plaintiff sought several prayers including among other revocation of the letters of administration issued to the defendant vide Administration Cause No. 1929 of 2008.
- 30 The law on Succession in Uganda has evolved and has since been amended with the Succession Act Cap 268 having commenced on 22nd May 2022. **Section 234 (now**

- 5 230(1) of the Succession Act Cap. 268 Revised Laws of Uganda provides that a grant of probate or letters of administration may be revoked or annulled for justice cause. "Just cause" includes, inter alia, situations where the grant has become useless and inoperative through circumstances (see: Section 230(2)(d) of the Succession Act Cap 268*).* In the case of **In the estate of Javuru Apollo HCMA No. 149 of**
- 10 2023, it was noted that the main reason for revoking letters of administration as has been held by courts is to ensure that due and proper administration of an estate and protection of the interests of the beneficiaries.

In the matter of the estate of the late Etadu Eliphas Misc. Application No. 006 of 2024, Hon Justice Dr. Henry Peter Adonyo held that:

15 "In law, the object of the power given to the court to revoke an earlier but now inoperative grant is to ensure that the due and proper administration of the estate and protection of the interests of those beneficially interested."*

While quoting **In the Goods of William Loveday [1900] Page 154**, the learned judge went on to state that:

20 "The real object which court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto, and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will and fully administer the estate and it turns out that the person so appointed will not or cannot administer, I do not see why the court should not revoke an inoperative grant and make a fresh grant."*

In the instant case, I am convinced that the defendant fraudulently dealt with estate

30 property and disposed the same to third parties hence interfering with the interests of the beneficiaries of the deceased's estate. It is my considered opinion that fraud qualifies as just cause which warrants revocation of the letters of administration granted to the defendant in the estate of the late Laurensio Kafeero vide Administration Cause No. 1929 of 2008.

5 General damages

The award of general damages is premised on the doctrine of *'restitutio in integrum'* which means that the aggrieved party has to be restored as nearly as possible to a position he or she would have been in had the injury complained of not occurred. *(See *Amazima (U) Ltd v. Mahdi* (HCCS NO. 453 of 2016).* In **Edward Emmanuel 10 v. Spencon Services Limited HCCS No.22 of 2015**, the Hon. Justice Stephen Mubiru stated that damages are designed to compensate for an established loss and

In addition, in the case of **Luzinda v. Ssekamatte & 3 Ors (Civil suit -2017/366 [2020] UGHCCD 20 (13 March 2020)**, *this court held that as far as damages are* 15 *concerned, it is trite law that general damages be awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued because 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 actions*.

not to provide a gratuitous benefit to an aggrieved party.

- 20 Following the guidance of the above-mentioned authorities and the resolve that the defendant breached her obligations when she fraudulently disposed of estate property. Therefore, an award of general damages is in order. The plaintiff is hereby awarded a sum of Ug. Shs. 10,000,000 (Uganda Shillings Ten Million only) as general damages from the defendant.
- 25 **Costs**

Section 27(2) of the Civil Procedure Act Cap 71 provides that costs shall be at the discretion of the court and shall follow the event unless for good reasons court directs otherwise.

5 It is trite that cost "shall follow the event"; which means that the successful party, shall be entitled to costs. Therefore, as the successful party herein, the plaintiff is entitled to the same.

In conclusion, I order as follows;

- 1. The Letters of Administration granted to the defendant in respect of the 10 estate of the late Laurensio Kafeero vide Administration Cause No. 1929 of 2008 are hereby revoked.
- 2. The defendant is ordered to deliver the original grant of Letters of Administration into this court for revocation.
- 3. The Letters of Administration in respect of the estate of the late 15 Laurensio Kafeero under Administration Cause No. 1929 of 2008 are hereby granted to the plaintiff.
- 4. The Commissioner Land Registration is hereby directed to transfer land in respect of Mawokota Block 85 plot 83 land at Bulansuku from the names of Nakafeero Cotlida and Nanyunja Harriet as administrators of
- 20 the estate of the late Laurensio Kafeero into the names of Bukenya Deo Ssebyala as the Administrator of the estate of the late Laurensio Kafeero.
- 5. The plaintiff is awarded general damages to a tune of UGX 10,000,000 (Uganda Shillings ten million).
- 25 6. The plaintiff is awarded costs of this suit.

I SO ORDER.

Judgment delivered via ECCMIS this 14th day of July, 2025.

14th July 2025

5 Immaculate Busingye Byaruhanga Judge

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