

UGANDA / JUDGMENT

Filda Ejon Vs Concy Ejon (Civil Appeal No. 21 of 2017) [2019] UGCA 338 (29 August 2019)

[2019] UGCA 338

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Civil Appeal No. 21 of 2017

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 21 OF 2017

(ARISING FROM CIVIL SUIT NO HCT \$-1 - CV - SC - 0008\$ OF 2009)

(CORAM: BARISHAKI, MUSOTA, MADRAMA, JJA)

<table>

FILDA EJON} \$10\$

VERSUS

CONCY EJON}

JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA IZAMA

The applicant's appeal is an appeal against part of the judgment of his Lordship Hon Justice Byabakama Mugenyi Simon in High Court Civil Suit No 008 of 2009 at Lira dated 15 14th July, 2013.

The grounds of the appeal are:

- 1. That the learned trial judge erred in law and fact when he held that the property situated at Plot No 24 Awangemola Road, Lira Municipality, Lira District forms part of the estate of the late Sylvester Ejon and not the appellant and her children.

- 2. That the learned trial judge erred in law and fact when he did not properly evaluate the evidence on record and thereby leaving out other property of the estate and thus arriving at incorrect conclusion.
- The appellant prays that the Court of Appeal reverses the errors in the judgment of the \$25\$ High Court as pointed out and find that the property situated at Plot No 24 Lira Municipality, constructed, occupied or utilised by the appellant and her children does not form part of the estate of the late Sylvester Ejon. Secondly, the appellant prays for the costs of the appeal to be provided for.
- \$30\$ At the hearing of the appeal learned counsel Mr. Alfred Okello – Oryem appeared for the respondent while learned counsel Mr. Enoch Kugonza appeared for the appellants. Both

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\$20\$

\$\mathsf{S}\$ advocates adopted their written submissions embodied in their conferencing notes on court record and gave oral highlights of the written arguments.

Submissions of the appellant's counsel

The appellant's counsel submitted that the appellant and respondent together with a 3rd person known as Goretti Grace were considered by the trial court at Lira to have been married by the late (Ejon Sylvester). Following the death of Sylvester Ejon in the year 2008, \$10\$ the respondent who had long separated with the deceased quickly applied for Letters of Administration to manage the estate. The respondent selectively listed 15 properties that she intended to manage as part of the estate, for grant of letters of Administration. The appellant contends that 14 of the listed properties belonged to her except an un -

- **surveyed piece of land at Ibuje** which ought to belong to the estate of the deceased. \$15\$ She contends that the respondent had tactfully left out all property in her possession but had purposely and deliberately included the property of the appellant as well as property that belonged jointly to the appellant and her biological children or property that ought rightly to belong to appellant's children.
- \$20\$ The respondent filed High Court Civil Suit No 0008/2009 and sought orders for removal of a caveat that had been lodged by the appellant. Counsel for the Respondent/Plaintiff conceded to the fact that some of the listed properties belonged to the appellant after evidence had been adduced at trial. Further, he submitted that the trial court agreed and found that even the other remaining affected properties rightfully belonged to the
- \$25\$ appellant and her children except the property on Plot 24 Awangemola Rd, Lira Municipality which Court adjudged to be estate property. Learned counsel submitted that the semi-finished storied building in possession and occupation and use of the appellant on the said Plot 24 was adjudged as forming part of the estate hence this appeal.

Ground 1

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Whether the learned Trial Judge was right in holding that the property situated at Plot 30 No. 24 Awangemola Road Lira Municipality forms part of the estate of late Ejon and not the Appellant and her nuclear family (children).

The appellant's Counsel submitted that the respondent and mainly one of her daughters called Alice Amuge planned to eventually acquire property they believed to be that of the

late Sylvester Ejon (hereinafter referred to as the deceased). He submitted that evidence 35 revealed that the respondent had embarked on a quick and haphazard process of seeking

- grant of letters of administration for purposes of "administering" and acquiring what was \$ S believed to belong to the deceased. He submitted that this targeted both movable and immovable property which he listed. He submitted that though the contentious property was acquired in the names of the deceased, the real owners were either the children or the appellant with the appellant sometimes holding such properties jointly with her
- children. Some of these properties were later adjudged to belong to the appellant and \$10\$ her children. Counsel noted that the titles or agreements of sale for the properties were sometimes witnessed by the widow, (the appellant) and her children. This was the trend with other two widows and their property were not listed in the application for letters of administration
- The appellant's case is that the property at Plot 24 Awangemola Road had throughout 15 been occupied by the appellant and children and they were still in physical possession and use of it. Furthermore, the certificate of title of the property had always been in possession of one of the children namely Sarah Ejon, a daughter of the appellant but the certificate of title had gone missing from the house and was produced by the respondent \$20\$ in court

Learned counsel submitted on the testimonies of various witnesses and I need not reproduce it here.

The appellant's evidence was that the property was constructed by the appellant's child and the respondent did not prove any contribution towards acquisition and later development of the property.

\$25\$

Further, the respondent had long separated with the deceased who lived only with the appellant and also with another woman known as Goretti Grace and therefore, under section 30 of the Succession Act, because there was separation for six or more months, the respondent was not a beneficiary of the property of the deceased, if any.

The appellant's counsel submitted that the learned trial judge ignored the material contribution of Julie Anna Bell to the construction of the contested property.

He conceded that the certificate of title was in the names of the deceased. So were the other registered property such as the property in Aduku which was rightly adjudged to belong to the Appellant's son. He concluded that Plot 24 Awangemola Road Lira had all

indications by way of construction and possession and use to prove that it belongs to the appellant and her children.

Decision of Hon, Mr. Justice Christopher Madrama Izama Tuaphily maximum 7:35 security 2019 sine ITIMER COURT 07 IPPEAL

Learned counsel prayed that this court conducts proper analysis and evaluation of the evidence in respect of inter alia the property at Plot 24 Awangemola Rd Lira and arrives at a decision allowing the appeal.

Reply on ground 1 of the appeal by the respondent's counsel

The respondent's counsel submitted that the respondent instituted a suit against the appellant for orders to vacate the caveat lodged by the appellant against her application for letters of administration in High Court Administration Cause No. LIR-00-CV-CS-026 of 2009 and, for orders granting her letters of administration to the estate of the late **Sylvester Ejon** (the deceased). In addition, the respondent sought a permanent injunction against the appellant, her agents and workers stopping her from intermeddling with the estate, and for payment of general damages and costs of the suit.

It was the respondent's case that she got married to the deceased, and she had not been separated from him at the time of his death. Following the demise of the deceased, the respondent applied for letters of administration to the property and credits of the estate and the appellant lodged a caveat against the grant. He submitted that the appellant

begun intermeddling with the estate by threatening, intimidating and chasing the tenants from the house situate at Plot 24 Awangemola Road Lira Municipality and the estate remained at risk and of being wasted.

The only defence raised by the appellant in her written statement of defence was that, the respondent was not the lawful widow of the late deceased.

During the scheduling, the parties agreed on the property forming part of the estate the petition save from 5 properties.

The issues framed for determination in the suit were; (1) Whether the properties not agreed upon form part of the estate of the late Sylvester Ejon. (2) Whether the Plaintiff and the defendant were married to the deceased and, (3) What remedies are available to

- the parties? The learned trial judge resolved the issues as follows:

- a) Property described as land at Ojwina Division and the Land cruiser all referred to as property No. 2 and No. 10 respectively all belonged to the Appellant by the fact that Counsel for the Respondent conceded in his submission.
- b) Plot No. 24 (property No.1) forms part of the estate of the late Sylvester Ejon.
- c) Property No. 5, a commercial building situated at Aduku does not form part of the \$
\\overline{5}\$ Estate.
- d) Property No. 6 at Obanga Pe-wany is a matrimonial home.

\$10\$

On the issue of whether the parties or any of them were lawfully married to the deceased, the learned trial judge resolved that both the appellant and the respondent were married to the late Silvester Ejon.

The appellant being dissatisfied with the finding on the ownership of the property No. 1, situated on Plot No. 24, Awangemola Road, Lira Municipality, in Lira District and other property which were mentioned during the trial but not resolved by the learned trial judge lodged this appeal.

- The respondent's counsel submitted that the first ground of appeal is in respect of the \$15\$ property situated at Plot No. 24, Awangemola Road, Lira since the only orders sought in the appeal was to find that the property does not form part of the estate of the deceased. The second ground of appeal is in respect of other property which were mentioned during the trial and not even considered by the Trial Judge.
- The respondents counsel urged the court to apply its duty to review the evidence and \$20\$ determine for itself whether the conclusion reached on the evidence by the learned trial judge should stand in respect of Plot 24, Awangemola Road, Lira and, whether the learned trial judge did not err by leaving out other property that were disclosed at the hearing and never brought in issue/in dispute.
- The respondent's counsel submitted that the learned trial judge did not err to hold that \$25\$ the property on Plot 24 formed part of the Estate of the late Sylvester Ejon. He submitted that property ownership was not based on theories. Secondly, the respondent's marriage certificate was authentic and proved in evidence. Applying for letters of administration did not mean that the respondent was going to personally acquire the estate property.
- Secondly, if the appellant now claims that Plot 24, like other properties, the deceased's \$30\$ name was on the certificate of title. There is no evidence that the appellant or children were involved in the transaction of acquisition of the property unlike others where agreements of sale were witnessed by the appellant or her children.

The respondent's counsel further submitted that occupation of property per se does not confer legal title to it. For instance, even the deceased occupied and received rent from 35

- this property before his death just like the appellant was doing at the time of the hearing. ⁵ The difference was that the certificate of title is in the names of the deceased. The fact of the children of the deceased with the appellant keeping the certificate of title did not lead to the inference that the property belonged to them or the appellant. Counsel submitted that a father can entrust a child with important documents for land, cars, and businesses
- but that does not mean the property belonged to the child. ¹⁰

The respondent's counsel submitted that the appellant had also submitted that the respondent never stepped on the property. But the appellant does not appreciate the fact that the respondent does not personally claim the property. What is being claimed is the estate of the deceased. He submitted that what matters is that the property is in the name of the deceased and the widow was entitled to administer it.

The respondent's counsel further submitted that the issue of separation does not affect the issue of the title to the property.

The respondent's counsel wondered why the appellant's daughter who claimed Plot 24 Awangemola Road did not file a suit alleging fraud against her late father when he was still alive to claim ownership or during the hearing of the main case, seek to be added as ²⁰ a party the moment she knew that her purported property was in dispute.

It was a conceded fact by both parties that the title is only registered in the names of the late Ejon Silvester. The trial Judge was alive to this fact. The respondent's counsel submitted that section 59 of the Registration of Titles Act is very clear on the conclusiveness of a certificate of title as proof of ownership. Such title can only be ²⁵ impeached on the grounds of fraud which was never pleaded or proved in court. What was only pleaded in the written statement of defence was that, the respondent was not legally married to the deceased. He prayed that the issue is answered in the affirmative.

On ground 2 learned counsel for the respondent raised a point of law to the effect that these properties the subject matter of the second ground were never in issue at the trial. ³⁰ They can therefore not be raised on appeal. He relied on the decision of Justice Oder JSC, in SCCA No. 33 of 1992 *Interfreight Forwarders (U) Limited v East African Development Bank* that:

¹⁵

A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings.

Another reason for departure from the findings of the learned Principal Judge is that the issue whether the Defendant was a common carrier was not included in the issues framed by agreement at the trial of the suit.

The respondent's counsel submitted that the issue ownership of the properties was never \$10\$ for determination at trial because the parties did not even plead them. The courts should only restrict themselves to what the parties dispute. He prayed that the court upholds the finding of the learned trial judge and dismisses the appeal with costs.

In rejoinder the appellant's counsel submitted that this was a partial appeal i.e. it concerns one of the properties at Plot 24 Awangemola Road, Lira Municipality and secondly, \$15\$ property that should ordinarily be estate property was converted and left out. He reiterated submissions on Plot 24, Awangemola Road, Lira.

Consideration of the appeal

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We have carefully considered the appellants appeal as contained in the grounds of appeal, the record of appeal, the submissions of counsel and the law generally. It is clear from the \$20\$ grounds of appeal that the matter in question in this appeal relates to whether certain properties belong or do not belong to the estate of the deceased (Sylvester Ejon). The proceedings in the High Court commenced by way of an application for letters of administration, a caveat and a suit filed to remove the caveat. The prayers of the appellant

in the memorandum of appeal clearly indicate that the appellant only seeks an order to \$25\$ reverse any errors in the judgment of the High Court and find that the property situated at Plot No 24 Awangemola Road Lira "constructed, occupied and utilised by the appellant and her children does not form part of the estate of the late Sylvester Ejon". Ground two of the appeal is superfluous in the sense that it deals with the issue of evaluation of evidence on record and asserts that: "the learned trial judge erred in law and fact when 30 he did not properly read the evidence on record and thereby leaving out other property of the estate and thus arriving at an incorrect conclusion." Ground two does not specifically indicate the property that was left out.

The plaint in the trial court was filed by the respondent seeking orders to vacate a caveat lodged by the appellant, for grant of letters of administration according to the application, 35 for a permanent injunction against the appellant, her agents and worker stopping her from intermeddling with the estate of the deceased, payment of general damages and Decision of Hon. Mr. Justice Christopher Madrama Izama Tungkilly maaimum 735800untyx 2018 dide MONER 09 IPPEAL

- costs of the suit. The prayers in the plaint were for vacation of the caveat, the grant of \$\mathsf{S}\$ letters of administration to the plaintiff/respondent to this appeal, payment of general damages by the defendants/appellants to this appeal, permanent injunction against the defendant/appellant to this appeal, her agents and co-workers, an order for an account for the said property held by the appellant and for costs of the suit. In the written

- statement of defence, the defendant who is the appellant in this appeal, denied the \$10\$ allegations in the plaint and averred that the plaintiff was not the lawful wife of the deceased. She prayed that the suit is dismissed with costs. It is further stated by the learned trial judge in the judgment that the plaintiff listed 15 properties in her petition as constituting part of the estate property. Secondly, at the scheduling conference between
- the parties, it was agreed that the bulk of the listed items form part of the estate of the late Sylvester Ejon save for certain properties which were listed and which became the bone of contention between the parties. This includes Plot No 24 Awangemola Road Lira Municipal Council. Secondly, a semi-permanent residential house at Baragole – Wigweng Village, a commercial building situated at Aduku Township, a semi-permanent residential building situated at Obanga Pe - Wany, a Land Cruiser Prado. The learned trial judge went \$20\$
- ahead to list three issues as:
- 1. Whether the properties not agreed upon form part of the estate of the late Sylvester Ejon.
- 2. Whether the plaintiff and the defendant were married to the deceased.
- \$25\$
- 3. Remedies available to the parties.

This appeal revolves on the first issue as to whether the properties not agreed upon form part of the estate of the deceased. The learned trial judge found that certain properties do not form part of the estate of the deceased. He however held inter alia that the property at Plot 24 formed part of the estate of the deceased. This is the basis of the 30 appellant's appeal to this court on the first ground of appeal as to whether the learned trial judge erred in law and fact when he held that the property situated at Plot 24 Awangemola Road Lira Municipality belongs to the estate of the deceased and not the appellant and her children.

Ground two of the appeal was whether the learned trial judge erred in law and did not 35 properly evaluate the evidence by leaving out certain property of the deceased and arriving at an incorrect conclusion. The second ground of appeal therefore also deals with whether certain property belonged to the estate of the deceased.

- As a matter of law, the pleadings in the lower court deal with the issue of whether the \$ \mathsf{S} \$ petitioner for letters of administration was entitled to obtain letters of administration after a caveat was lodged by the appellant against the grant. The above notwithstanding, the learned trial judge vacated the caveat lodged by the defendant/appellant. Secondly, the learned trial judge held that letters of administration would be granted jointly to the

- children of the deceased. The three intended administrators are to be decided upon by \$10\$ the respective families comprising a child of each of the three wives of the deceased including the parties to this appeal. If the family fails to do so, the letters of administration of the estate will be granted to the Administrator General. Each party was to bear its own costs of the suit.
- The powers of an appellate court under section 80 of the Civil Procedure Act are stated \$15\$ as follows:

80. Power of appellate court.

- (1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power-
 - \$20\$ (a) to determine a case finally;
 - (b) to remand a case;
 - (c) to frame issues and refer them for trial;
 - (d) to take additional evidence or to require such evidence to be taken;
 - (e) to order a new trial.
- \$25\$ (2) Subject to subsection (1) the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted in it.

The power **inter alia** includes the power of the trial court to determine a suit finally. We agree with the respondent's counsel that every suit has to be determined on the basis of the pleadings which gives rise to the controversies for trial. Secondly, issues for determination by the learned trial judge should arise from the pleadings and not from claims extraneous to the pleadings. A decision that does not arise from a controversy framed from pleadings, has no basis in law and can only be possible if there is or was an amendment to the pleadings. It is therefore incumbent upon this court to set out the procedure for determining issues for trial and for decision of the court. These basic rules 35

are stipulated in the Civil Procedure Rules. Order 4 rule 2 of the Civil Procedure Rules \$ \overline{\{5\}} \$ provides that every pleading shall comply with the rules contained in Order 6 and 7 of the rules as far as are applicable.

The applicable rules include Order 7 rule 1 of the Civil Procedure Rules which *inter alia* provide that the plaint shall indicate the facts constituting the cause of action and when it arose; the facts showing that the court has jurisdiction; the relief which the plaintiff \$10\$ claims etc. A cause of action must include a claim of right as against the defendant, an allegation that the right of the plaintiff has been violated and that the defendant is liable (see *Auto Garage v Motokov* (1971) EA 514). The Supreme Court of Uganda in *Attorney General v Tinyefunza Constitutional Appeal No 1*

of 1997 defined a cause of action in the judgment of Wambuzi, C. J at pages \$18 - 19\$ as:

\$15\$

On the authorities referred to us, I find useful the definition given by Mulla on the Indian Code of Civil Procedure, Volume 1, and 14th Edition at page 206. The learned author says:

A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts \$20\$ which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but every fact necessary for the plaintiff to prove to enable him to obtain decree. \$25\$ Everything which if not proved would give the defendant a right to an immediate judgment must be part of the cause of action. It is, in other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.

Where the claim or the defence and the material facts in support of each are stated in the pleadings of the parties, then the framing of the issues for resolution of the controversy would arise from the pleadings under Order 15 rule 1 of the Civil Procedure Rules. \$30\$ Similarly, judgment only arises from each issue that in turn arose from the pleadings. Order 15 rule 1 provides that:

> (1) Issues arise when a material proposition of law or fact is affirmed by one party and denied by the other.

35 (2) Material propositions are those propositions of law or fact which the plaintiff as alleged in order to show a right to sue or a defendant must allege in order to constitute a defence.

> (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

Decision of Hon. Mr. Justice Chirlist Opher Madrama Izama Tungally maximum 735 Beautyx 2019 state ITOPHER COURT 07 IPPEAL

\$\overline{5}\$ A reading of Order 15 rule 1 of the Civil Procedure Rules goes on to demonstrate that there are two kinds of issues; namely, issues of fact and issues of law. A controversy for trial is a proposition of law or fact which is affirmed by one party and denied by the other. Order 21 rules 4 and 5 of the Civil Procedure Rules provide for the contents of a judgment and a decision on each issue in the following words:

\$10\$ 4. Contents of judgment.

Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision

5. Court to state its decision on each issue.

In suits in which issues have been framed, the court shall state its findings or decision, with the reasons for the finding or decision, upon each separate issue, unless the findings upon any one or more of the issues is sufficient for the decision of the court.

Because issues arise from the pleadings, and each party is bound by his or her pleadings, the court was only required to pronounce itself on each issue arising from the pleadings in terms of Order 15 rule 1 of the Civil Procedure Rules. The matter before the court was

- for determination of the appropriate person entitled to apply for letters of administration to the estate of the deceased. On the other hand, the claims of the parties to certain property as against the claims of the estate of the deceased require a full trial involving an administrator of the estate and parties who are adversely claiming the property. What was in court is entitlement to letters of administration and not a suit relating to which
- property belonged to the estate and which one did not. Furthermore, the question of whether any property was held in trust for some of the children by the deceased could not be determined in the administration cause. There is an apparent conflict of interest between persons asserting that the property is individual property owned by the claimants as against the estate sought to be administered. The potential administrator of
- the estate is duty bound to collect all the assets of the deceased and deal with it in accordance with the Succession Act.

Suffice it to refer to in a few salient sections of the Succession Act. Letters of administration upon grant by the court have the effect of entitling the administrator so appointed to all rights belonging to the intestate under section 192 of the Succession Act:

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.

It is therefore the purpose of the law to confer upon the administrator all the rights that belonged to the intestate with effect from the date after the death of the deceased. If it is a right to property, it is by operation of law. The question of which property belonged

- to the deceased is a separate matter that can only be dealt with by the administrator of the estate when fulfilling his or her duty to collect the property of the estate and file an inventory thereof with court. The administrator can receive claims from any claimant including a claim of having a beneficial interest though property was registered in the names of the deceased as legal owner or trustee. Adverse claims to the property can

- become the subject of litigation in court between the administrators and the claimant or claimants. The adverse party is entitled to lodge his or her claims to the administrator of the estate and where the matter is contentious, it could be resolved in a suit brought by the administrator or the claimant against the administrator who represents the estate. This is made clearer by quoting sections 191 and 192 of the Succession Act Cap 162 laws of Uganda which provide that: \$20\$

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191. Right to intestate's property, when established.

Except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

\$25\$ 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.

No right to any part of the property of a person who has died intestate shall be established in any court of justice unless letters of administration have first been granted by a court

- of competent jurisdiction. The High Court had no jurisdiction to determine the right of any person as against the estate or that of the estate to any property without first having granted letters of administration to an entitled person. The question of whether the property belonged to a child of the deceased or to the deceased is a question of fact that needed to be determined after letters of administration have first been granted and after
- the administrator has been made a party to the cause. Moreover, the question before the court arising from the pleadings was who was entitled to grant of letters of administration but not who was the owner of the property. In any case, such questions had to be
- determined by the administrator or as against the administrator of the estate of the deceased in a separate action. The vesting of the property of the deceased in the administrator is by operation of law. The question of whether any property belongs to the estate of the deceased is a question of fact which can be determined after grant of letters of administration

- The law vests legal title of the estate property in the appointed administrator in the \$10\$ character of the trustee liable to distribute the estate to the lawful beneficiaries in accordance with the law. The administrator of the estate of a deceased person is a trustee who holds property in trust for those entitled under the Law of Succession. The entitled persons are the creditors to the estate, the beneficiaries stipulated in a will in case of \$15\$ testacy or the beneficiaries under the law of intestacy where there is no will. Section 25 of
- the Succession Act specifies that the administrator holds the property in trust for the beneficiaries:
- 25. Devolution of property of a deceased dying intestate.

\$20\$

\$25\$

All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.

The law specifically provides for who entitled persons are. It *inter alia* stipulates that an administrator or executor shall settle the debts of the testator or intestate as the case may be and distribute the residue of the estate to those entitled to it. Property in the names of the deceased and which is supposed to be conveyed to a person claiming the same, falls in the category of a claim against the intestate's estate. The person claiming can be classified as a creditor or beneficiary to a trust arrangement who is owed the transfer of

- the property by the administrator upon proof that the person claiming is entitled. Otherwise, where there is controversy as to whether the property belongs to the claimant or to the estate, the matter should be resolved as an independent suit with the administrator of the estate as one of the parties. It is not resolved in the administration 30
- cause, which concerns issues that are to do with the appointment of an administrator of the estate. In fact, as noted above, under section 191 of the Succession Act, no right to the property of an intestate shall be proved in a court of law without grant of letters of administration. The issue of who is the rightful owner of the property cannot be litigated
- without the appointment of an administrator in whom the estate should vest by operation 35 of law.

The Succession Act further provides for caveats against grant of probate or administration \$ \mathsf{S} \$ and the procedure for dealing with such contentious matters. A caveat may be lodged against the grant of probate or letters of administration according to section 253 of the Succession Act. The outcome of the caveat and proceedings thereunder is either the refusal of the grant or a suit to determine entitlement to the grant. Section 265 of the Succession Act provides for the procedure in contentious matters as follows: \$10\$

265. Procedure in contentious cases.

\$15\$

\$20\$

In any case before the High Court in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the law relating to civil procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared to oppose the grant shall be the defendant.

It is apparent from section 265 of the Succession Act that the contention in relation to the application for letters of administration by way of the caveat was to be resolved by proceedings as nearly as possible, in the form of a regular suit with the petitioner for probate or letters of administration being the plaintiff and the caveator being the defendant. In the circumstances, the outcome of the proceedings should have been the grant or refusal of the grant of probate or letters of administration.

In the premises, the pleadings of the parties are clear as to what the issues for resolution by court in the administration cause ought to have been and issues set out by the court related to entitlement to letters of administration. The listing of contentious properties

ought to have remained a matter for determination after letters of administration have \$25\$ been granted vesting the property in the administrator of the estate who has the authority and duty to collect the property of the intestate and the power to sue or be sued on behalf of the estate in relation to any claims for or against the estate.

According to Philip H. Pettit in *Equity and the Law of Trusts*, Fourth Edition London

- **Butterworths 1979**, a trust is a right of property held by one person called the trustee for the benefit of another person, the *cestui que trust* or beneficiary. It is an obligation under which a person to whom property is confided is bound in equity to deal with the beneficial interest in such property in a particular manner in favour of a specified object or class of objects or *cestui que trust*.
- 35 Under the Trustees Act Cap 164, word "trust" is defined under section 2 (r) thereof as:
- $\$ \text{trust} \$$ "trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of a personal representative, and "trustee" where the context admits includes a personal representative, and "new trustee" includes an additional trustee

- Case law classifications of types of trusts include express, statutory, implied, resulting and \$10\$ constructive trusts. Resulting trusts are legal presumptions where an intent to create a trust is presumed by the person who buys property in the name of another. The property is deemed to be held in trust for the purchaser. The purchase of property in the name of another may be presumed as held in trust for the purchaser. Transfer of property to
- another which leaves the equitable property undisposed is subject to the equitable \$15\$ interest of the beneficiary. Where property is bought in the names of children for purposes of hiding it, it is liable to be traced under the anticorruption laws of Uganda. In other words, the issue of whether the property held by the deceased was the subject of unwritten equities can be litigated and ought not to have been resolved in the administration cause. \$20\$
- In the premises, this court cannot superimpose another decision which would affect the rights of parties not before the court such as any claimant or *cestui que trust* claiming Plot 24 Awangemola Road Lira Municipality. The determination that the property formed the part of the estate of the deceased, was without jurisdiction since letters of administration had not yet been granted and the affected or alleged *cestui que trust* were \$25\$ not parties to the suit. On that ground alone, ground one of the appeal has merit. This court cannot determine to whom the property belongs.

The decision of the High Court as to what forms part of the estate of the intestate is hereby set aside. For the same reason ground two of the appeal cannot be determined because the issue of appointment of an administrator should first be resolved. The issue 30 was resolved by the High Court holding that each of the widows and her children should appoint one person and all the three persons so appointed shall be granted letters of administration. If the parties fail to appointment three persons who are to be granted the letters of registration, letters of administration shall be granted to the Administrator

General for administration of the estate by the Administrator General. 35

In the premises, ground one of the appellant's appeal partially succeeds on ground of want of jurisdiction of the High Court to make a determination as to who owns what

property as against the estate of the deceased before grant of letters of administration to \$ \mathsf{S} \$ the estate of the intestate as stipulated by section 191 of the Succession Act.

The matter is referred back to the High Court to continue with the process of enforcing the order of court on appointment of the three persons or the Administrator General to be granted letters of administration.

The costs of this appeal shall be borne by the estate of the deceased. \$10\$

Dated at Kampala the day of August 2019

Christopher Madrama Izama

- Justice of Appeal \$15\$

Ruling delivered in the presence of:

Decision of Hon. Mr. Justice Chills 10 pher Madrama Itama Taughtly maximum 735800 until 1994
IN MIN COURT 07 IPPEAL

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Prepared on 13 October 2026 · Esheria