

UGANDA / JUDGMENT

Kaliyo & Another v Katungye & Another (Civil Suit 32 of 2022) [2023]

UGHCFD 183 (20 December 2023)

[2023] UGHCFD 183

COURT

HC: Family Division (Uganda)

BEFORE

Nagawa, J

CASE / FILE NUMBER

Civil Suit 32 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

CIVIL SUIT NO. 32 OF 2022

1. KALIYO ZAMZAM

2. TAYEBWA ASHLAF ::::::::::::::: PLAINTIFFS

VERSUS

1. KATUNGYE AHMED

2. KATABAZI ABBEY TUMUHIMBISE ::::::::::::::: DEFENDANTS

JUDGEMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction.

- 1.1 The plaintiffs Kaliyo Zamzam and Tayebwa Ashlaf instituted this suit against Katungye Ahmed and Katabazi Abbey Tumuhimbise praying for the judgement against the defendants jointly and severally for;

- 1. A declaration that the defendants have failed to properly and fully administer the estate of the late Tayebwa Badru Kaliyo.
- 2. An order for revocation of the Letters of Administration for the estate of the late Tayebwa Badru Kaliyo.
- 3. An order for grant of Letters of Administration for the estate of the Late Tayebwa Badru Kaliyo to the Plaintiffs.
- 4. A permanent injunction restraining the defendants from undertaking any dealings with the estate of the late Tayebwa Badru Kaliyo.
- 5. General Damages
- 6. Costs of the suit.

- 1.2 The defendants filed a defence and a counterclaim seeking the following orders.
- 1. A declaration and an order that the 1st counterclaimant is entitled to recovery of UGX 168,300,000/= (One Hundred Sixty Eighty Million Three Hundred Only) out of the estate of the late Tayebwa Badru Kaliyo as balance of his share from the land sold to Crown Beverages by the 1st counterclaimant and the deceased for land comprising of Busiro Plots 917, 923 and part of 925.
- 2. An order directing the counter defendants to account for all the mismanagement of the deceased's estate.
- 3. A permanent injunction restraining the 1st and 2nd Counter Defendants from further mismanagement of the affairs of the estate of the late Tayebwa Badru Kaliyo.
- 4. A declaration that the 1st and 2nd Counter defendants are liable for intermeddling with the estate of the late Tayebwa Badru Kaliyo, when they acted without powers and changed the directorship and secretary, and made the 1st counter defendant a sole signatory to the company bank accounts, withdrew all the moneys thereon, in total disregard of the 80% majority shareholding by the estate of the late Tayebwa Badru Kaliyo.
- 5. General damages
- 6. Interest
- 7. Costs of this suit.
- 1.3 **Representation**

1.4 The plaintiffs were represented by Mr. Kenneth Tumwebaze *(as he then was)* and upon his appointed as a Judicial Officer they were represented by Mr. Steven Kalali while the defendants/ counter-claimants were represented by Mr. Mukasa Charles. The 2nd Plaintiff did not participate in this hearing. The 1st Plaintiff and the defendants filed sworn witness statements. Their counsel filed written submissions although the defendants filed out of the scheduled timelines. I have considered all pleadings and written submissions in determination of this suit.

2.0 Background of the Suit.

- 2.1 The 1st plaintiff is a widow of the Late Tayebwa Badru Kaliyo and mother of the 2nd Plaintiff. The Late Tayebwa Badru Kaliyo died intestate on 18th June, 2021. The 2nd Plaintiff is a son of the deceased. Both the plaintiffs and defendants petitioned for and were granted Letters of Administration on 2nd December, 2021. The defendants are the deceased's brother and brother-in-law. The deceased left behind 6 children aged between 18- 2 years old. The plaintiffs brought this suit against the defendants for revocation of Letters of Administration, a declaration that the defendants have failed to properly and fully administer the estate of the late Tayebwa Badru Kaliyo, an order for grant of letters of administration to the plaintiffs, a permanent injunction, general damages and costs of the suit.
- 2.2 On their part, the defendants claimed that the plaintiffs intermeddled with the estate of the deceased. They averred that

at the time the grant was obtained, the Plaintiffs had on their own volition and without the knowledge of the 1st and 2nd defendants as co-administrators processed title for the untitled land in Kakanzu Bushenyi Town Council which had eucalyptus trees and registered it in the names of the 1st plaintiff. The defendants also claimed that before the grant of the Letters of Administration, the plaintiffs without quorum changed the directorship of Cream Land Junior School where the 1st plaintiff was the Company Secretary with a minority shareholding of 20%. She appointed herself as the director, secretary and sole signatory of the company's bank accounts. The defendants averred that the 1st Plaintiff appointed the 2nd Plaintiff as a director, withdrew all the funds from the company account and converted it for personal use and failed to account for the dealings which actions amount to intermeddling and/ or mismanagement of the estate property.

- 2.3 The defendants filed a counterclaim stating that on 19th October, 2020 and 31st May, 2021, while the deceased was still alive, both him and the deceased sold land comprising Busiro Block 411, Plots 411, Plots 917 and part of 925 to Crown Beverages Limited at UGX 700,000,000/= (Uganda Shillings Seven Hundred Million) measuring approximately 2.5 acres (250 decimals) each decimal sold at 2,800,000/=.

- 2.4 That out of the 250 decimals the 1st Counterclaimant owned Plot 923 which had 122 decimals amounting to UGX 341,000,000/=. Upon purchase the entire sum was deposited onto the deceased's account and out of his share he only

received 173,300,000/= and remained with a balance of UGX 168,300,000/=. The money was paid in two deposits, the first of UGX 61,870,000/= and UGX 111,430,000/= was paid by the Plaintiff, he therefore claims a balance of UGX. 168,300,000/= which the counter defendants have declined to pay and instead have resorted to threatening his share by preferring a suit to scare him off.

3.0 Evidence of the Parties.

3.1 Plaintiff Evidence.

- 1. A copy of her marriage certificate in evidence of her marriage to the deceased marked "PEX 1".
- 2. A certificate of incorporation for Cream Land Junior School Limited marked "PEX 2".
- 3. A Board Resolution for CreamLand Junior School Limited marked "PEX 3".
- 4. A Certificate of No Objection marked "PEX 4".
- 5. A grant of Letters of Administration marked "PEX 5".
- 6. The Request for Registration as Administrators of the Estate on the suit property comprised at Busiro County, Block 411 Plot 85 identified and marked "PD1".

3.2 Defendants/Counterclaimants Evidence.

- 1. A grant of Letters of Administration for the estate of the Late Tayebwa Badru Kaliyo.
- 2. A copy of statement of search conducted for land comprised at Ruhandagazi Igara Block 1, Plot 295A marked "DEX 1".

- 3. A Board resolution were the 1st plaintiff was appointed as the sole signatory for the bank accounts of Creamland Junior School "DD 1".
- 4. The Land Sale Agreement and its addendum were the deceased sold land comprised in Block 411 Plots 917, 923 and part of 925 to Crown Beverages Limited for the sum of UGX 700,000,000/= marked "DEX 2&3".
- 5. A copy of the bank statements evidencing receipt of the payment marked "DEX 4".

4.0 Issues to be determined by this Court.

- 1. Whether there is mismanagement of the Estate property and if so who is responsible?
- 2. Whether the suit discloses a cause of action against the defendants?
- 3. Whether the Letters of Administration should be revoked?
- 4. Whether the plaintiffs intermeddled with the Estate of the late Tayebwa Badru Kaliyo?
- 5. Whether the 1st defendant is entitled to UGX 168,300,000/= as per the counter claim?
- 6. What remedies are available to the parties?

5.0 Burden and Standard of Proof.

5.1 The Plaintiff by virtue of *Section 101, 102, 103 & 106 of the Evidence Act* has the burden of proving the facts alleged in the Plaint on the balance of probabilities. The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

- 5.2 Section 103 of the Evidence Act provides; *"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 the proof of that fact shall lie on any particular person."*
- 5.3 Section 106 of the Evidence Act provides; *"In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that act is upon that person".*

6.0 Determination of Court.

The issues will be resolved not in a particular order as framed.

Issue No. 2: Whether the suit discloses a cause of action against the defendants?

- 6.1 Counsel for the plaintiffs submitted that, for a suit to disclose a cause of action, the plaintiff must prove that there existed a right, it was violated and the defendant is liable. He cited the authority of *Auto Garage V Motokov (No.3) (1971) EA 514*. He contended the suit before the court clearly lays down the averments that whereas the plaintiffs and defendants were granted Letters of Administration, the defendants have with utter impunity neglected to participate in the affairs and management of the Estate of the late Tayebwa Badru Kaliyo thereby making the grant inoperative to the prejudice of the beneficiaries.
- 6.2 Furthermore, the plaintiffs contended that the defendants refused to cooperate as regards registration for property comprised in Busiro Block 411 Plot 825 (Wakiso District) and

that the defendants themselves admitted this fact during cross-examination. Against that background, with evidence and submissions presented by the plaintiffs they have sufficiently shown that there is a cause of action.

6.3 On his part, counsel for the defendants equally cited **Auto Garage Vs Motoko (supra)** and submitted on the fiduciary position of the administrators to the trust property and beneficiaries relying on the case of **Boardman & Another Vs Phipps (1966) WLR 1009**. He cited scenarios where the Plaintiff transferred land at Ruhandagazi Igara Block 1 Plot 295A which forms part of the estate before being appointed an administrator and appointing the 2nd Plaintiff as a company secretary without informing the co-administrators. He contended that the suit is merely a cover up of the possible actions of intermeddling and mismanagement of the estate. According to the defendants, they had not violated any lawful right of the plaintiffs. The defendants' failure to execute their obligations as administrators was majorly attributed to the unbecoming conduct of the 1st Plaintiff who before acquisition of the grant had a motive of having the estate property as her personal property.

Determination.

6.4 Both parties are administrators of the estate of the deceased. An administrator acts as the personal representative of the deceased upon trust for those persons entitled to the property under the Act. **(Section 25 of the Succession Act, as amended)**

Once a grant is issued by court, the administrator becomes the deceased's legal representative for all purposes. **(See Section 180 of the Succession Act)** As such, he or she is duty bound to administer the estate on behalf of the beneficiaries. In so doing, he or she must at all times comply with the laws governing the administration of the estate.

- 6.5 During trial while cross-examining DW1 he testified that *"his duties as administrators is to protect the estate of the deceased, to sit down as administrators and identify the beneficiaries to enable the administrators to distribute the estate. File an inventory in courts of law, in regard to the estate of the deceased, he has proof that he has not executed the duties of the estate, the example he availed is that he has never filed an inventory to this Honorable Court. He has not distributed any estate, at the time of the demise of the deceased, there were no dependent relatives but the brother left behind beneficiaries and these were his children".**
- 6.6 This evidence is corroborated with the DW2 testimony. DW2 testified that **he is an administrator of the estate of the late Tayebwa Badru Kaliyo, he petitioned for the grant of letters of administration, and as an administrator one of his obligations is to act in the best interest of the beneficiaries and since the grant was issued he has never signed any document in regard to filing an inventory or distribution of the properties to the rightful*

beneficiaries, in addition he has never executed any other document as joint administrator in regard to the said estate.*

- 6.7 The defendants filed a counterclaim to wit they claimed intermeddling with the estate and mismanagement of the property of the deceased, failure to account for 80% shareholding of the company dividends and the unpaid balance of UGX. 168,300,000/=.
- 6.8 As administrators, the plaintiffs hold all rights and responsibilities including suing on behalf of the estate where the process of its management is being delayed or hindered by a party to the estate including fellow administrators. I therefore, find that the suit discloses a cause of action against the defendants.

7.0 Issue No. 4: Whether the plaintiffs intermeddled with the Estate of the late Tayebwa Badru Kaliyo?

- 7.1 The 1st plaintiff submitted that she has at all times been an administrator of the estate of the deceased Tayebwa Badru Kaliyo and no evidence has been led by the defendants to show that the plaintiffs ever mismanaged or dealt with any estate property without the grant or before obtaining the grant.
- 7.2 On the other hand, the defendants submitted that, the 1st plaintiff's actions of unlawfully converting and or transferring estate land into her personal property comprised in Block 1 Plot 295A Ruhandagazi Igara, is in no doubt an act of intermeddling with the estate. The 1st plaintiff in reexamination, claimed to have owned the said land jointly with her late husband, yet she listed the same property in the petition for the grant as the deceased's estate.

7.3 During cross examination the 1st Plaintiff claimed that the said land was a gift from her late father to her and the deceased, then a gift from her late husband, which they find to be misleading. No evidence was produced by the 1st plaintiff in respect to these allegations and despite absence of evidence, she appeared determined to continue holding onto the same and not willing to revert it to the estate.

Determination.

7.4 Section 191 of the Succession Act provides that *'...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'* Section 268(2) of the Succession Act (as amended) states that; "A person is taken to intermeddle with the estate of a deceased person where that person, while not being the Administrator General, an agent of the Administrator General or a person to whom probate or Letters of Administration have been granted to by court — (a) takes possession or disposes of the property of a deceased person; or (b)

does any other act which belongs to the office of executor or administrator." In **Namirimu v Mulondo & 2 Others (High Court Civil Suit 27 of 2011) [2014] UGHCFD 48 (23 December, 2014)** Court defined intermeddling to include assuming authority to administer the estate of another when a person does not have such authority.

- 7.5 The 1st plaintiff and co-administrators obtained Letters of Administration on 2nd December, 2021 and the 1st plaintiff was registered as the registered proprietor of the suit property on 15th December, 2021. Intermeddling means that a person without powers of an administrator or executor acts as though he has the powers to administer that estate. In this regard, relying on the statement of search "DEX1" *(search report)* presented by the defendants, it is clear that at the time of the registration under Instrument No. MBR-00044324, on the 15th December, 2021, the Plaintiffs along with the defendants had obtained of Letters of Administration for the estate of the deceased and therefore by the very definition of the term intermeddler under **Section 268**, the 1st plaintiff could not have intermeddled with the estate. I take note that the 1st Plaintiff did not act according to the provisions of Section 272 of the Succession Act (as amended).
- 7.6 In this regard, the court finds that the 1st plaintiff did not intermeddle with the estate of the deceased.

8.0 Issue 2. Whether the Letters of Administration should be revoked?

8.1 Plaintiffs Submissions

- 8.2 Section 234 (2) (d) of the Succession Act, Cap. 162 provides that the grant of letters of probate or letters of administration may be revoked or annulled for just cause.
- 8.3 Section 234 (2) provides; In this section, "just cause" means

- a) That the grant has become useless and inoperative through circumstances; or
- b) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.
- 8.4 The 1st Plaintiff testified that they obtained letters of administration jointly with the defendants and as a beneficiary to date the estate has never been administered. Since issuance of the grant, the defendants have been uncooperative, never executed any documents or distributed the estate as would be required by law and have endlessly pressurized the 1st Plaintiff to give them money through dubious claims that they demand the estate money, which fact the defendants admitted during cross examination that they have never filed an inventory nor distributed the estate, neither have they executed any documents on behalf of the estate and yet they knew their role as administrators

- 8.5 During cross examination, the defendants affirmed that the 1st plaintiff is a widow, she has custody of the beneficiaries and she has taken full care of the beneficiaries who are the biological children of the deceased. Other than the number of children, DW1 was not sure of all the names of the biological children of the deceased nor the schools that they attended.
- 8.6 According to the plaintiffs the defendants fell short of their duties as administrators of the estate.

- 8.7 In reference to the petition for the Letters of Administration, the deceased left behind land comprised in Busiro, Wakiso District Block 411 Plot 825 measuring approximately 0.1000 hectares, the defendants declined to sign on the application to be registered as Administrators clearly against the interests of the beneficiaries and as defendants they have never signed any document to the estate.
- 8.8 The parties due to their differences failed on the provisions of Section 278 (1) of the Succession Act.
- 8.9 The plaintiff prayed that the grant be revoked and a fresh one be granted to them to avoid greatest hardships that may be caused by maintaining the defendants on the grant who are not beneficiaries therein to the estate had have since proved to be putting their self-interest at the fore front than those of the beneficiaries.

8.10 The defendants' submission.

- 8.11 The defendants submitted that if there is any party who should be subjected to a revocation of letters, then it is the plaintiff. They relied on Section 234 (2) (d) of the Succession Act and cited the case **HCCS No 44 of 2020 Gladys Vs Sebuluguse Henry** *(court noted that this case was never availed for reference)*.
- 8.12 That the conduct of the 1st plaintiff in refusing to convene meetings or declining to have the affairs of the estate unrecorded or documented, is a clear indication that she is not willing to execute her obligations as an administrator despite being one of the beneficiaries. Some of the beneficiaries are still

minors and with the greed so far exhibited by the 1st plaintiff, she will not manage the estate.

- 8.13 Both parties were made aware of their duties and obligations upon grant of Letters of Administration. It was DW1's evidence that they held meetings as administrators but all could be frustrated by the attitude and conduct of the 1st plaintiff.

- 8.14 Since no evidence whatsoever had been adduced by the plaintiffs to warrant a revocation of letters of administration. Instead, court should issue out stringent conditions on how to expeditiously distribute the estate and to ensure that each of the beneficiaries is accorded his or her lawful share of the estate and prayed that court finds this issue in negative.

Determination of Court

- 8.15 The administration of the estate commences with the appointment of the administrators and ends when the last asset of the estate has been distributed to the beneficiaries. The defendants as administrators of the estate of the late Tayebwa Badru Kaliyo had an obligation to distribute the properties of the estate amongst the beneficiaries and to exhibit in the court an inventory.
- 8.16 When the deceased has died intestate, those who are connected with the deceased either by marriage or consanguinity are entitled to obtain Letters of Administration of his estate. (Section 201 of the Succession Act).
- 8.17 Section 201A (1) the surviving spouse shall have preference over any other person in the administration of the estate of a

deceased intestate. (See **Christine Male Verses Sylifiya Mary Namanda & Another** [1982] HCB 140).

8.18 Considering Section 234 (2) (d) and (e), there is evidence that the parties have never filed neither a full and true inventory nor a true account of the properties of the estate of the late Tayebwa Badru Kaliyo as they undertook in the administration bond. It is also evident that the grant has become useless and inoperative. In that regard, on the adduced evidence and authorities, it is my finding that there exists a just cause for revocation and/or annulment of the grant of Letters of Administration of the Late Tayebwa Badru Kaliyo's estate to the defendants.

Issue (2) is therefore answered in the affirmative.

9.0 Issue No.1: Whether there is mismanagement of the Estate Property and if so, who is responsible?

- 9.1 According to the plaintiffs, the defendants alleged that the 1st Plaintiff appointed the 2nd plaintiff (her son) as a Secretary to the company of Cream Land Junior School Limited and submitted that the law is clear in stating that a director of a company can appoint a secretary since the co- director had died, the 1st plaintiff remained the sole director of the company.

- 9.2 Counsel for the plaintiffs further stated that under **Section 187 (2), 188 and 190 of the Companies Act 2012 as amended and Regulation 110 (1) of Table A to the Companies Act 2012**, that it goes without saying that Company Matters are different and governed by different laws to wit the Companies Act and a company can never be regarded

as an estate property to contend mismanagement since it is distinct in personality.

- 9.3 That none of the defendants led any evidence to prove mismanagement. That the defendants adduced evidence of resolutions of the alleged mismanagement of the school. However, during cross examination, the 1st defendant/counterclaimant admitted to this court that these resolutions were made during the lifetime of the deceased and therefore could not be evidence of mismanagement of his estate.
- 9.4 The plaintiffs contended that they led evidence in proof of the fact that the defendants, without just cause, refused to sign on documents seeking to change the title or proprietorship of the suit property to allow for distribution. A fact that was admitted to at the trial.
- 9.5 On their part, the defendants submitted that the plaintiffs had a fiduciary duty towards the estate of the deceased and the actions of the 1st plaintiff amounted to mismanagement of the estate. It was undisputed on the court record that even before the 1st plaintiff obtained Letters of Administration, she had illegally processed a conversion and transfer of the land at Ruhandagazi Igara Block 1 Plot 295A into her names which land was initially unregistered and belonged to the deceased's estate.

Determination.

9.6 Administration is the management and settlement of the estate of an intestate decedent, or of a testator who has no executor,

by a person legally appointed and supervised by the court. **Black's Law Dictionary Eighth Edition at page 113**. By its very definition, it is seen that administration of an estate fully entails the entrustment of the person known as the administrator to manage this estate in the absence of its owner who would have had the duty to manage and distribute it.

- 9.7 The scope of mismanagement of the estate begins at the point where one receives the duty to administer the said estate, which in this case starts at the point where all the parties were granted letters of administration. One cannot mismanage an estate where they did not have a duty to manage. The mismanagement starts at the point where the duty of management was bestowed upon the parties and in this case it was on the 2nd December, 2022. Therefore any actions done by the 1st plaintiff before she obtained letters of administration cannot be labelled as mismanagement.

- 9.8 However, upon receipt of the Letters of Administration on the 2nd December, 2022, the 1st plaintiff was now under duty as an administrator and any actions she made thereafter regarding the estate can be found to fall under mismanagement. In this regard, the 1st plaintiff without the consent of the coadministrator, registered herself as the sole owner of the suit property at Ruhandagazi Igara Block 1 Plot 295A. This was done without due consideration of the 6 children of the deceased not even the co- administrators and I fault her.
- 9.9 At the trial, the 1st plaintiff argued that the suit land was given to her and her deceased husband as a gift by her father first

and then by her deceased husband. She did not state that the transfer was made for the benefit of the entire estate or for the preservation of the estate yet it was declared estate property during the petition for letters of administration.

9.10 In this instance, the transfer of the suit land without the consensus of the other administrators or due consideration to all the beneficiaries amounts to mismanagement.

Failure to file and inventory

9.11 Section 278 (1) of the Succession Act, Cap. 162 provides that;

"*An Administrator shall, within six months from the grant of Letters of Administration, or within such further time as the Court which granted the Letters may from time to time appoint, exhibit in the Court an inventory containing a full and true estimate of a person to which the executor or administrator is entitled in the character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner to which they have been applied or disposed of".*

9.12 Upon grant of letters of administration, Section 278(1) immediately becomes an order that must be adhered to by the administrators. As administrators they were duty bound to distribute the estate and account for the same with the stipulated statutory period of time.

Administrators of the estate with Letters of Administration

9.13 The plaintiffs contended, that the defendants without just cause, refused to sign on documents seeking to change the title or proprietorship of the suit property to allow for distribution. In their refusal to sign documents which could lead to the very act of distribution, which the defendants committed to do by

applying for letters of administration, they committed the act of mismanagement.

- 9.14 The defendants might not be disposing of the estate property, nor improperly distributing it or using it to the exclusion of others, but their refusal or failure to distribute the estate by signing the documents that allow for the estate to be effectively administered amounts to the mismanagement of the estate, even as an action of omission.
- 9.15 In this regard, by the actions of the defendants, amount to mismanagement and render the grant of letters of administration useless and inoperative.

9.16 Mismanagement of the Company.

Regarding the company, Cream Land Junior School Limited, the defendants contended that 1st plaintiff without quorum changed the directorship of Cream Land Junior School where the 1st plaintiff was the Company Secretary with a minority shareholding of 20%. She appointed herself as the director, secretary and sole signatory of the company's bank accounts. The 1st Plaintiff appointed the 2nd plaintiff as a director, withdrew all the funds from the company account and converted it for personal use and failed to account for the dealings which actions amount to intermeddling and or mismanagement of the estate property.

9.17 It is a fundamental principle of law that a company is a legal person with its own corporate entity, separate and distinct from its directors or shareholders and with its own property rights and interests which it is alone entitled to.

- 9.18 The defendants/counter-claimants are not members or shareholders in the Company and if they were, it was not disclosed by the pleadings. No evidence was adduced as to whether the 2nd Plaintiff was allocated to shares at all. This means that they cannot bring an action for the mismanagement of the company by way of a derivative action, personal action or representative action. **See Foss versus Harbottle (1843) to Hare 461 and Salim Jamal versus Uganda Oxygen Ltd Civil Appeal No. 64 of 1995.**
- 9.19 I therefore find that the defendants did not adduce sufficient evidence on the mismanagement of the company.

10 .0 Issue No. 5: Whether the 1st defendant is entitled to UGX 168,300,000/= as per the counter claim?

- 10.1 The 1st counterclaimant contended that on the 19th October, 2020 and 31st May, 2021, while the deceased was still alive, both the counterclaimant and the deceased sold land comprising Busiro Block 411, Plots 411, Plots 917 and part of 925 at UGX 700,000,000/= (Uganda Shillings Seven Hundred Million) measuring approximately 2.5 acres (250 decimals) each decimal sold at 2,800,000/=. Of the 250 decimals the 1st defendant/counterclaimant had a total of 122 decimals amounting to UGX 341,000,000/=. That the entire purchase sum was deposited on the deceased's account and he only received 173,300,000/= and claims a balance of UGX 168,300,000/=.

- 10.2 In reply to this, the plaintiffs submitted that apart from the mere blanket sum of UGX 168,300,000/=, no evidence was led

by DW1 to prove that indeed the said sum was due to him by the deceased before his demise.

Determination.

- 10.3 Both parties petitioned for Letters of Administration on 28th September, 2021. In this petition the applicants were named as administer of the estate, the children of the deceased were named and so were his properties. DW1 even as one of the petitioners did not mention himself as a creditor of the estate to be paid and no evidence was led to quantify the cost of the decimals and the unpaid balance plus a reflection of the total paid sum of UGX. 700,000,000/= which sum had the cost of the caveator payment to lift the caveat.
- 10.4 DW2 was referred to defendant's trial bundle at page 26 at a bank statement reflecting the name Katabazi, confirming the Katabazi had received 110,000,000/= Million shillings on 1st June, 2021 and he denied that he had not and clarified that the bank statement was not part of his trial bundle and he denied knowledge of the bank statement.
- 10.5 The law of evidence is clear, it states that he who wishes the court to believe a fact alleged by him must provide proof as to that alleged fact. DW1 did not provide sufficient proof to the satisfaction of court to warrant judgment in his favour. He court declines to grant him the prayed entitled sum.

11.0 Remedies

11.1 General Damages.

Page 22 of 24 Both parties prayed for general damages. There is no evidence that either party has used the grant at the detriment of the

other. It is trite law that damages are the direct probable consequence of the act complained of. Such Consequences may be loss of use, loss of profit, physical; inconvenience, mental distress, pain and suffering. General damages must be pleaded and proved (**Moses Kizige Vs Muzakawo Batolewo [1981] HCB 66. In Assist (U) Ltd Vs Italian Ashalt & Haulage & another HCCS 1291 of 1999 (unreported)**) inconvenience was held to be a form of damage. In this case no award to general damages will be made since the defendants were mere volunteers to administer the estate.

Costs: This suit being a family matter relating to an estate, this court will not award costs to promote harmony among the parties however, on the counterclaim being partly of personal interests to the 1st Defendant he will meet costs that are awarded to the Counter defendants.

- 12.1 Consequent upon my findings above, I make the following declarations and orders;
- 1. The letters of administration granted to Kaliyo Zamzam, Tayebwa Ashlaf, Katungye Ahmed and Katabazi Abbey Tumuhimbise by this Honorable Court on 2nd December, 2021 vide Administration Cause No. 1209 of 2021 are hereby revoked.
- 2. The 1st Plaintiff (widow) and her son Ashlaf Tayebwa are appointed administrators of the estate of the late Tayebwa Badru Kaliyo.

- 3. The Commissioner Land Registration is hereby directed to cancel the 1st Plaintiff's name on the Certificate of Title as entered on the 15th of December vide Instrument No. MBR-00044324 and enter the Administrators of Estate of Late Tayebwa Badru Kaliyo that will have the fresh grant until the estate is it is distributed.
- 4. A declaration is hereby made that the defendants have failed to properly and fully administer the estate of the late Tayebwa Badru Kaliyo.
- 5. The plaintiffs and defendants are hereby directed to provide an Inventory and account of the estate of the late Tayebwa Badru Kaliyo within one month from the date of this judgment.
- 6. A permanent injunction is made restraining the defendants from undertaking any dealings with the estate of the late Tayebwa Badru Kaliyo.
- 7. No award as to General Damages
- 8. The counterclaim is hereby dismissed with costs to the Counter defendants.
- 9. The parties shall each party will bear their own costs.

Dated, signed and delivered by email this 20th day of December, 2023.

CELIA NAGAWA JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcfd/2023/183/eng@2023-12-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kaliyo-v-katungye-civil-suit-32-of-2022-2023-ughcfd-183-20-december-2023-and-others-unknown-topic-unknown-court-2023>

Prepared on 14 October 2026 · Esheria