

UGANDA / JUDGMENT

Kateregga and Another v Sekibala and 3 Others (Miscellaneous Application 439 of 2024) [2025] UGHC 67 (20 February 2025)

[2025] UGHC 67

COURT
High Court of Uganda

BEFORE
Allan Nshimye, J

CASE / FILE NUMBER
Miscellaneous Application 439 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA MISCELLANEOUS APPLICATION 439 OF 2024

- 5 (ARISING FROM ADMINISTRATION CAUSE NO MMB 16 OF 1989)
- 1. KIIZA KATEREGGA
- 2. PROSSY NANTALE ----- APPLICANTS

VERSUS

- 10 1. ABISSAGI SEKIBALA ----- RESPONDENTS
- 2. JOESPH KIMAKA MUKASA
- 3. EPHRAIM SAMUEL LUWAGA
- 4. FRED SSEKIBALA
- 15 BEFORE: Hon. Justice Nshimye Allan Paul M.

RULING

REPRESENTATION

Adv. Flavia Alingumya for the applicants, Adv James Kiiza for the 2nd respondent and holding brief for Adv Roseline Kunuhira for the 1st 20 respondent and Adv Ben Muhumuza holding brief for Adv Emmanuel Tumwebaze for the 3 rd & 4th respondent.

BACKGROUND

- 25 This matter relates to the estate of the late David Livingstone Sekibaala of Kakooba in Mbarara district. The late David Livingstone Sekibaala had about 25 children and left property. The beneficiaries have been in legal fights since 2012.
- On 14th 30 September 1989, a grant of probate was made vide High Court Administration Cause MMB 16 of 1989 to Mrs Abissagi Sekibala, Mr Kimaka Mukasa joseph, Kalema Stephen, Kakooza Christopher, Muwanga Leo, Mrs Mukasa Eliabu, Haji Musoke Sulayiti and Kahigiriza James.
- 35 Kizza Kateregga & 11 others filed HCT -05-CV-C3-226-2012 by way of originating summons under Order 37 Rule 8 of the Civil Procedure Rules SI 71- 1. Raising many questions regarding the management of the estate. In a judgement dated 17th April 2018, His Lordship Justice Duncan Gaswaga noted

that there are contentious issues that would require witness testimony, he then held that the parties ought to file a fresh suit. No order as to costs was made since it was a family matter. Kizza Kateregga & 11 others filed an appeal in HCT Civil suit 226 of 2012 to the court of appeal vide Civil Appeal 174 of 2018. They

5 later withdrew the appeal by filing a notice of withdraw in the Court of Appeal registry on 17th October 2023. Civil Appeal 174 of 2018 was withdrawn with no order as to costs.

Kizza Kateregga & 11 others also had filed a civil suit in the Mbarara High Court 10 vide Civil Suit 52 of 2018 (*Kizza Kateregga & 11 others vs Abissagi Ssekibala & Joseph Kimaka Mukasa*). The case suffered several adjournments to allow for the input of all the lawyers involved. The scheduling of the case was finally done on 02nd June 2023 and the joint scheduling memorandum was later adopted on court record after scheduling. Two plaintiff witnesses testified on 15 court record, then the parties discussed a settlement leading to filing of a

- consent judgment that was endorsed by this court on 04th October 2024. In the consent judgement, the salient agreed positions are;
- 1. That the grant vide High Court administration cause 16 of 1989 is revoked.
- 20 2. That Nantale Prossy and Kiiza Kateregga are nominated to manage the estate
- 3. That the property comprised in LRV 462 Folio 5 Plot 41 on High Street Mbarara city forms part of the estate of the late David Livingstone Sekibala. That it should be sold and the proceeds shared.
- 25 4. That the widow, Abissagi Sekibala is entitled to 50 % interest in the property comprised in LRV 462 Folio 5 Plot 41 on high street Mbarara city, while the 25 children are entitled to share the remaining 50 % of the same property.

- 5. That the property situate in Nakaziba and Kasahari as defined in the 30 consent judgement shall be divided among the 25 children.

In my opinion it was necessary to lay down the above background of the legal matters between the beneficiaries of the estate of the late David Livingstone Sekibala that has culminated to the application now before this court.

APPLICATION

The applicants herein filed this application by way of a notice of motion under Section 98 of the Civil Procedure Act CAP 282, Section 234 (2)(d) of the Succession Act CAP 268 and Order 52 Rules 1,2 & 3 of the Civil Procedure Rules

40 SI 71-1 seeking orders that;

- 1. That the grant of letters of administration granted to Mrs Abissagi Ssekibala, Mr Kimaka Mukasa Joseph, Kalema Stephen, Kakooza Christopher, Muwanga Leo, Mrs Mukasa Eliabu, Haji Musoke Sulayiti and Kahigiriza James on 14th day of September 1989 be revoked.
- 5 2. That a fresh grant be issued to Kizza Katerega and Prossy Nantale.
- 3. Costs of the application

The application is supported by an affidavit deposed by the Kizza Katerega on his own behalf and on behalf of Prossy Nanatale. The 1st and 2nd respondents 10 did not file an affidavit in reply despite their lawyers attending court.

When the application came up on 29th October 2024, Ephraim Samuel Luwaga and Fred Sekibaala, children of the late David Livingstone Ssekibaala appeared in court with their lawyer and applied to be joined to the application as 15 respondents pursuant to Order 1 Rule 10 Civil Procedure Rules. The court invoked its inherent power and allowed the application to add the two as respondents. The court then gave schedules for Ephraim Samuel Luwaga and Fred Sekibaala to file affidavits in reply, and the applicants to file any rejoinders. A schedule was also given for the parties to file submissions.

Ephraim Samuel Luwaga and Fred Sekibaala filed affidavits in reply on 5th November 2024 and the 1st applicant filed an affidavit in rejoinder on 25th November 2024. In regard to submissions, it is only the applicants that filed submissions as ordered.

I have considered the submissions on court record

DETERMINATION

It is trite law that facts that have been admitted by the parties need not be 30 proved as is stipulated in **SECTION 57 OF THE EVIDENCE ACT CAP 8**. I have perused the evidence on court record and I find that the parties have commonalities that are salient, these are;

- 1. The late David Ssekibaala had 25 children (*See paragraph 2(iii) of* 35 *annexture D to the applicant's affidavit in support. See also paragraph 4 of the 3rd respondent's affidavit in reply, and paragraph 4 of the 4th respondent's affidavit in reply*)
- 2. That the grant of administration vide High Court Administration Cause MMB 16 of 1989 be revoked (See paragraph 6 and 9 of the affidavit in

support, *paragraph 6.4 of the 3rd respondents affidavit in reply, and paragraph 6.4 of the 4th respondent's affidavit in reply.)*

- 3. That the property of the estate of the late David Livingstone Ssekibaala be shared as agreed in the consent judgement in High court civil suit 52 5 of 2018 as follows;
- a. Mrs Abissagi Sekibaala is entitled to 50 % interest in the property / commercial building comprised in LRV 462 Folio 5 plot 41 on High Street, while the remaining 50 % interest in the property is owned 10 collectively by the 25 children of the late David Livingstone Ssekibaala. *(See paragraph 1 (a) & (b) of annexture D to the applicant's affidavit in support. See also paragraph 6.2 of the 3rd respondent's affidavit in reply, and paragraph 6.2 of the 4th respondent's affidavit in reply).*
- 15 b. *The land at Nakaziba and the land at Kakooma in Mbarara district be divided equally among the* 25 children of the late David Livingstone Ssekibaala. *(See paragraph 3 & 4 of annexture D to the applicant's affidavit in support. See also paragraph 6.2 of the 3rd respondent's affidavit in reply, and paragraph 6.2 of the 4th* 20 *respondent's affidavit in reply).*

The above constitutes areas of agreement based on the evidence of the parties, it therefore means that as admitted positions there is no need for them to be proved. I will now proceed to frame three issues to guide this court in 25 determination of this family matter.

ISSUES

- 1. Whether the grant of administration vide High Court Administration Cause MMB 16 of 1989 should be revoked.
- 30 2. Whether the applicants should be appointed administrators of the estate of the late David Livingstone Ssekibaala
- 3. What remedies are available to the parties.

ISSUE 1

35 Whether the grant of administration vide High Court Administration Cause MMB 16 of 1989 should be revoked.

In principle a grant that becomes inoperative through circumstances may be revoked as is stipulated in **SECTION 230 (1) & (2)(d) OF THE SUCCESSION ACT**

40 CAP. 268 which states that;

"230. Revocation or annulment for just cause (1) The grant of probate or letters of administration may be revoked or annulled for just cause* 5 *(2) In this section, "just cause" means— (d) that the grant has become useless and inoperative through circumstances*

The evidence on court record contained in the affidavit in support of the 10 application is to the effect that the majority of the eight persons listed in the original grant vide High Court Administration Cause MMB 16 of 1989 to administer the estate of the late David Livingstone Ssekibaala died. The two that are still living signed a consent judgement in High court civil suit 52 of 2018 on 3rd October 2024, wherein paragraph 1(c)(i) they consented that the 15 grant vide High Court Administration Cause MMB 16 of 1989 be revoked.

The 3rd & 4th respondent in paragraph 6.4 of their respective affidavits in reply all testify that "I have no problem with revoking the grant vide administration cause No MMB 16 of 1989".*

In my analysis of the evidence on record, I find that all the parties including the surviving persons named in the original grant vide High Court Administration Cause MMB 16 of 1989 all agree that the grant be revoked. I therefore revoke the grant in High Court Administration Cause MMB 16 of 1989 basing on 25 SECTION 230 (1) & (2)(d) OF THE SUCCESSION ACT CAP. 268, because it has become inoperative due to passing of most of the persons to whom the grant was issued.

ISSUE 2

30 Whether the applicants should be appointed administrators of the estate of the late David Livingstone Ssekibaala.

In principle a court may on revocation of probate or letters of administration, grant probate or letters of administration to another person where court 35 determines that such a person is a fit and proper person to be granted probate or letters of administration under the Succession Act Cap. 268 as is provided in SECTION 230 (5) OF THE SUCCESSION ACT CAP. 268.

This court in resolution of issue 1 revoked the grant vide High Court Administration Cause MMB 16 of 1989. It means that it can grant administration to another person it considers fit and proper.

- 5 The evidence on court record contained in annexure D to the affidavit in support, is a consent judgment in High Court civil suit 52 of 2018 in which the signatories to the consent judgment recommend that the applicants (Kizza Katereggga and Prossy Nantale) be appointed administrators of the estate of the late David Livingstone Ssekibaala.
- 10

The evidence of the 3rd respondent in paragraph 6.5 of his affidavit in reply is that he should be joined as one of the administrators of the estate since he is the heir and successor of the deceased. The 4th respondent also stated in paragraph 7 of his affidavit in reply that he should also be joined as one of the 15 administrators of the estate.

The above evidence of the applicants and the 3rd & 4th respondents shows that the parties who are beneficiaries of the estate do not agree on who should be appointed as an administrator to implement the distribution that was agreed upon in the consent judgement in High Court civil suit 52 of 2018.

It should be highlighted that despite disagreement on who should be appointed as an administrator, the parties all agree with the distribution of the property detailed in the consent judgment in High Court civil suit 52 of 2018. 25 (*See paragraph 1 (a) & (b), 3 & 4 of annexure D to the applicant's affidavit in support. See also paragraph 6.2 of the 3rd & 4th respondent's affidavits in reply).*

I find that it is necessary to appoint a neutral person that is fit and proper as an administrator late David Livingstone Ssekibaala. It has to be a neutral person 30 that is above the internal disagreements of the 25 children and their factions. The Administrator General being a statutory office is thus a good option, since the Administrator General has sufficient knowledge to execute the duties of an administrator of an estate making him or her a fit and proper person within the spirit of the law.

In principle the court is not precluded from granting letters of administration to the Administrator General as is provided in **SECTION 247 (b) OF THE SUCCESSION ACT CAP. 268** which states that;

40 *"247. Administrator General not precluded from grant"

Nothing in this Part shall be deemed to preclude—

(a) the Administrator General from applying to the court for letters of administration;

(b) the court from granting letters of administration to the 5 *Administrator General,*

> *in any case where the court is empowered under this or any other Part of this Act to grant letters of administration to any person other than an executor or executrix appointed under the will of the testator or testatrix".(Bold emphasis mine).*

10

This means that this court can appoint the Administrator General as the administrator of the estate of the late David Livingstone Ssekibala basing on **SECTION 230 (5)** read hand in hand with **SECTION 247 (b) OF THE SUCCESSION ACT CAP. 268**.

I therefore, hereby appoint the Administrator General as the administrator of the estate of the late David Livingstone Ssekibala.

ISSUE 3

20 What remedies are available to the parties.

1. Costs

It is the law that costs follow the event as is provided in **SECTION 27(2) OF THE CIVIL PROCEDURE ACT CAP 282**. The 3rd and 4th respondents expressed their objection to costs being paid out of the revenue of the estate of the late David 25 Livingstone Ssekibaala as was stipulated in clause 6 of the consent judgment in High Court Civil suit 52 of 2018.

Generally, lawyers that have done work ought to be paid for their service. In this case, the estate property that is causing disharmony among the children of

- 30 the late David Livingstone Ssekibaala, was owned by late David Livingstone Ssekibaala. It is thus proper that estate income caters for the legal costs to the lawyers representing the different parties especially in cases where a settlement has been reached by the beneficiaries by filing a consent judgment.
- 35 I therefore see no reason to interfere with clause 6 of the consent judgment in High Court Civil suit 52 of 2018.

2. Proprietorship of LRV 462 Folio 5 plot 41 on High Street

The High Court is empowered to grant remedies to resolve controversy 40 between the parties as is provided in **SECTION 37 OF THE JUDICATURE ACT CAP 16**. The High Court also has Powers to direct cancellation of an entry in the certificate of title in certain cases as is provided in **SECTION 161 OF THE REGISTRATION OF TITLES ACT CAP 240**.

- 5 The land comprised in LRV 462 Folio 5 plot 41 on High Street is registered in the names of Abisagi Sekibala the 1st respondent herein. She was also a signatory to a consent Judgment in High Court Civil Suit 52 of 2018 that among others resolved that
- 10 a. That the property comprised in LRV 462 Folio 5 Plot 41 on High Street Mbarara city forms part of the estate of the late David Livingstone Ssekibala
- b. That the land comprised in LRV 462 Folio 5 plot 41 on High Street be shared with Abisagi Sekibala taking 50% and the children of the late 15 David Livingstone Sekibala taking 50%.

In order to give effect the spirit of the Consent Judgement in High Court Civil Suit 52 of 2018, I make an order under **SECTION 161 OF THE REGISTRATION OF TITLES ACT CAP 240** that the Commissioner land Registration cancels the name 20 of Abisagi Sekibala as proprietor of LRV 462 Folio 5 plot 41 on High Street and the Administrator General as an administrator of the estate of the late David Livingstone Sekibala be registered as proprietor of the land comprised in LRV 462 Folio 5 plot 41 on High Street.

25 3. Family management committee.

The High Court is empowered to grant remedies to resolve controversy between the parties as is provided in **SECTION 37 OF THE JUDICATURE ACT CAP 16**.

- 30 The consent judgment signed in High Court Civil Suit 52 of 2018 proposed the creation of a family management committee composed of Kiiza Katerega and Natale Prossy. On the other hand, Ephraim Samuel Luwaga and Fred Ssekibala expressed interest in their affidavits in reply to be added on this committee. The idea of a family management committee is a worthy idea that can promote
- 35 family unity.

I do appoint Kiiza Katerega ,Natale Prossy, Ephraim Samuel Luwaga and Fred Ssekibala as initial members of a family management committee to serve for a year and specifically do the following;

- a. To avail the Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala with information in regard to the names of the 25 children of the late David Livingstone Ssekibaala.
- b. To aid with mobilisation of the children of the late David Livingstone 5 Ssekibaala to attend to the Administrator General when required.
- c. To serve the notices issued by the Administrator General on the tenants of the property owned by the estate of the late David Livingstone Ssekibaala.
- d. To cooperate with the Administrator General to ensure that the property 10 of the estate of the late David Livingstone Ssekibaala is transferred into the names of the beneficiaries as agreed in the consent judgment in High Court civil suit 52 of 2018.

4. Administrator General's duty

15 The law in SECTION 176 OF THE SUCCESSION ACT CAP. 268 provides that

"*176. Character and property of executor or executrix or administrator or administratrix*

The executor or executrix or administrator or administratrix, as the case 20 *may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such."*

This means that the Administrator General as the newly appointed 25 administrator of the estate of the late David Livingstone Ssekibaala will be the legal representative of the estate and all the property will vest in the Administrator General.

To ensure that the spirit of the consent judgement signed in High Court Civil 30 suit 52 of 2018 touching on the estate of the late David Livingstone Ssekibaala is implemented and harmony within the family is promoted. The Administrator General shall do the following;

- a. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall be registered as proprietor of land 35 comprised in LRV 462 Folio 5 plot 41 on High Street in Mbarara city.
- b. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall transfer the land comprised in LRV 462 Folio 5 plot 41 on High Street in Mbarara city into the names of the beneficiaries of the estate as tenants in common with Mrs Abissagi 40 Sekibaala entitled to 50 % interest in the land, while the remaining 50 %

interest in the property is owned by the 25 children of the late David Livingstone Ssekibaala or their legal representatives. Each child or legal representatives of the child if deceased will have a 2% interest in the land comprised in LRV 462 Folio 5 plot 41 on High Street.

- 5 c. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall divide the land at Nakaziba and the land at Kakooma in Mbarara district equally among the 25 children of the late David Livingstone Ssekibaala.
- d. The Administrator General as the administrator of the estate of the late 10 David Livingstone Ssekibaala shall serve notice and collect the rent from all the tenants of the property on the land comprised LRV 462 Folio 5 plot 41 on High Street.
- e. The cost of transferring the land comprised in LRV 462 Folio 5 plot 41 on High Street shall be obtained from the income of the estate of the late 15 David Livingstone Ssekibaala.
- f. The cost of subdividing the land at Nakaziba and the land at Kakooma in Mbarara district equally among the 25 children of the late David Livingstone Ssekibaala shall be obtained from the income of the estate of the late David Livingstone Ssekibaala.
- 20 g. The Administrator General shall after deducting costs share the rent collected from the land comprised LRV 462 Folio 5 plot 41 on High Street by giving 50% of it to Mrs Abissagi Sekibaala and the remaining 50 % shall be divided among the 25 children of the late David Livingstone Ssekibaala.
- 25 h. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall be pay the legal costs against the estate of the late David Livingstone Ssekibaala from the income of the estate.
- i. The Administrator General as the administrator of the estate of the late 30 David Livingstone Ssekibaala shall file an inventory in the High Court.
- j. The beneficiaries of the estate of the late David Livingstone Ssekibaala are free to deal with the property when it is registered into their names, guided where necessary with the Consent Judgement in High Court Civil suit 52 of 2018.

In Conclusion I order that;

1. The Administrator General as an administrator of the estate of the late David Livingstone Sekibala.
- 2. The Commissioner Land Registration cancels the name of Abisagi Sekibala as proprietor of LRV 462 Folio 5 plot 41 on High Street and the Administrator General as an administrator of the estate of the late David Livingstone Sekibala be registered as proprietor of the land comprised in 5 LRV 462 Folio 5 plot 41 on High Street.
- 3. Kiiza Katerega ,Natale Prossy, Ephraim Samuel Luwaga and Fred Ssekibala are appointed as initial members of a family management committee for a period of one year. The beneficiaries will in the future determine how committee members are appointed and duration of service.
- 10 4. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall transfer the land comprised in LRV 462 Folio 5 plot 41 on High Street in Mbarara city into the names of the beneficiaries of the estate as tenants in common with Mrs Abissagi Sekibaala entitled to 50 % interest in the land, while the remaining 50 % 15 interest in the property is owned by the 25 children of the late David Livingstone Ssekibaala or their legal representatives. Each child or legal representatives of the child if deceased will have a 2% interest in the land comprised in LRV 462 Folio 5 plot 41 on High Street.
- 5. The Administrator General as the administrator of the estate of the late 20 David Livingstone Ssekibaala shall divide the land at Nakaziba and the land at Kakooma in Mbarara district equally among the 25 children of the late David Livingstone Ssekibaala.
- 6. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall serve notice and collect the rent from 25 all the tenants of the property on the land comprised LRV 462 Folio 5 plot 41 on High Street.
- 7. The cost of transferring the land comprised in LRV 462 Folio 5 plot 41 on High Street into the names of the beneficiaries and the cost of subdividing the land at Nakaziba and the land at Kakooma in Mbarara 30 district equally among the 25 children of the late David Livingstone Ssekibaala shall be obtained from the income of the estate of the late David Livingstone Ssekibaala.
- 8. The Administrator General shall after deducting costs share the rent collected from the land comprised LRV 462 Folio 5 plot 41 on High Street 35 by giving 50% of it to Mrs Abissagi Sekibaala and the remaining 50 % shall be divided among the 25 children of the late David Livingstone Ssekibaala.
- 9. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall be pay the legal costs against the

estate of the late David Livingstone Ssekibaala from the income of the estate.

- 10. The Administrator General as the administrator of the estate of the late David Livingstone Ssekibaala shall file an inventory in the High Court.
- 11. The beneficiaries of the estate of the late David Livingstone Ssekibaala are free to deal with the property when it is registered into their names, guided where necessary with the Consent Judgement in High Court Civil suit 52 of 2018.

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NSHIMYE ALLAN PAUL M. JUDGE 20-02-2025

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