

UGANDA / JUDGMENT

# Mwebaze v Basemera

## (HCT-01-FD-MC-0020-2024)

### [2025] UGHC 439 (30 May 2025)

[2025] UGHC 439

## COURT

High Court of Uganda

## BEFORE

Wagona, J

## CASE / FILE NUMBER

HCT-01-FD-MC-0020-2024

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**THE REPUBLIC OF UGANDA****IN THE HIGH COURT OF UGANDA AT FORT PORTAL****HCT-01-FD-MC-0020-2024****MWEBAZE EDWARD ::::::::::::::::::::::::::::::::::: APPLICANT****VERSUS****BASEMERA JESCAH ::::::::::::::::::::::::::::::::::: RESPONDENT****BEFORE: HON. JUSTICE VINCENT WAGONA****RULING****Introduction:**

- 1. The Applicant filed the instant Application under **Order 52 Rule 1** and **2** of the Civil Procedure Rules seeking orders; -
- (1)For nullification of the subdivision and distribution of the estate of the late Charles Mwirumbi;
- (2)Stopping the Respondent from any further decisions regarding the estate of the late Charles Mwirumbi without the Consent of the Applicant;

- (3) Costs of the Application be provided for.



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### Grounds of the Application:

- 2. In brief, the Application is premised on grounds that;
- (1) The Applicant and the Respondent are joint administrators to the estate of their late Father, Mr. Charles Mwirumbi having obtained a grant of letters of administration on 31st May 2024.
- (2) From the time of the grant, the Respondent stopped cooperating with the Applicants as a co-administrator and sidelined him thereby making personal independent decisions regarding administration without the Applicant's knowledge and consent.
- (3) On the 25th July 2024, without the Applicant's consent, the Respondent personally and solely invited the beneficiaries of the said estate to turn up on 3rd August 2024 for the subdivision of the said estate and allocation of shares and went ahead to convene the meeting and solely subdivided the said estate with a number of illegalities and irregularities without the whereabouts of the land title.
- (4) The Applicant through his lawyers of \*M/s Ngaruye Ruhindi, Spencer & Co. Advocates\* wrote to the Respondent to stop all the activities on the said



estate until when there is consensus between the two administrators, but the letter was ignored.

- (5) The Respondent went further and allocated three acres of land from the estate to the surveyor without the Applicant's consent and the consent of other beneficiaries to subdivide the land while part of the estate land was sold off before by some of the beneficiaries.
- (6) The Respondent did not consider the untitled land as per the printout of the so called subdivision which does not even disclose the total acreage of the land that was subdivided among the beneficiaries.
- (7) The actions of the Respondent have led to total mismanagement of the said estate and it is just and equitable that this Application be allowed for the ends of justice to be met.

### The Respondent's Reply:

- 3. The Respondent opposed this Application through her Affidavit in Reply, in which it was averred, in brief as follows; -

- (1)The late \*Mwirumbi Charles\* died intestate in 1986 and since then, his estate had no proper administration and as such, the Applicant took advantage of the absence of the letters of administration to occupy, cultivate, graze and



rent out the estates land to different people for over 16 years to the exclusion and detriment of other beneficiaries.

- (2)The process of applying for letters of administration commenced in 2018, and the certificate of no objection was issued by the Administrator General on 15th February 2021, the same was received by the Applicant who kept it away until 2024 in a bid to frustrate the process of administration.
- (3)After obtaining the grant of letters of administration, the Applicant was consulted about convening a family meeting to discuss the issues of administration, and the Applicant attended the family meeting held on 23rd June 2024 where the beneficiaries demanded for their beneficial shares since it had taken 38 years since the death of their father, and it was also resolved that a surveyor be engaged to ascertain the total acreage of estate land.
- (4)The survey exercise was scheduled to take place on 3rd August 2024, but the Applicant complained against it to the Administrator General's office who organized a family mediation meeting, in which the Administrator General's office advised the Applicant that the beneficiaries must get their beneficial share of the estate. It was also agreed that the meeting of 3rd



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August 2024 should proceed and that a surveyor should be engaged to ascertain the total acreage before subdivision.

- (5)On 1st August 2024, the Applicant wrote to the Respondent to call off the survey exercise but the same was conducted on 3rd August 2024 since it had been agreed upon with the guidance of the Administrator General and because the surveyors had already been paid.
- (6)After ascertaining the total acreage of the land (392 acres), each beneficiary was allocated 40 acres, 20 acres were reserved for the family, 3 acres were reserved to cater for legal and survey costs while 5.154 acres were consumed by the access roads. After the that exercise, the Respondent filed an inventory in court to effect.
- (7)It is not true that land was allocated to the surveyor and the issues of sold land were considered and included in the shares of the land received by those individuals who had sold, and that was clearly alluded to in the inventory.

- (8) The exercise of subdivision and subsequent allocation of shares was fair and just to all beneficiaries, and if the Applicant is not comfortable with his share, the Respondent is ready to exchange her share for that allocated to



### Representation and Hearing:

4. The Applicant was represented by \*M/s Ngaruye Ruhindi, Spencer & Co. Advocates\* while \*M/s Rwabwogo & Co. Advocates\* appeared for the Respondent. Both parties addressed me by way of written submissions which I have duly considered.

### Preliminary Objections:

- 5. In their written submission, learned counsel for the Respondent raised two preliminary points of law against the instant Application. Counsel submitted that the Applicant commenced this action using a wrong procedure contrary to **Section 262 (1) of the Succession Act, Cap 268** which provides that any case before the High Court in which there is a contention shall take the form of a regular suit according to the provisions of the law relating to the civil procedure. That under **Order 4 Rule 1 of the Civil Procedure Rules**, every suit shall be instituted by presenting a plaint to the court. That in the instant case, there is a contention regarding the distribution process, and as such, the Applicant ought to have commenced his action in the form of a regular suit.
- 6. Secondly, learned counsel for the Respondent submitted that this Application is prematurely brought before this Honourable Court because **Section 268 (3) of the Succession Act, Cap 268** provides that where in an estate with more



than one administrator or administratrix, a dispute arises between the administrators, the dispute shall be referred for arbitration to the Registrar of the High Court or a Chief Magistrate. Counsel submitted that Section 268 is coached in mandatory terms and as such, the instant Application is premature. Learned Counsel for the Respondent prayed that both points of law be upheld and the instant Application be dismissed.

7. Learned Counsel for the Applicant did not respond to the above points of law.

### RESOLUTION OF THE PRELIMINARY OBJECTIONS:

8. A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit (see: **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696**). In the case of **Uganda Telecom Ltd vs. ZTE Corporation SCCA No.3 of 2017**, it was held that a trial Court has discretion to dispose of a preliminary point either at or after the hearing but that the exercise of the discretion depends on the circumstances of each

case. In the instant case, it is judicious to first determine the above preliminary objection before embarking on the merits of the case, since it has been argued that they are capable of disposing of the matter in issue.



### **\*Whether the Applicant used a wrong procedure\***

- 9. In the case of **Kasirye, Byaruhanga & Co. Advocates vs. Uganda Development Bank (SCCA No. 2 of 1997)**, the Supreme Court emphasized that procedural rules are not mere formalities but essential to the administration of justice, and in the case of **Makula International Ltd v. His Eminence Cardinal Nsubuga (Civil Appeal No. 4 of 1981)**, the Supreme Court emphasized that procedural improprieties should not be overlooked, especially when they pertain to matters of legality. This underscores the principle that adherence to procedural rules is vital for the legitimacy of judicial decisions.
- 10. **Section 262 (1) of the Succession Act, Cap 268** provides that; -

### **\*"262. Procedure in contentious cases"**

- \*(1)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."\*
- 11. Therefore, a contentious matter under the Succession Act ought to be brought to court in the form of a regular suit by way of an ordinary Plaint prepared in accordance with the provisions of Order 4 of the Civil Procedure
- Rules. A **contentious matter** is defined by the **Black's law dictionary, 4th**



**edition, at page 390** as a judicial proceeding not merely *\*ex parte\** in its character, but comprising attack and defense as between opposing parties. In

**R vs. Makerere University Academic Staff Union & Another, Ex parte Makerere University Appointments Board [1989] UGSC 2**, a contentious matter was defined as *\*"a dispute or controversy involving conflicting claims or interests that require the intervention of a court or tribunal for resolution."\**

12. I find the instant case very contentious in nature because it involves a very serious dispute about administration of the estate of the late *\*Mwirumbi Charles\** especially in regard to the performance of the administration role by the joint administrators and the distribution of the estate to the respective beneficiaries. Such a matter is very complex in nature and cannot be ably and finally resolved through affidavit evidence in a Miscellaneous Cause like the instant one, but can only be resolved through a full trial where oral and other evidence can be adduced and analyzed by the court. The matters in issue are very contentious in

nature that they need evidence of calling witnesses. In the case of **Zalwango Elivason and Nakalema Mariam v. Dorothy Walusimbi and Henry Bijjumuko Originating Summons No. 3 of 2013**, it was held that, where a matter is contentious, and involves a considerable need to call oral evidence to prove further the facts in controversy, then the procedure of proceeding by



affidavit evidence either by originating summons or other motions as in this case becomes improper.

13. In the instant case, the procedure adopted by the Applicant of bringing this action by notice of motion was not designed for such contentious matters and is also expressly prohibited by **Section 262 (1) of the Succession Act, Cap 268**. I therefore accordingly uphold learned Counsel for the Respondent's preliminary objection.

**\*Whether the instant Application is prematurely before court.\***

14. **Section 268 (3) of the Succession Act, Cap 268** provides that; -

"Where in an estate with more than one executor or executrix or administrator or administratrix, a dispute arises between the executors or executrices or administrators or administratrices or between the executor or executrix or an administrator or administratrix and a beneficiary of the estate, the dispute shall be referred for arbitration to the Registrar of the High Court or a Chief Magistrate."\*

15. This statutory arbitration clause was introduced into the Uganda Succession law by the **Succession (Amendment) Act, 2022**, which came into effect on 31 May 2022 to streamline the resolution of disputes in estate administration and to reduce the burden on the judiciary by encouraging alternative dispute



resolution mechanisms. The Section is couched in mandatory terms making arbitration before the Registrar of the High Court or a Chief Magistrate (as the case may be) a prerequisite before commencing court proceedings in disputes involving executors, administrators, or beneficiaries.

- 16. In the instant case, the dispute in issue is between the Applicant and the Respondent who are co-administrators to the estate of the late **\*Mwirumbi Charles\***. The Applicant contends that after obtaining the grant of letters of administration, the Respondent stopped cooperating with him as a coadministrator and acted stubbornly against him thereby sidelining him in regard to the issues pertaining estate administration. That as a result, the Respondent solely convened a meeting and subdivided the said estate with a number of illegalities and irregularities. On the other hand, the Respondent contended that the Applicant has been acting elusive and wanted to frustrate the process of administration because he had earlier taken advantage of the absence of letters of administration to occupy

and utilize the estate land alone to the detriment of the other beneficiaries.

- 17. This is clearly a dispute between the two administrators for which there exists a mandatory statutory arbitration clause created by **Section 268 (3) of the Succession Act, Cap 268** requiring such administrators to first submit their



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dispute to arbitration. In my view, where a statute provides for arbitration, parties are specifically required to exhaust this remedy before seeking judicial intervention, because the statute operates as an ouster clause, prohibiting courts from intervening in matters subject to arbitration. I therefore also uphold the second preliminary objection as raised by learned Counsel for the Respondent.

In the final result, I find that this Application is devoid of any merit, it hereby fails and it is hereby dismissed with no order as to costs in the interest of fostering harmony among the parties in a family matter.

I so Order.

**Dated at Fort Portal this 30th day of May 2025**



**Vincent Wagona High Court Judge FORTPORTAL**

**02/06/2025**

- Joseph, Court Clerk
- The parties absent.



Court: Ruling delivered in Chamber. In the absence of both parties

\*Signed: Kiirya Emmanuel (Magistrate Grade One (Research)) 02/06/2025\*



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