

UGANDA / JUDGMENT

Nassali & 5 Others v Lukwago (Civil Suit 185 of 2022) [2024] UGHCFD 61 (8 October 2024) [2024] UGHCFD 61

COURT

HC: Family Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Civil Suit 185 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 HOLDEN AT KAMPALA (FAMILY DIVISION) CIVIL SUIT NO. 185 of 2022

15 BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA

JUDGMENT

Introduction

The Plaintiffs sued the Defendant for the following Orders:

- 20 a) That the Plaintiffs are entitled to Uganda Shillings Three Hundred Twenty Five Million Seven Hundred Fourteen Thousand Two Hundred and EightyFour only (UGX 325,714,284) as beneficiaries of the estate of the late James Kiggundu;
- b) General Damages; and
- 25 c) Costs of the suit.

Representation

At the hearing, the Plaintiffs were represented by Mr. James Muhumuza of M/S Muhumuza & Co. Advocates while the Defendant was represented by Mr. Musa Luwambya of M/S Wetaka, Bukenya & Kizito Advocates.

Facts

The Plaintiffs and the Defendant are biological children of the late James Kiggundu but borne by different mothers. The late James Kiggundu was a biological son of the late Ssezi Musoke (herein referred to as the "deceased") and he made a Will in which

10 he bequeathed $\frac{1}{2}$ an acre of land to his son James Kiggundu (hereinafter referred to as "the suit land"). The land is situated at Kyaliwajala, Kira Municipality in Wakiso District. The late James Kiggundu died on 8 th August 1998 leaving fourteen (14) children and no wife at the time of his death. His father, Ssezi Musoke died later on 1 st February 1999. After the death of James Kiggundu, the Defendant was installed

15 as his heir.

On 4th April 2011, one Teophil Semuyinde, the only surviving Executor of the Will of the deceased's estate handed over a Certificate of Title for land comprised in Kyadondo Block 222 Plot 3436 (suit land) to the Defendant already registered in the 20 name of the Defendant (Lukwago Moses). Upon receipt of the Certificate of Title, the Defendant sold the suit land. The Plaintiffs claim that after the sale, the Defendant misrepresented to them that he had sold the suit land at One Hundred Forty-Five Million Shillings Only (UGX 145,000,000) and gave each one of them Ten Million Shillings only (UGX 10,000,000) and claimed that as the heir, he had 25 taken only Fifteen Million Shillings (UGX 15,000,000). The Plaintiffs further claim that later, they learned that contrary to what the Defendant had represented to them earlier on, the suit land was sold at Eight Hundred Million (UGX 800,000,000) and they demanded from him the balance of their would-be entitlement but he refused.

On the contrary, the Defendant contends that the suit property was handed over to 5 him exclusively as a son of the late James Kiggundu. It became his property because the Certificate of Title was in his name. That he had the right to sell it and when he sold, out of generosity, he gave each of his thirteen (13) siblings, Fifty Million Shillings only (UGX 50,000,000). It was against this background that the Plaintiffs filed this suit for recovery of what they consider to be their entitlement from the sale 10 of the suit land.

Issues

- 1. Whether the suit land was part of the estate of the late James Kiggundu;
- 2. Whether the Plaintiffs are entitled to a claim of Three Hundred and Twenty-
15 Five Million Seven Hundred and fourteen Thousand Two Hundred and eighty-four
Uganda Shillings only (UGX 325,714,284) as pleaded in the plaint; and
- 3. What remedies are available to the parties?

20 Resolution of issues

Issues 1 and 2: *Whether the suit land was part of the estate of the late James Kiggundu and whether the Plaintiffs are entitled to a claim of Uganda Shillings Three Hundred and Twenty-Five Million Seven hundred and fourteen Thousand Two hundred and eighty-four Uganda Shillings only (UGX 325,714,284) as*

25 *pleaded in the plaint.*

Counsel for the Plaintiffs submitted that the suit land was bequeathed to James Kiggundu under a Will which was probated and upon his death, the same vested in

his children who include both the Plaintiffs and the Defendant with others who were never parties but altogether totaling fourteen (14). According to him, all the children were equal beneficiaries and upon the sale of the suit land by the Defendant, he ought to have shared the proceeds of the sale equally amongst all the children of the late

5 Kiggundu which he did not.

On the contrary, Counsel for the Defendant contended that the suit land did not form part of the estate of the late James Kiggundu. He insisted that the same belonged to the Defendant exclusively because it was registered in his sole name and because he 10 was not the administrator of the estate of his father, it became his individual property.

Court's Consideration

The probated Will of the deceased dated 18th November 1995 both the Luganda and the English versions was adduced in the Court and marked as PEX1 (a) and (b) 15 respectively. In the Will, the testator listed his children with **ABIRI JAMES KIGGUNDU** (father to the Plaintiffs and Defendant) appearing as the first. He also distributed the properties to the Children and I will reproduce the relevant parts of the Will especially what relates to James Kiggundu and the suit land. It reads thus:

"*AT NAMUGONGO-BLOCK 222 PLOT 221 SIZE 0.7 ACRES (2 ACRES)*

- 20 *I HAVE GIVEN IT TO THE FOLLOWING PEOPLE:*
 - *1. MY CUSTOMARY HEIR FREDRICK KAFEERO MUGAGGA FIFTY DECIMALS (Dec. 50) ON THE SIDE OF THE ROAD WHICH GOES TO THE LATE Y. KATENDE NATIGO.*
 - *2. ABIRI JAMES KIGGUNDU FIFTY DECIMALS WHERE HE BUILT HIS HOUSE* 25
- *"RESIDENTIAL HOUSE"*

THE REMAINING ONE ACRE IS FOR ANCESTRAL GROUND TO BE FOR BURYING CHILDREN, GRAND CHILDREN AND MY RELATIVES. THAT IS THE ANCESTRAL

GROUND FOR ABIRI TEBEJJANGA KIGGUNDU AND I SHALL ALSO BE BURIED THERE"

The testator also indicated that:

5 *"If there is any child who will die but who has a share in this Will but without leaving any child that share will be distributed to you by the Executors."*

From the reading of the Will, what was bequeathed to the late James Kiggundu is clear and it is his bequest that forms the suit land/property. I also deduce from the 10 reading of the Will that the testator intended that if either of his beneficiaries died leaving children, that bequest would vest to his/ her children.

It is therefore, my finding that the suit land formed the estate of the late James Kiggundu. Issue No.1 is therefore answered in the affirmative.

The second issue relates to whether the Plaintiffs are entitled to the monies as claimed. Evidence was adduced to the fact that the Plaintiffs and the Defendant are some of the children of the late James Kiggundu out of a total of fourteen (14) children. Evidence was also adduced to the satisfaction of the Court that the suit land

20 is the fifty (50) decimals of land that was bequeathed to the late James Kiggundu.

During the locus visit, I established that the suit property is situated in the center of the busy Township of Kyaliwajala, Namugongo on the main road towards Kira Municipality, Wakiso District currently with a storeyed commercial building with 25 many shops for rent on one part and a market for food stuffs on the other part. This suit land is also part of the two acres, fifty (50) decimals of which were bequeathed to the heir of the deceased and one (1) acre being used as burial grounds.

It was also undisputed evidence that by the time the suit land was bequeathed to the late James Kiggundu, he had already built a residential house thereon and the Will acknowledges that. Both the Plaintiffs and the Defendant agree that was the place they called home as they were growing up and though with different mothers, they 5 often gathered in that home as family.

Susan Namuddu (PW2) who is a paternal aunt of both the Plaintiffs and the Defendant and her husband Teophil Semuyinde (PW3), the surviving executor of the deceased's Will testified that the suit property belonged to the estate of the late

- 10 James Kiggundu and for the benefit of all his children. PW3 insisted that he handed over the Certificate of Title for the suit land to the Defendant as the heir of his father and it was in trust and for the benefit of all the children and he expected him to take care of their interests.
- 15 While citing Section 59 of the Registration of Titles Act, Cap. 240 and the case of *Fr. Narsensio Begumisa & Ors versus Eric Tibebaga SCCA No. 17 of 2022,* Counsel for the Defendant contended that a Certificate of Title is conclusive evidence that the person named in the Certificate as proprietor is possessed of the estate in the land as described in the Certificate and such Certificate of Title can only
- 20 be impeached for fraud.

However, it is important to note that the Plaintiffs did not contest the fact that the Defendant was the registered proprietor at the time of the sale and did not seek to impeach the Certificate of Title. The Plaintiffs' complaint is that the Defendant,

25 having received a Certificate of Title registered in his name as the heir and in trust and for the benefit of all the beneficiaries, sold the land, misrepresented to them as to how much he had sold it and gave them only Uganda Shillings Ten Million Shillings (UGX 10,000,000) each and took the balance.

In his evidence, the Defendant stated that PW3, being the surviving executor of the 5 Will of the deceased (the late Ssezi Musoke) refused to distribute the properties to the beneficiaries as bequeathed in the Will and out of his vigilance, he put him under pressure for his share. That PW3 then succumbed to pressure and gave him part of his grandfather's estate, the late Ssezi Musoke Ssalongo located at Kyaliwajjala, measuring approximately 0.5 acres. This has left me wondering how the Defendant 10 could claim his individual share in the estate of the late Ssezi Musoke when the Will did not bequeath anything to him. His claim on this estate is only through his father the late James Kiggundu who was a named beneficiary in the Will. PW3 gave the his father, the late James Kiggundu.

I will also need to re-emphasize that the suit land had for all the time been in the possession of the family of the late James Kiggundu where their family residential house was and all the family members including the Defendant knew it as their home. What the family did not have was a Certificate of Title which was later issued 20 in the name of the Defendant. In my considered view, this did not make the Defendant an exclusive owner of the suit land.

Defendant the Certificate of Title for the exact piece of land that was bequeathed to

On the contrary, I find that though PW3 may have made a mistake by transferring the Certificate of Title in the exclusive name of the Defendant, it was done in good

25 faith and out of trust that as the heir, he was holding the Certificate of Title and suit land in trust and for the benefit of all the children of the late James Kiggundu. This is also fortified by the fact that evidence was also adduced by both the Plaintiffs and

the Defendant to the fact that the late James Kiggundu did not possess any other property apart from the suit land. This therefore, means that the suit land was the only inheritance of all his children.

- 5 In light of the above, it is my finding that though the Certificate of Title was registered in the sole name of the Defendant, it did not entitle him to the exclusive benefit of the suit land. I believe the evidence of PW2 and PW3 that it was for the benefit of all the children and the Defendant was fully aware of that position. My belief is further backed by the fact PW3 informed the Court that he got information
- 10 from the Plaintiffs that they had sat in a meeting as a family (all the fourteen (14) children) and agreed to sell the suit land and share the proceeds, a fact that the Defendant confirmed during the locus visit. The Defendant stated that after he got the Certificate of Title, he called his siblings and tasked each one of them to look for a buyer and when they failed, he got the buyers who bought in two phases. This, 15 therefore, means that the land was sold with the consent and authorization of all the

beneficiaries.

This leads me to the question as to how much the suit land was sold and how the proceeds were shared and or distributed. I need to note that no documentary evidence 20 was adduced to confirm the exact amount of money at which the land was sold. In the Complaint and the Plaintiff's evidence, it was stated that the Defendant in 2020 after disposing of the suit land told them that it fetched Uganda Shillings One Hundred and Forty-Five Million Shillings only (UGX 145,000,000). He gave each of the thirteen siblings Uganda Shillings Ten Million Shillings only (UGX 10,000,000) and 25 as the heir, he retained Uganda Shillings Fifteen Million Shillings (UGX 15,000,000) only. Later, they discovered that he had sold it at a much higher price and claimed for Three Hundred and Twenty-Five Million Seven Hundred and Fourteen Thousand Two Hundred and eighty-four Uganda Shillings only (UGX 325,714,284) as their unpaid share.

However, the Defendant was consistent in his evidence in chief, during cross-examination and during the locus visit that he sold the suit land at Uganda Shillings One Billion One Hundred Million Shillings (UGX 1,100,000,000) only in two phases, the first at UGX 300,000,000 and the second at UGX 800,000,000. In the absence of any evidence to the contrary, this Court is inclined to believe that the suit land was sold at Uganda Shillings One Billion and One Hundred Million Shillings 10 (UGX 1,100,000,000) and accordingly make that finding. I also have no doubt in my mind that the suit land fetched that amount of money considering its prime location.

Counsel for the Plaintiffs in his submission prayed that since the evidence that was adduced in the Court further revealed that the suit land was sold at a much higher 15 price than what was indicated in the Plaint, this Court should be pleased to use its discretion and order for the refund of the money out of Uganda Shillings One Billion One Hundred Million Shillings (UGX 1,100,000,000). Counsel for the Defendant contested this prayer and insisted that the Plaintiffs are not entitled to any refunds.

20 It is my finding that this Court has established that the suit land was sold at Uganda Shillings One Billion One Hundred Million Shillings (UGX 1,100,000,000) as confirmed by the Defendant himself. The proceeds of the sale should have been distributed guided by Section 27 of the Succession Act Cap. 268 where each of the Fourteen (14) children of the late James Kiggundu would take an equal share with 25 the Defendant, having a 1% extra by virtue of being the heir. 1% of One Billion One

Hundred Million Shillings (UGX 1,100,000,000) is Eleven Million Shillings only (UGX 11,000,000) which would mean that what remained to be shared equally was One Billion Eighty- Nine Million Shillings only (UGX 1,089,000,000) giving each of the Fourteen (14) beneficiaries Seventy-Seven Million Shillings only (UGX 77,000,000). Since the Plaintiffs' and other beneficiaries stated that they were given only Ten Million Shillings (UGX10,000,000), each of them is entitled to Sixty-

- 5 Seven Million Shillings (UGX 67,000,000) as their remaining share from the sale of the suit land. The Defendant therefore, shall pay each of the 13 beneficiaries Sixty-Seven Million Shillings (UGX 67,000,000) totaling to Eight Hundred and Seventy-One Million Shillings only (UGX 871,000,000).
- 10 It is also important to observe that whereas the Plaintiffs stated that the Defendant gave each of the beneficiaries Ten Million Shillings only (UGX 10,000,000), the Defendant insisted that he gave each one of them Fifty Million Shillings only (UGX 50,000,000) not as an entitlement but out of his generosity. There was no document to support the version of either party. However, I believed the Plaintiffs' version 15 because they were consistent in what they told PW2 and PW3 and what was in their pleadings and the testimony of PW1.

On the contrary, the Defendant neither in his Written Statement of Defence nor in his evidence in chief (written witness statement) mentioned anywhere the amount he 20 gave to each of the beneficiaries. It was only during his cross examination that he stated that he had given each one of them Fifty Million Shillings only (UGX 50,000,000). I will reproduce what he stated both in the Written Statement of Defence and in the Witness statement.

Paragraph 5(e) reads as follows:

25 "That on the above account, the Defendant took possession and developed the same by constructing thereon a market on part thereof and sold the land in two phases, first at UGX 300,000,000 and out of generosity, he gave part of the proceeds to the Plaintiffs and other*
siblings without any objection given that the administrator of the estate of the late Sezzi Musoke Ssalongo to date has not and or distributed to the Plaintiffs their beneficial share."

Paragraph 5 (f) thereof, reads thus:

5 *"That subsequently, in early 2020, the Defendant sold the said land with all the developments thereon to one Bwogi at UGX 800,000,000 and still out of generosity, he shared part of the proceeds with the plaintiffs and all his siblings."*

In paragraph 8 of the witness statement, the Defendant stated:

10 *"That I immediately took possession of the subject land by developing the same thereof and disposed the same in two phases, first at UGX 300,000,000 which, out of generosity, gave part of the said proceeds to the Plaintiffs as my siblings and others who mattered in my life."*

Paragraph 9 thereof states:

"That subsequently in early 2020, I sold another portion to the 3 15 *rd Defendant at a consideration of UGX 800,000,000, whereof out of generosity I gave part thereof to the Plaintiffs as my siblings and others who mattered in my life."*

It is my considered view that if the Defendant had indeed given that amount of 20 money, he should have documented it and he should also have been eager to state the figure that he gave out to his siblings in his pleadings and his evidence in chief. He did not have to wait to say the same in cross examination. I find this to have been an afterthought.

25 I also note with concern the casual and inconsiderate way in which the Defendant took this matter especially when he stated in his statement *how he shared the proceeds from the sale with the people that mattered in his life*. (Emphasis is mine). He never found it necessary to mention those people in his witness statement. When asked by the Court who those people were, he stated that it were the land brokers that got the buyers. He could not even tell the Court how much was paid to the brokers; neither did he mention who the land brokers were. I found that to be so casual, arrogant and inconsiderate of the other beneficiaries.

Consequently, therefore, Issue No. 2 is answered in the affirmative with a variation of the amount of money from Three Hundred Twenty-Five Million Seven Hundred Fourteen Thousand Two Hundred Eighty-Four Uganda Shillings only (UGX 325,714,284) as claimed to Eight Hundred and Seventy-One Million Shillings only 10 (UGX 871,000,000) as proved by the evidence as the unpaid beneficial interest to the other beneficiaries.

Issue No. 3: *What are the remedies available to the parties?*

This issue has been fully resolved in Issue No. 2.

Conclusion

Consequently, therefore, this suit whole succeeds on the following declarations and orders:

- 1. Land comprised in Kyadondo Block 222 plot 3436 (suit land) formed the 20 estate of the late James Kiggundu;

- 2. Each of the Fourteen (14) beneficiaries of the estate of the late James Kiggundu was entitled to a beneficial share of Seventy-Seven Million Shillings only (UGX 77,000,000); save for the Defendant who is entitled to Eighty-Eight Million Shillings only (UGX 88,000,000), the extra being the 25 1% of the total proceeds of the sale as **the heir**;
- 3. The Defendant shall give each of the thirteen (13) beneficiaries of the estate of the late James Kiggundu Sixty-Seven Million Shillings only (UGX 67,000,000) since they already received Ten Million Shillings (UGX 10,000,000);
- 5 4. The above-said monies shall be paid to the individual beneficiaries within Six (6) months from the date of this judgment and in any case not later than 10th April 2025 in two equal installments, the first being paid not later than 10th January 2025;
- 5. No damages have been awarded to the Plaintiffs;
- 10 6. Each party shall bear its own costs in order not to aggravate the already sour relationship between the Plaintiffs and the Defendant.

I so order.

Dated at Kampala this 8 th 15 day of October 2024.

.....

Alice Komuhangi Khaukha

JUDGE

20 08/10/2024.

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/2024/61/eng@2024-10-08>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nassali-5-others-v-lukwago-civil-suit-185-of-2022-2024-ughcfd-61-8-october-2024-unknown-topic-unknown-court-2024>

Prepared on 14 October 2026 · Esheria