

UGANDA / JUDGMENT

Tumuhairwe and Another v Tumwebaze Mugasha (Civil Suit 102 of 2020) [2025] UGHCFD 15 (14 April 2025) [2025] UGHCFD 15

COURT

HC: Family Division (Uganda)

BEFORE

Nagawa, J

CASE / FILE NUMBER

Civil Suit 102 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA [FAMILY DIVISION] CIVIL SUIT NO.
102 OF 2020

1. TUMUHAIRWE MOSES

2. DINAH MUGASHA ::: PLAINTIFFS VERSUS

ANNET TUMWEBAZE MUGASHA ::DEFENDANT

JUDGEMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA.

1.0 Introduction.

- 1.1 The Plaintiffs instituted this suit against the defendant, seeking the following orders;
- 1. Revocation of the grant to the Defendant.
- 2. An order for accountability and distribution of the estate.
- 3. General damages
- 4. Costs of the suit.
- 1.2 The plaintiffs were represented by Mr. Kamugisha Vincent of M/S Balikuddembe & Company Advocates while the defendant was represented by Mr. Tumwesigye Louis of M/S Tumwesigye Louis & Company Advocates.

2.0 Background

2.1 The suit in summary concerns the estate of the late Frank Mugasha who died on 12th March, 2016, leaving a widow (the defendant), seven children and a dependent relative (his father). The Defendant obtained Letters of Administration on 23rd August, 2016, and to date, she has never distributed the estate but has continued to liquidate estate

property and convert the proceeds to her purpose, hence prejudicing other estate beneficiaries.

- 2.2 The Plaintiffs contend that after obtaining Letters of Administration, the defendant became hostile to them and other dependent relatives by stopping the assistance they were receiving from the deceased.
- 2.3 The Defendant has since sold and transferred most of the estate properties and converted proceeds therefrom to her use. She has also grabbed and sold the eucalyptus forest at Mirama, which the deceased had in his lifetime given to his father.
- 2.4 The defendant denies this contention and avers that upon her appointment as an administrator, she then commenced the process of collecting and identifying all the property that formed the estate.
- 2.5 After identifying the property that formed the estate of the late Frank Mugasha, the defendant filed an inventory and thereafter called for a family meeting for purposes of distributing the property but all her efforts were frustrated by the 1st plaintiff.
- 2.6 The defendant further contended that she sold property comprised in Kyadondo 194 Plot 553 and 531 at Kungu to pay school fees for the beneficiaries including the 2nd plaintiff and other children of the deceased. The same proceeds were used to obtain scholastic materials, home maintenance, catering for the deceased's father (dependent), fencing lands, planting bananas on 7 acres of land, renovation of her home, buying a car, building a village home, bailing out the 1st plaintiff in his shop business by giving him capital of Ugx. 5,000,000/= to stock his shop. She also contends that Kyadondo Block 10 Plot 1542 was a matrimonial home. She asserts that she has never been hostile to the plaintiffs or other beneficiaries.

2.7 It is also the assertion of the defendant that the properties that were jointly purchased with the Late Frank Mugasha and registered as such do not form part of the deceased's estate.

3.0 Issues to be determined by the Court.

- 1. What are the plaintiffs are entitled to in the estate?
- 2. Whether the 2nd Plaintiff lawfully caveated Kyadondo Block 220 Plots 290 and 396 at Kiwatule?

- 3. What Remedies are available to the parties?

4.0 Submissions.

4.1 Counsel for the Plaintiffs and the defendant agreed to proceed by way of filing written submissions which were filed although way out of time and this affected the timing of this decision. All documents filed before this Court have been perused, analyzed and considered in the determination of this suit. Every effort by counsel to have this matter resolved is thus appreciated by the court.

5.0 Proceedings in Court.

5.1 On the 27th February, 2024, PW3, Tumuhairwe Moses, took the oath and was subsequently cross-examined regarding his witness statement. In his testimony, PW3 spoke about the ownership of several properties belonging to the estate of the deceased. He was certain that many of the properties in question were owned by his father, the deceased. PW3 showed a lack of knowledge about certain estate properties, particularly those within the city, and could not provide clear insights into their management or any transactions related to them. His testimony highlighted a general unfamiliarity with the specific circumstances surrounding the deceased's assets.

- 5.2 On 29th October, 2024, Mr. Rogers Odokemyero a bank official who held the position of Head of Branches and Channels at Standard Chartered Bank, gave his testimony in court. He provided significant details regarding the deceased's bank account. He confirmed that Account Number 01501022411300 was indeed held by the deceased and had been opened on the 20th January, 2012, under the name Mugasha Frank Muhumuza. He went on to clarify that following the death of the deceased, the defendant had presented Letters of Administration for the deceased's estate, and as a result, the defendant became the new account holder. However, he made it clear that the defendant was never introduced as a co-owner of the account during the lifetime of the deceased as had been alleged by the defendant. He stated that the account was specifically a salary account, into which the deceased's salary was regularly deposited. His testimony provided crucial information regarding the handling of the deceased's bank account, as it confirmed that the account was solely in the deceased's name prior to his passing and that the defendant, as the administrator of the estate, took over its management thereafter.
- 5.3 On 3rd October, 2024, the defendant (DW1) took the oath and was cross-examined regarding her three (3) witness statements. During her testimony, she shared details about the assets left behind by the deceased. The defendant revealed that she had four children with the deceased, namely Mugasha Owen, Mugasha Darwin, Mugasha Erwin, and Mugasha Calvin. She went on to describe the extensive estate that the deceased had accumulated during his lifetime. The properties included land in various locations, such as Kakooba

Mbarara City, Namuloge Kyadondo, unregistered land Lusaze- Rubaga Division,

Lyantonde, Busiro at Jungo, and Sagala. Additionally, there were four rental units in Kiwatule, a jointly owned house in Kakyeka, a farm and plantation in Rugando, Rwampara, a 2-acre banana plantation at Rucece, a commercial plot on Kabale Highway, a forest on Kabale Road, a house in Rucece, and lock-up shops in Nakivubo.

- 5.4 In light of the above, DW1 further testified that some of these properties had been sold, while others were jointly owned by her and the deceased. She specifically mentioned the sale of land in Kungu, which had been sold for UGX 700,000,000/= (Seven Hundred Million Uganda Shillings). DW1 explained that the funds obtained from the sale were used for various purposes, including the management of the deceased's estate, the establishment of businesses for the children, and covering their school fees. In addition, she stated that she had regularly sent money to the children for their upkeep and had also paid the school fees for Tendo Sunitah on two separate occasions.
- 5.5 During re-examination, the defendant in that content clarified that certain properties were jointly owned between herself and the deceased. These included the rental properties in Kiwatule, the house in Kakyeka, Mbarara, the lock-up shops in Kisseka, the house in Kyebando, and the money held in various accounts. She reiterated that her role in managing these assets had been crucial in maintaining the well-being of the children and ensuring their education and business ventures were supported after the passing on of the deceased.

6.0 Determination by the Court.

What are the plaintiffs entitled to in the estate?

6.1 The deceased Frank Mugasha had 7 children namely Tumuhairwe Moses, Dinah Mugasha, Owen Gumisiriza, Ahumuza Darwin,

Mugasha Erwin, Mugasha Calvin and Tendo Sunitah. The deceased also left a widow (the defendant Annet Tumwebaze) who is the administrator of the estate and a dependent relative, his father Elisafu Kitentela.

- 6.2 The deceased left behind known several properties including the following;
- a) Kyadondo Block 158 Plot 381 land at Namulange.
- b) Unregistered land at Lusaze measuring 30 decimals.
- c) Kyadondo Block 220 Plot 290 and 286 holding rental houses.
- d) Lyantonde Kabula Block 76 Plot 1782 (Developed 15 decimals).

- e) Mbarara LRV 2852 Folio 9 Plot 4 Kakyeka with a house.
- f) Kyadondo Block 210 Plot 1542 Kyebando
- g) Busiro Block 532 Plot 321 Jungo & Sagala- (Nakawuka 4 acres undeveloped).
- h) Mbarara Kakoba Plot 21 Mosque Road (undeveloped)
- i) Kyadondo Block 194 Plot 553 & 531 Kungu
- j) Farm at Rukindo Kampala
- k) Eucalyptus Forest at Recece Rwampara and a House at Rucece
- l) Land at Rucence with 2 shops and a banana plantation on Kabale High way.
- m) Customary land at Rucece
- n) LRV 2851 Folio 9 Mbarara Rufara Lane.
- o) Commercial Plot on Kabale Highway.
- p) Lock up shops in Kisseka namely LD015, ZD006, 2C005 Nakivubo Road.
- q) Money in bank accounts held in Absa and Standard Chartered Banks.
- r) Gratuity of the deceased.

- 6.3 The plaintiffs assert that the properties available for distribution, which were neither jointly owned nor distributed by the deceased during his lifetime, include the following: 1) Kyadondo Block 158B Plot 381 (land at Namulonge measuring 2.4 acres), 2) Busiro Block 532 Plot 321 (Jungo & Sagala), 3) Kabula Block 76 Plot 1782 (commercial property in Lyantonde Town), 4) an unregistered commercial plot at Lusaze (Rubaga Division), 5) farmland at Rukindo-Rwampara county measuring 25 acres, 6) a banana plantation at Rucece (2 acres) customary land at Rucece, 7) an unregistered plot at Kakoba, Mbarara City, 8) land with eucalyptus trees at Rucece on Kabale Highway and 9) gratuity.
- 6.4 The plaintiffs further contend that the defendant sold the land at Namulonge (Kyadondo Block 158B Plot 381), and the proceeds from this sale remain unknown. They argue that the land at Namulonge was prime property and estimate it was sold for approximately UGX.800,000,000/= (Eight Hundred Million Uganda Shillings).
- 6.5 To this end, DW1 asserts that Kyadondo Block 210 Plot 1542 at Kyebando is matrimonial property and, therefore, should not be considered part of the deceased's estate. DW1 also claims that the property at Kyadondo Block 220, Plots 290 and 386, located at Kiwatule and developed with four housing units, as well as LRV 2852 Plot 1542 at Kakyeka in Mbarara City, and the lock-up shops at Kisseka Market (LD015, ZD006, 2C005, Nakivubo Road), were jointly owned by herself and the deceased, and as such, should not be included in the deceased's estate.

- 6.6 The defendant testified that she sold the property comprised at Kyadondo Block 158B, Plots 131 and 381 at Namulonge, as well as

Kyadondo Block 194, Plots 553 and 531 at Kungu, to pay for the children's school fees, support their businesses, and provide for the deceased's father. The defendant, however, did not provide receipts for these transactions.

- 6.7 The defendant testified that the funds in the bank accounts were joint property. She explained that while the deceased was a civil servant, she was an international businesswoman, and the money in the accounts belonged equally to both her and her husband. She requested that the court distribute the properties in accordance with her proposed arrangement.
- 6.8 This court, observed that being an employed spouse, an international business woman automatically does not necessary mean that the defendant directly contributed towards the acquisition and development of properties mentioned herein.

7.0. Determination.

- 7.1. The court recognizes that while the defendant asserts that Bank Account 0150102411300 at Standard Chartered Bank was a joint account, the evidence presented contradicts this claim. In fact, the account was solely registered in the name of the deceased, Frank Mugasha. At the time of his death on 12th March 2016, the balance in the account was UGX 539,548,293 (Five Hundred Thirty-Nine Million, Five Hundred Forty-Eight Thousand, Two Hundred Ninety-Three Shillings).
- 7.1.1. This amount, alongside the proceeds from the sale of Kyadondo Block 158B, Plots 131 and 381 at Namulonge, and Kyadondo Block 194, Plots 553 and 531 at Kungu, was reportedly used by the defendant. However, she failed to provide any receipts or documentary proof

regarding how these funds were utilized. The defendant did not offer any satisfactory explanation or justification for the use of this money, nor did she provide any records showing the disbursement or expenditure of the funds.

- 7.1.2. **Section 27 of the Succession Act, Cap. 162** *(The Act in force at the time of the deceased's death and the grant of Letters of Administration)* provides that in the case of a male intestate, a wife is entitled to 15% of the estate, the children 75% and dependent relatives 9%. The defendant did not administer the estate of the deceased in accordance with this.
- 7.1.3. Based on the evidence presented and the court's findings, it is evident that the defendant has misappropriated substantial funds from the deceased's estate.

- 7.2. Firstly, the court notes that the defendant claimed Bank Account 0150102411300 at Standard Chartered Bank was a joint account. However, the evidence presented clearly shows that the account was solely registered in the name of the deceased, Frank Mugasha. At the time of his death on 12th March 2016, the account held a balance of UGX 539,548,293/= (Five Hundred Thirty-Nine Million, Five Hundred Forty-Eight Thousand, Two Hundred Ninety-Three Shillings). This was also confirmed by the witness from the bank who confirmed to this court that this account was opened solely by the deceased who had never introduced the defendant as a co-owner of the account. As such, these funds were rightfully part of the deceased's estate and should have been handled in accordance with the applicable legal procedures for distribution.

- 7.2.1. However, despite this, the defendant has failed to provide any receipts or documentation to account for the use of these funds. Additionally, she did not offer any clear explanation for how the money was spent. This accountability is concerning, especially considering that the defendant also used proceeds from the sale of Kyadondo Block 158B, Plots 131 and 381 at Namulonge, and Kyadondo Block 194, Plots 553 and 531 at Kungu, for which no receipts or proof of expenditure were submitted.
- 7.2.2. While the court acknowledges that the defendant has children to care for and that some of the funds may have been used for their education and well-being, the amounts spent for these purposes were far less than the sums in question. Specifically, only about UGX 3,000,000/= was alleged to have been used towards the education of Tendo Sunitah, to wit it was denied that instead the defendant sent UGX.300,000/= towards her education through her grandfather (the dependent) which was reverted to her for it was far less the required amount of Ugx. 2,800,000/= for the 2 terms of the beneficiary's school dues. In addition the UGX 5,000,000/= that the defendant claims to have allocated to the plaintiffs and the deceased's father for his care and their businesses cannot be equated to the proceeds expenditure from the said sale of the estate property. She did not provide the court with how much money was allocated towards the education of her own biological children. Even if the defendant did use some of these funds to support her children's education, it is clear that this spending was disproportionately directed towards her biological children, to the exclusion of the deceased's other children and beneficiaries.

- 7.2.3. This biased allocation of funds not only lacks transparency but also undermines the equitable distribution of the estate. It is clear that the defendant's actions were self-serving and did not take into account the interests of the other beneficiaries not being her own biological children and the deceased father whom she acknowledged that he was a dependent of the deceased. The court finds that the defendant has misappropriated significant estate funds, and her actions were in violation of her fiduciary duties as an administrator of the deceased's estate.

- 7.3. Therefore, the court finds that the amount misappropriated, including the funds from the Standard Chartered Bank account and the proceeds from the property sales, would be counted as part of the estate.
- 7.4. The defendant will be held accountable for these actions in the final distribution of the estate. In light of the defendant's biased handling of the estate funds, the court will ensure that these misappropriated amounts are properly considered and rectified in the fair and equitable distribution of the deceased's assets.
- 7.5. Furthermore, the court finds that the property claimed to have been distributed to the 1st plaintiff and the deceased's father during the lifetime of the deceased fails to meet the standard required for a gift inter vivos under the law. A gift inter vivos of land may be established by evidence of exclusive occupation and use thereof by the donee during the lifetime of the donor. A gift is perfected and becomes operative upon its acceptance by the donee and such exclusive occupation and user may suffice as evidence of the gift (**Ovoya Poli v.**

Wakunga Charles, H. C. Civil Appeal No. 0013 of 2014). A legitimate gift must demonstrate;

- a) clear donor intention,
- b) complete property delivery,
- c) donee acceptance,
- d) absence of consideration.
- 7.6. A gift inter vivos is valid only when all legal requirements are unequivocally satisfied, protecting the integrity of voluntary property transfers. The plaintiffs state that the deceased distributed property to his deceased father but present no proof of the abovementioned requirements. The properties mentioned form part of the estate of the deceased and shall be distributed as such.
- 7.7. In distributing property, the court always considers the principle of fairness, justice, reasonableness, proportionality, comity, conformity and solidarity that will result in the property being equally divided among the beneficiaries. The concept of equality and fairness is considered by holding that fairness depends on the circumstances of the case when it comes to distribution of property as provided for in the Succession Act as cited herein above while equality means that beneficiaries are entitled to an equal share of the estate irrespective of the mode of acquisition.
- 7.8. Each decision is the courts' attempt to be fair in a particular situation and fairness requires this court to take into account all circumstances of the case. In seeking to achieve a fair outcome, there is no place for discrimination among beneficiaries.

- 7.9. Considering the above, the estate shall be distributed following the proposal by both parties with a few changes.
- a) The unregistered commercial plot at Lusaze-Rubaga division shall be sold and the proceeds distributed to all the deceased's children.
- b) The commercial property at Lyantonde, Kabula-Block 76 Plot 1782 and the farm at Rukindo in Rwampara are distributed to Owen Gumisiriza, Ahumuza Darwin, Mugasha Erwin, Mugasha Calvin and the defendant.
- c) The property comprised at Busiro Block 532 Plot 321 (4 acres) shall be distributed to Tumuhairwe Moses, Dinah Mugasha and Tendo Sunitah.
- d) The land at Mbarara Kakoba Road Plot 21 Mosque Road Mbarara City shall be distributed to Tumuhairwe Moses, Dinah Mugasha, Elisafu Kitentela and Tendo Sunitah.
- e) The deceased's house, built on his father's land, shall also be distributed to Tumuhairwe Moses, Dinah Mugasha, Elisafu Kitentela and Tendo Sunitah.
- f) The land with two shops on Mbarara Kabale Highway is distributed to Dinah Mugasha and Tendo Sunitah.
- g) Rucece banana Plantation shall be distributed to Tumuhairwe Moses and Elisafu Kitentela.
- h) The Eucalyptus Forest at the Rucece is distributed to the plaintiffs and Tendo Sunitah.
- i) The deceased's gratuity of Ugx.45,326,991/= shall be distributed evenly among all the beneficiaries including and the deceased's father. This claimed sum was not sufficiently proved

by the plaintiffs, therefore court considers the mentioned sum herein.

- j) In the findings above, I have also taken into account the distribution of the money already used by the defendant in caring for herself as well as her children. This includes the proceeds of the sale of two prime plots of land. It is only fair that the rest of the deceased's children receive an equal share in the estate.

8.0. Whether the 2nd Plaintiff lawfully caveated Kyadondo Block 220 Plots 290 and 396 at Kiwatule.

- 8.1. In the resolution of Issue One above, it has been conclusively established that the land located at Kyadondo Block 220, Plots 290 and 396, Kiwatule, was co-owned by both the deceased and the plaintiff. Given the background of this suit and the time it has taken the defendant to distribute the estate since the passing on of the 2nd plaintiff's father, it was the

only remedy she had left lest everything is misappropriated by the defendant before filing the final account of the deceased's estate. Unless, the defendant files the final account of the deceased's estate upon sharing a copy with all the beneficiaries, the property shall remain caveated.

- 8.2. The Registrar of Titles shall not vacate the Caveat on Kyadondo Block 220 Plots 290 and 396 at Kiwatule until the final account of the estate is filed and consented to by all the beneficiaries.

9.0. What remedies are available to the parties?

9.1. Section 230 of the Succession Act, Cap. 268 provides that a grant of probate or letters of administration may be

revoked or annulled for just cause. The grant may be revoked for "just cause" where;

- a)
- b)
- c)
- d)
- e) 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; or
- f) that the person to whom the grant was made has mismanaged the estate.
- 9.2. Based on the testimony provided by Mr. Rogers Odokemyero it is evident to the court that the defendant exhibited a pattern of mismanagement concerning the estate funds. The defendant withdrew money from the deceased's account without providing any proper accounting or justification for these withdrawals.
- 9.3. The defendant also sold property belonging to the estate, and failed to account for the proceeds from those sales. This lack of transparency and disregard for fiduciary duties suggests a deliberate attempt to misappropriate the estate's assets. The defendant's actions, as described by the witness, point to a clear and ongoing failure to properly manage and safeguard the estate's financial resources, which is a breach of her responsibilities as an administrator. For this reason, the Letters of Administration granted to her by this court are revoked. The beneficiaries of the deceased of majority age shall select two

persons, not including the defendant to administer the estate of the deceased as directed by this court.

10.0. Conclusion.

- 10.1. In the final result, the court determines as follows;
- 1. The Letters of Administration granted to the Defendant on 23rd August, 2016 over the estate of the deceased Frank Mugasha are hereby revoked.
- 2. The beneficiaries of the estate of the Late Frank Mugasha of majority age shall approach court having selected two persons, not including the defendant to whom Letters of Administration shall be granted to administer the estate of the deceased.
- 3. The Defendant is hereby directed to file at this court not later than two months from this Judgement an account of the funds received from Standard Chartered Bank Account Number 01501022411300 and from the sale of estate property comprised at Kyadondo Block 158B, Plots 131 and 381 at Namulonge, and Kyadondo Block 194, Plots 553 and 531 at Kungu.
- 4. The deceased's estate property shall be distributed to his beneficiaries as follows;
- a) The unregistered commercial plot at Lusaze-Rubaga division shall be sold and the proceeds distributed to all the deceased's children.
- b) The commercial property at Lyantonde, Kabula-Block 76 Plot 1782 and the farm at Rukindo in Rwampara are distributed to Owen Gumisiriza, Ahumuza Darwin, Mugasha Erwin, and Mugasha Calvin.

- c) The property comprised at Busiro Block 532 Plot 321 (4 acres) shall be distributed to Tumuhairwe Moses, Dinah Mugasha and Tendo Sunitah.
- d) The land at Mbarara Kakoba Road Plot 21 Mosque Road Mbarara City shall be distributed to Tumuhairwe Moses, Dinah Mugasha, Elisafu Kitentela and Tendo Sunitah.
- e) The deceased's house, built on his father's land, shall also be distributed to Tumuhairwe Moses, Dinah Mugasha, Elisafu Kitentela and Tendo Sunitah.
- f) The land with two shops on Mbarara Kabale Highway is distributed to Dinah Mugasha and Tendo Sunitah.
- g) Rucece banana Plantation shall be distributed to Tumuhairwe Moses and Elisafu Kitentela.
- h) The Eucalyptus Forest at the Rucece is distributed to the plaintiffs and Tendo Sunitah.
- i) The deceased's gratuity of UGX. 45,326,991/= shall be distributed evenly among all the beneficiaries of deceased children and including father.
- j) The Registrar of Titles shall not vacate the Caveat registered on Kyadondo Block 220 Plots 290 and 396 at Kiwatule unless by court order.

- k) Costs awarded to the plaintiffs.

Dated, Signed and delivered electronically this 14th day of April, 2025.

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