

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
CIVIL SUIT NO. 97 OF 2006

1. NTAMBI GEORGE 2. LUTAMAGUZI G. EMMANUEL 3. NABWETEME BARBRA 4. NAKIYAGA 5. NAMAWUBA AGNES 6. NABUKALU CHRISTINE 7. NAKIMU JACKLINE	} IMMACULATE } PLAINTIFFS
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VERSUS

BENEDICTO MUDIIMA NJUKI
DEFENDANT

BEFORE: HON. JUSTICE SUSAN OKALANY

JUDGMENT

INTRODUCTION

- 1) The plaintiffs jointly instituted this suit against the defendant for the following orders:
 1. An order of revocation of letters of administration granted to the defendant in respect of the estate of the deceased;
 2. A declaration that the defendant has wrongly sold/alienated land and other property, including land of the estate and converted the proceeds to his own use;

3. An injunction restraining the defendant from selling, disposing off, alienating and wasting the estate;
4. An order that the defendant gives an account of the proceeds of the land he sold and monies of the estate;
5. General damages;
6. Interest therein; and
7. Costs of the suit.

BACKGROUND

- 2) According to the amended plaint, the plaintiffs and the defendant are children of the late Emmanuel Ndugwa Sekisambu (hereinafter called 'the deceased') who died testate on 15/12/1998. The deceased in his will distributed his property and appointed executors of his will as: Yakobo Katende (deceased), Johnson Mutumba, Eriyazaali Musoke, Lawrence Mukasa Ssemakula, Nabatanzi Nakiyaga, Goobi (deceased) and the defendant. According to the plaintiffs, the said executors did not obtain probate of the will. The plaintiffs were surprised to learn that on 11/12/1999, the defendant solely obtained letters of administration of the estate, with the will annexed, without consulting them.
- 3) It is claimed that the will gave specific responsibilities to the executors with regard to the land at Kamuli, comprised in Kyadondo Block 230, Plot 200 (now known as Plot 1235). The said land consisted of the family burial land and other family assets that were to be commonly used by all beneficiaries.
- 4) The plaintiffs declared that since obtaining letters of administration, the defendant has mismanaged the estate and done things contrary to the will as follows:
 - a) Using the estate for his sole benefit;
 - b) Selling three (3) pieces of land reserved as burial land to strangers who have since constructed on it, and converting the proceeds of the said sale to his own use;

- c) Constructing a building, which he rented out to tenants, on land that is beyond the 40 decimals willed to him;
 - d) Constructing a commercial building on the said burial land and letting it out to tenants;
 - e) Surveying off 49 instead of the 40 decimals willed to him;
 - f) Entering a sale agreement concerning a portion of burial land saved for all beneficiaries of the estate with Edmond Kinene (who is one of the parties' brother);
 - g) Selling Plot 179, which was bequeathed to the 5th plaintiff and using its proceeds for his own benefit;
 - h) Selling Plot 181, which was reserved for a road;
 - i) Selling Plot 195, which was bequeathed to Nakazibwe Leonia;
 - j) Selling Plot 184, which was bequeathed to the 6th plaintiff;
 - k) Selling Plot 189, which was reserved for payment of school fees for the school going beneficiaries of the estate; and
 - l) Withdrawing the deceased's savings from Grindlays bank and using it for his own personal benefit.
- 5) The defendant in his amended written statement of defence stated that he would raise a preliminary objection to the effect that the claim of the 2nd plaintiff (Lutamaguzi) against him, is frivolous and vexatious and not maintainable in law, since he is not a beneficiary of the estate of the deceased according to the will. According to him, the only Lutamaguzi known to the testator and the defendant is Lutamaguzi Emmanuel Fulbert, who had received his share under the will and that the 2nd plaintiff is an imposter/impersonator whose stated name is unknown to the defendant.
- 6) He declared that the deceased died on 15/12/1998 and named the defendant as one of his executors, as well as heir and chairperson of estate of the deceased. He asserted that the other appointed executors of the will being of advanced age, declined to honor their

appointments, leaving the defendant as the only eligible executor/administrator of the estate.

- 7) The defendant said that the deceased bequeathed 0.40 decimals of Plot 200 to him as the defendant's customary heir and directed him to preserve the remaining unoccupied piece land on Plot 200 as burial land. The defendant alleged that the 1st plaintiff encroached on part of the burial land by making bricks on it, while the 2nd plaintiff constructed rental units on part of that land, from which he earns monthly rental proceeds to the exclusion of others, contrary to the testamentary wishes of the deceased and the defendant's protests. The defendant maintains that the acts of the 1st and 2nd plaintiffs amount to intermeddling and trespass to the estate of the deceased. He also maintained that he had distributed the estate according to the will of the deceased, and that all plaintiffs got their respective shares under it.
- 8) The defendant filed a counterclaim against Lutamaguzi Godfrey Emmanuel (2nd plaintiff) and Ntambi George (1st plaintiff) as 1st and 2nd counter defendants respectively, for the recovery of the parts of Plot 200 occupied by them and for vacant possession, mesne profits, general damages and costs of the suit. In his counterclaim, he stated that he had fully distributed the estate of the deceased reasonably and according to the will and provided sustenance for the widow, paid school fees for the school going beneficiaries of the estate, despite the 2nd counter defendant's refusal to continue with his education, resorting instead to brick making on Plot 200, contrary to the provisions of the will and without the consent of the counterclaimant.
- 9) He claimed that the 1st counter defendant forcefully and illegally occupied Plot 200 and constructed an illegal structure therein, despite attempts by the area local council administration to stop him. Additionally, he claimed that the 1st and 2nd counter defendants had not only trespassed on burial land, but had also threatened to injure

the counter plaintiff and the deceased's widow. Furthermore, he alleged that the 1st counter defendant had forcefully constructed rental units on burial land, from which he earns rental income at the expense of the estate and the rest of the beneficiaries, while the 2nd counter defendant intermeddled with the estate, when he exceeded the 50ft x 50ft piece of land he had swapped with the 5th plaintiff's plot, given to her by the defendant as compensation for her bequest that had been sold by the deceased.

- 10) The counterclaimant prayed for the following:
 - a) Vacant possession of Plot 200;
 - b) Demolition of the 1st counter defendant's illegal structures erected on Plot 200;
 - c) Mesne profits;
 - d) General damages;
 - e) Recovery of the Kibanja of the counterclaimant from the 1st counter defendant;
 - f) Costs of the suit; and
 - g) Interest and 6% per annum on (c), (d) and (f) above from the date of judgement till payment in full.
- 11) In reply to the counter claim, the counter defendants, asserted that the counter claimant did not have locus to prosecute this suit in the counter claim. They denied the allegations made by the counter plaintiff that they are intermeddlers of the estate of the deceased.
- 12) The 1st counter defendant refuted claims that he had refused to study and declared that the will provided a source of income for payment of school fees for the school-going beneficiaries of the estate, but that the counterclaimant had used it for his own benefit and provided only a small fraction of the said school fees. He claimed that he constructed a house on the piece of land shown to him by the deceased and with the deceased's permission, but that later on, the counter claimant maliciously added that piece of land to his own title.

- 13) The counter defendants denied allegations that they had illegally occupied Plot 200 and constructed illegal structures thereon. They insisted that the said structures were lawfully constructed, with the approval of 1st counter defendant's building plans by Kira Town Council, for the purpose of preserving estate land from illegal sales and alienation by the counter claimant.
- 14) According to the 2nd counter defendant, his making of bricks on the estate land does not waste the estate.
- 15) The counter defendants claimed that there is enough land for burial of family members, for decades to come, and denied committing any trespass. They declared that the house constructed by the second plaintiff (first counter defendant) on the plot that was sold to Edmond Kinene by the counter claimant was constructed to frustrate the said illegal sale and alienation.
- 16) The counter defendants declared the conviction alluded to in paragraph 3 of the counter claim was wrong in law and fact, since it was based on a malicious prosecution commenced by the counter claimant. They instead accused the counter claimant of being a convict in the assault of Timothy Serunjoji, son of the 2nd counter defendant and Siraj Din Lubwama, son of the 3rd plaintiff.

SCHEDULING

- 17) This matter suffered several adjournments up until 5/2/2016, when the court directed that the parties conduct a joint scheduling before it on 15/6/2016. Strangely, on that date, counsel for the plaintiffs informed the court that they were unable to schedule. The matter was adjourned to 17/10/2017, when the parties were again directed to file their joint scheduling notes by 31/10/2017. The defendant compiled. On 23/11/2017, the court issued another directive for the parties to prepare a joint scheduling memorandum and file the same by 15/12/2017. The parties did not oblige. The court graciously

gave them several other adjournments to 30/8/2018, 15/10/2018, and 15/1/2019 to enable them file scheduling notes in vain. On 2/4/2019, the hearing commenced with just the defendant's scheduling notes on the record, in which the following issues were raised for determination:

1. Whether the defendant has committed acts of intermeddling with the estate of the late Emmanuel Ndugwa Sekisambu;
2. Whether the plaintiffs are trespassers on Plot 200 and thereby intermeddled with the estate of the deceased;
3. What remedies are available to the parties.

REPRESENTATION

18) Mr. Denis Kwizera appeared for the plaintiffs, while Mr. Francis Xavier Ogwado represented the defendant. The parties were permitted to proceed by way of written statements. The plaintiffs called 5 witnesses, namely: Ntambi George (PW1), Lutamaguzi Godfrey Emmanuel (PW2), Namawuba Agnes (PW3), Nabweteme Babra (PW4) and Nabukalu Christine (PW5), while the defendant testified and called one other witness Norah Ndugwa Nanozi (DW1).

19) The following exhibits of the plaintiffs were admitted in evidence with the consent of the defendant's counsel:

- Exh. P1 is the will of the late Christopher George Emmanuel Ndugwa Sekisambu dated 9/12/1995;
- Exh. P2, a copy of the grant of letters of administration to the defendant dated 11/10/1999;
- Exh. P3 is a memorandum dated 3/3/2003, made by the defendant, undertaking to pay 4,000,000/= in two instalments, to his step mother Nakazibwe Leokadiya;
- Exh. P4 is a document dated 25/10/2012, addressed by the defendant to the committee dealing with the affairs of the deceased's estate responding to an earlier document dated

18/10/2012, written by the children and grandchildren of the deceased;

- Exh. P5 consists of photographs of houses built by external buyers of plots on the estate of the deceased;
- Exh. P6 is a boundary verification report for Block 230, Plot 200, dated 14/9/2016;
- Exh. P7 is a certificate of title for Block 230, Plot 1235;
- Exh. P8 is the resolutions of a meeting held between 1st plaintiff and other beneficiaries of the estate, dated 18/6/2016; and
- Exh. P9 is a collection of photos showing developments on the disputed land. Photos.

20) The following exhibits of the defendant were admitted in evidence with the consent of the plaintiff's counsel:

- DEX1 (same as Exh. P1) is the will of the late Christopher George Emmanuel Ndugwa Sekisambu (deceased) dated 9/12/1995;
- DEX2 is the inventory made by the defendant;
- DEX3 is a photograph of the house constructed by the 2nd plaintiff in encroachment of Plot 200;
- DEX4 is the judgment of his Worship Komakech Kenneth dated 11/8/2015;
- DEX5 (same as Exh P2) is a copy of the grant of letters of administration to the defendant dated 11/10/1999;
- DEX6 dated 18/9/1999, is an acknowledgement of receipt of title deeds by Ntambi George, Lutamaguzi Emmanuel, Rock Nobert Muwanga, Halima Nabweteme, and Mutabulawo Nakitende, beneficiaries of the estate of the deceased;
- DEX7 is an acknowledgement of receipt of a title deed by Migadde Patrick, Navubya Diana and Ssemwogerere Herbert the grandchildren of the deceased;

- DEX8 dated 18/2/2000, is a land sale agreement for Plot 184, made between the 5th plaintiff (Namawuba Agnes) and a one Abwaimo Francis;
- DEX9 dated 22/8/1999, are Minutes of a meeting held by the beneficiaries of the estate of the deceased;
- DEX10 is an undertaking dated 22/2/2001, by the 2nd plaintiff, to vacate his house upon payment to him of 1,500,000/= by a one Mr. Ben;
- DEX11 is a letter written by Kira town Council to the 2nd plaintiff, dated 3/8/2012, prohibiting him from constructing a structure on the disputed piece land in Kireka;
- DEX12 is a gazetted copy of a notice of application for letters of administration by the defendant, dated 13th - 19th September 1999;
- DEX13 is a Certificate of title for Block 230, Plot 1235; and
- DEX14 is a letter dated 31/1/2000, written by Nabukalu Christine (PW5) to the defendant.

The following exhibits were admitted in evidence for the defendant during the trial:

- DEX15 is a photograph of a house under construction by the 2nd plaintiff;
- DEX16 is a letter dated 27/11/1999, written by the 2nd plaintiff, to the defendant, notifying him that he had instructions from Nakimu Jackline (7th plaintiff) to sell off her plot;
- DEX17 is a consent agreement dated 27/5/2000, made between defendant and a former occupant of a plot of land, in which the defendant agreed to compensate him for his crops and to construct latrines for the said occupant;
- DEX18 is a sale agreement for Plot 816 made between the defendant and a one Dr. Sam Lyomoki;

- DEX19 is a sketch map of Plot 200;
- DEX20 is a sale agreement for Plot 815, Block 230, made between the deceased, and a one Dr. Sam Lyomoki and Margret Lyomoki;
- DEX21 is a demolished house, constructed by the defendant for the 2nd plaintiff;
- DEX22 is a sale agreement for Plot 184 made between the defendant and a one Mwesigye Dan;
- DEX23 is a sale agreement dated 14/4/1997, for Plot 190, made between the deceased and a one Michael Victor; and
- DEX24 is a sale agreement for part of Plot 190, dated 1/7/1997, made between the deceased and Rose Ndagire.

THE PLAINTIFFS' EVIDENCE

- 21) According to 1st plaintiff (Ntambi George), who testified as PW1, the plaintiffs and defendant are all children of the deceased, who died testate on 15/12/1998. The deceased in his will distributed his property, particularly land at Kamuli and appointed executors of his will, as: Yakobu Katende (deceased), Johnson K. Mutumba, Eriyazaali Musoke, Lawrence Mukasa Ssemakula, Nabatanzi Nakiyaga, Goobi (deceased) and the defendant. The executors did not obtain probate of the will but somehow, the defendant solely applied for and was granted letters of administration.
- 22) It was also his evidence that the will of the deceased gave specific responsibilities to the executors with regard to the land at Kamuli comprised in Kyadondo Block 230 Plot 200. A portion of estate land was to be maintained as the family's burial land. Unfortunately, the defendant mismanaged the estate by selling off Plots of land measuring 50ft x 100ft to Sam Njuki, John Okia and Charles Owuma. The defendant lied to him that proceeds of the sale of land to the said Okia would be used to compensate their sister the 5th plaintiff, whose

plot of the land the defendant had sold off. The 1st plaintiff signed the agreement in which the defendant sold the said piece of land to Okia, believing that the 5th plaintiff would be compensated, but unfortunately, the defendant failed to hand over the proceeds of that sale to the 5th plaintiff as promised and used the same for his own personal gain.

23) The 1st plaintiff testified additionally that the defendant never consulted the beneficiaries of the estate before applying for letters of administration and the rest of the appointed executors have never renounced their right to apply for probate. The defendant also sold the land bequeathed to Nakazibwe Leonia their stepmother, to a man known to him as Fred Kibazo and has threatened to continue selling off more portions of the land reserved for family burials.

24) In cross-examination, the 1st plaintiff testified that he was 30 years old in 1999 and got to know about the executors of his father's will during their introduction to the family and those persons who attended the last funeral rites of the deceased. It was his brother Kiyingi who read the will during the deceased's last funeral rites. He knew the executors of the will who did not include the defendant. Subsequently, in further cross examination, the 1st plaintiff admitted that the defendant was one of the executors of the deceased's will. The 1st plaintiff did not know why the other executors of the will never applied for letters of probate. He denied seeing any notice of application for letters of administration issued by the defendant in any newspaper. It was also his evidence that he never lodged a caveat with any court to restrain the defendant from obtaining letters of administration.

25) The 1st plaintiff confirmed the fact that defendant handed Plot 199 to him as his rightful share under the deceased's will. He declared that he was also bequeathed a bicycle by the deceased, but never got it. His main complaint against the defendant was that he had curved

out and sold 3 plots of land, each measuring 50ft x 100ft from Plot 200 of Block 230, which land had been reserved as burial land in the will.

- 26) The defendant had for a while avoided giving the 5th plaintiff any piece of land. When the 1st plaintiff approached the defendant on the subject, the defendant instead suggested to him that he shares his own allotted plot with the 5th plaintiff, a suggestion the witness ignored. Subsequently, the defendant gave a piece of land next to the burial land to the 5th defendant. The 1st plaintiff switched his plot for the said plot. The defendant did not give the 5th plaintiff all of her bequest, since she still demands a plot measuring 50ft by 50ft from him, which the defendant sold.
- 27) It was also the testimony of the 1st plaintiff that the entire will was not read during the last funeral rites. He admitted the fact that defendant was named chairperson of the estate by the deceased, but maintained that the inventory filed by the defendant is false. Additionally, he testified that the defendant encroached on burial land when he constructed a structure containing about 20 rooms on it, contrary to the will. The deceased allocated a portion of Plot 200 to his mother to serve as a garden. On her death bed, his late mother asked him to sell her plot, but while trying to do so, he discovered that the defendant had already sold it. His mother died a month before his testimony in this court. She did not leave any power of attorney for him to claim her share of the estate on her behalf.
- 28) The 1st plaintiff's testimony at locus in quo was that the defendant had built on land reserved as burial land and had sold off portions of the said land to nonfamily members. He showed the court two houses next to the house of their mother (Nanozi Norah), which were constructed by the defendant, as well as shops built by him on Plot 200. He also showed court the rental rooms constructed by the deceased, as well as the piece of land which he swapped with the plot

given to 5th plaintiff by the defendant next to the burial land, now known as Plot 1076.

29) During cross-examination at locus in quo, he testified that the said Plot 1076 measures 0.15 decimals and that it is the defendant who knows the exact size of the plot that he (the 1st plaintiff) exchanged with the 5th plaintiff, which she later sold to a proprietor who built the apartment block that now stands on it. He confirmed that he signed the agreement in which the defendant sold land to a one Okia, because he wanted the defendant to purchase land and give it to the 5th plaintiff, Namakula Justine and Namakula Solome. He explained that the 5th plaintiff only received two, instead of the three plots that she was entitled to under the will, while his nieces Namakula Justine and Namakula Solome got nothing.

30) The 2nd defendant (Lutamaguzi Godfrey Emmanuel) testified as PW2, stating that the defendant specifically sold a plot of land apportioned in the will for his education and used all its proceeds for his own gain. At the time of his father's demise, he was in his school vacation, having completed his advanced level education. He was admitted to study a Bachelors of Arts degree in Urban Planning at Makerere University, but failed to join the university because he lacked tuition fees. Subsequently, the defendant gave him 1,500,000/= only, for a course he applied for, that was supposed to last two years at the Institute of Teachers Education in Kyambogo (ITEK). He sold the plot of land that he was bequeathed in the will to pay for his education, spending over ten million shillings (10,000,000) to cater for tuition, accommodation, meals and learning materials. It was not true as alleged by the defendant that he had refused to continue with his education.

31) According to the witness, he intentionally built on the part of the burial land that the defendant had illegally sold to their brother Kinene,

in order to preserve that land and to deter the defendant from selling it. Concerning the second house that he constructed on the disputed Plot 200, he asserted that the land on which the said house was built, did not belong to the defendant as claimed. The deceased had given him that portion of land during his lifetime, but that the defendant maliciously joined it with his (defendant's) own bequest while surveying his plot. The defendant was given 40 decimals, but had instead fraudulently surveyed off 49 decimals in the process of obtaining a title for his Plot 1054.

32) The defendant further encroached on burial land, where he built 5 shops, siting on approximately 5 decimals. Other beneficiaries of the estate were given only fractions of what they were actually entitled under the will. The 6th plaintiff was entitled to 14 decimals but was instead given the cash worth of only 12 decimals, while the late Goobi Christopher's plot was sold and its proceeds used personally by the defendant.

33) During cross-examination, the 2nd plaintiff declared that the defendant had sold Plot 189, although he was not sure if that was exact plot number of the land that the defendant had sold and used its proceeds for his sole benefit. He was not aware that his late father had sold off Plot 189 during his lifetime. The agreement presented to him by the defendant's counsel showed that the deceased had sold Plot 189, but the 2nd plaintiff believed that the contents of that document were false, since according to hm, the signature on it was not the deceased's signature. The deceased was suffering from an illness that made him tremble to the extent that he was unable to hold a pen. Upon reading the said document presented to him by counsel for the defendant, the 2nd plaintiff informed the court that he had challenged Fred Mukisa the alleged buyer of Plot 186, in a case he reported to the land protection unit at Kasubi Police, which case was still pending.

- 34) The 2nd plaintiff insisted that he was entitled to the full payment of his school fees from the estate, but had only received 1,500,000/=. There were other properties of the estate that had never been distributed, such as rental units on Plot 200 and household property of the deceased which include tables, suitcases and medals. He emphasized the fact that the deceased's will gives the defendant only 40 decimals of Plot 200 and the rest of the land is burial land.
- 35) His siblings the 1st, 3rd, 4th, 5th and 6th plaintiffs, Yayiro Musoke and Nakijoba met and resolved to stop whoever had purchased a piece of land on Plot 200, from the defendant, from constructing on it, only to discover that it was their brother Kinene Edmond who was its purchaser. He was advised by his said siblings to construct a building on the said piece of land. He did so without the consent of the defendant, because it was not necessary to obtain consent from the very person who had sold that land contrary to the will. He sought permission from Kira Town Council to construct and his building plan was approved by the said council.
- 36) He confessed that he did not build on the piece of land assigned to him in the will, but on the plot that was sold to Kinene Edmond by the defendant, in order to stop the said Kinene from unlawfully taking it. He affirmed that the 6th plaintiff never got what was allotted to her by the will.
- 37) Serunjoji Timothy, the son of the 1st plaintiff, and a one Semambo are among the persons who benefited from the house he had constructed on the disputed land. Just like the 1st plaintiff, the 2nd plaintiff insisted that the inventory made by the defendant was false. He believed it to be so, particularly because the defendant had lied in it that he had sold a piece of land to raise school fees for his siblings and yet the defendant had earlier told him that he had obtained the money he used for the 2nd plaintiff's school fees from a bank. Also, the defendant had lied in the inventory that he had distributed the estate

well, and yet most beneficiaries had not received their allotments of the estate land. The 5th and 6th plaintiffs and Leonia Nakazibwe (the 2nd plaintiff's late stepmother) are among those who were not given their lawful portions by the defendant. His stepmother had complained about the defendant's misappropriation of her share of the estate to the area Local Council before she died. Plot 184 which was given to the 5th plaintiff belonged to the 6th plaintiff who was still demanding for it from the defendant.

38) The witness conceded that DEX9 are minutes of the meeting of the beneficiaries, one of the several meetings held by the family members of the deceased. In one such meeting, it was resolved that those who did not get their allotted shares under the will, be allocated plots from the burial land and that was why the witness, the defendant and several other beneficiaries did not contribute the 50ft by 50ft plots of land mentioned in DEX9 and it is also why the 5th plaintiff sold a plot measuring 100ft by 50ft instead of the 50ft by 50ft allocated to her by the defendant. He maintained that DEX9 does not settle the 5th plaintiff's claim under the will.

39) Furthermore, the 2nd plaintiff testified that the sons and daughters of the deceased were equally given accommodation on the family home built by the deceased on Plot 200. His sisters have since benefited from their allotment, while the defendant has prevented the deceased's sons from benefiting from theirs, having demolished the mud and wattle house constructed by the deceased for his sons, and was putting up a storied house in its place. He maintained that the defendant had no right to demolish the house gifted to him and his brothers by the deceased and that the ongoing construction by the defendant was being conducted without the consent of the rest of the deceased's beneficiaries.

40) He conceded that his mother still stays in the main house where she was left by the deceased and receives money from the rental

houses built by the deceased as well as from well-wishers. He had no problem with their mother deriving income from the said houses, but wanted to be informed about the distribution of the entire estate. He explained that Exh. P5 is evidence of houses constructed by external buyers of estate land sold off by the defendant.

- 41) The witness asserted that Plot 189 mentioned at page 4 of the will, is the land that was supposed to be sold and the proceeds therefrom used to cover the deceased's funeral expenses as well as school fees for the school going beneficiaries of the estate, but that sadly, the defendant had sold that piece of land as well and put its proceeds to his own use. According to him, the budget for the burial of the deceased was funded through the contributions of well-wishers and not from the proceeds of selling Plot 189.
- 42) It was his statement that he never got what he was entitled to in the will. Instead of 3,500,000/= promised to him by the defendant as school fees, he received a meagre 1,500,000/=. Similarly, his brother Edmond Kinene never received what he was entitled to in the will. He admitted that Plots 178, 179, 181, 184, 189, 193 and 195 mentioned in the will, were bequeathed to the children of the deceased, himself being the beneficiary of Plot 189.
- 43) The disputed Plot 200 measured between 1.5 and 2 acres. Part of it was sold fraudulently sold to Njuki, Okia, Kinene Edmond and some other person he could not recall. The proceeds of those sales were used by the defendant to buy a tipper lorry, a pick up and to build his houses on his own land and made a donation to his church, in addition to hosting for parties and travelling to Israel with his wife, oblivious of the rights of the rest of the beneficiaries.
- 44) In response to the contents of paragraph 4 of the inventory filed by the defendant, the witness admitted that the deceased had sold Plots 188 and 190 in his lifetime, implying that the beneficiaries of those plots had no shares in the will. He also admitted that the

deceased had sold the plots that he had bequeathed to Stephen Galabuzi, Namakula Solome and Namakula Justine, but disputed the fact that the Plot 179 bequeathed to the 5th plaintiff had been sold by the deceased. He maintained that it was the defendant who sold it as well as Plot 181 bequeathed to the late Goobi, who is survived by his wife Nakazi Sarah.

- 45) The witness admitted that DEX11, the letter from Kiira Town Council, was directed to him, stopping him from constructing on the piece of land on Plot 200 which the defendant had illegally sold to Edmond Kinene, due to the existing family disputes. He declared that the estate has benefited from his construction of that house, since his act has preserved the estate as agreed between him and his siblings. He informed the court that he and his said siblings had agreed that when the court dispute concerning the distribution of the estate is resolved, he will sell the piece of land in question and its proceeds will be divided equally amongst all beneficiaries.
- 46) He confirmed the fact that his mother lives on Plot 200 in the family home and that according to paragraph 5 of the will, the said home will eventually go to the heir upon the death of the widow or if she leaves it voluntarily. He declared that the total portion of Plot 200 sold by the defendant is a half an acre.
- 47) Namawuba Agnes the 5th plaintiff testified as PW3. It was the gist of her testimony that the defendant sold Plot 179 of Block 230 Kyadondo, which was willed to her by the deceased. She ended up getting a small portion of the land which she exchanged with part of the bequest of the 1st plaintiff. The defendant sold several pieces of land from the plot reserved as burial land. He refused to account for the proceeds of the sale of that land and Plot 179.
- 48) The 5th plaintiff's testimony during cross-examination was that Plot 179 was willed to her and that the deceased's daughters were given a room in the boys' quarters of their parents' house. The said

Plot 179 has never been handed to her. What she received was part of Plot 184, which was bequeathed to the 6th plaintiff, who is now demanding for her plot of land. It is also the evidence of the witness that she sold that part of Plot 184, believing that it was hers. She learnt later, after reading the will, that Plot 184 wasn't hers.

- 49) She affirmed that she had read the inventory and also admitted that her signature appears on DEX9, which are family minutes. According to the witness, the deceased never sold Plot 179.
- 50) She asserted that the 2nd plaintiff had signed the sale agreement for Plot 179, made between Mr. Lyomoki and the defendant and that when the said plot was sold, 2nd plaintiff informed her that he had signed the sale agreement.
- 51) The 5th plaintiff admitted that she was the first signatory of family minutes of 22/8/1999, where it was resolved that the deceased's beneficiaries who got land from the distribution of the estate made by the defendant, should cut out portions of their land measuring 50ft X 50ft, as their contributions to those beneficiaries who had not received any land, including herself.
- 52) It was her evidence that the said resolution was not implemented because only one side of the family attended the meeting. The children of their stepmother, namely Nakiyaga Immaculate (4th plaintiff) and Nabukalu Christine (6th plaintiff) were absent.
- 53) She also testified that the defendant occupied 40 decimals of the burial land being the heir. The witness neither knew the land registration certificate numbers of the four plots of land sold by the defendant, nor who the buyers of the said land were. She admitted the fact that the 2nd plaintiff resides on part of the burial land, although he was not willed any land there. According to her, she was not offended by the 2nd plaintiff's occupation of the disputed land, since the defendant was busy selling the deceased's estate. She admitted signing the sale agreement dated 18/2/2000 (DEX8), wherein she sold

land given to her by the defendant to Abwaino Francis. According to her, the plot was measuring 50 ft X 100 ft and there was no harm in the defendant giving it to her, except that when her sister the 6th plaintiff claimed for it, she realized that the defendant had acted wrongly in giving her the said piece of land.

54) It was her additional evidence in cross examination that during one of the meetings held by the beneficiaries, it was discovered that it was defendant and not the deceased who was responsible for selling the disputed plots of land. She had received only half of the purchase price of the land she sold, when the defendant had received shillings 2,500,000 from the buyer and failed to transmit all of it to her. The sale agreement for that transaction showed that the land she sold was 50ft X 100ft in size and yet she was paid for a piece of land measuring 50ft X 50ft, which was not her entitlement under the will. She exchanged the plot given to her by the defendant, with the 1st plaintiff, because the 1st plaintiff did not want her to stay within the burial land. The plot she swapped with him measured 50ft X 100ft. Her main complaint against the defendant was that he gave her just 1 ½ pieces of land and yet in the will, she was entitled to Plot 179, equivalent to 2 ½ pieces: two of which measuring 100ft x 50ft and one measuring 50ft x 50ft.

55) Nabweteme Babra, the 3rd plaintiff testified as PW4. It was her testimony that the will was read to the family of the deceased during his last funeral rites, but that the beneficiaries of the estate did not access it, until sometime later, when her brother Yayiro Musoke secured a copy. The family learnt that the defendant had obtained letters of administration without the consent of the rest of the members. According to her, the will appointed the defendant heir and not executor of the estate. The deceased appointed the defendant as a trustee of Plot 200, reserved as burial land, together with Yakobo Katende (deceased), John Mutumba, Eriyazaali Musoke, Lawrence Mukasa Semakula, Nabatanzi Nakiyaga and Goobi B.CA (deceased).

- 56) The defendant usurped all the powers of the appointed trustees and dealt with the land as he pleased, without consulting the other trustees. Portions of land from Plot 200 were sold to Oromakecha Charles, Njuki and Okia. The defendant filed a false inventory after this suit was filed, wherein he admitted selling 3 plots of land at 14,000,000 /=, all measuring 100ft X 50ft each, which he curved out of burial land. The defendant also falsely accounted for the proceeds therefrom, of 14,000,000/= as follows: school fees for Lutamaguzi - 1,500,000; school fees for Kinene - 3,500,000; St. Gonzaga Gonza Church pledge - 2, 000,000; construction of rental rooms - 4,000,000; digging and construction 2 pit latrines and 4 gates - 1,500,000; education for Nalweyiso - 800,000, concrete for graves - 500,000 and feeding maama/children - 1,500,000.
- 57) The witness maintains that the inventory was false, because in the will there was a plot of land reserved for educating children and the will did not give any land to St Gonzaga Church or provide for construction of rental units which the defendant purported to spend money on.
- 58) In 2012, the defendant without the consent of the members of the deceased's family, sold another plot of land curved from the burial land to their brother Kinene Edmond. The defendant was bequeathed 40 decimals of land on which he built his residence, but went ahead to construct another house on land reserved as burial land.
- 59) The witness testified in cross-examination that she had read and understood the will properly and that paragraph 10 of the will appointed the defendant heir and not executor of the will. Upon further probing in cross examination, she admitted that the defendant was appointed executor but jointly with other executors.
- 60) Additionally, the 3rd plaintiff testified that there were other properties including what she was meant to receive under the will, but had not received them. She testified that the beneficiaries who had

occupied the burial land apart from the widow were herself, Yayiro Musoke, the 1st and 2nd plaintiffs and Muwanga. She maintained that despite most of them having not been willed to stay on the disputed land, they were not trespassers on it, due to the circumstances of their occupation.

- 61) Furthermore, the witness confirmed the fact that the parties' mother (Nanozi Norah) was still living in the house that the deceased's husband had left her in. The witness was unaware that the deceased had sold Plot 189, which was willed for the payment of the school fees of her siblings and declared that by applying for probate, the defendant had confirmed the fact that the will was true. She did not know who the current occupant of Plot 189 was. She confirmed the fact that Oromakecha Charles, Njuki and Okia, mentioned in paragraph 15 of her witness statement bought part of Plot 200 and are the current occupants of part of burial land that originally belonging to the estate of the deceased.
- 62) The 3rd plaintiff also confirmed that fact that Kinene Edmond was not in possession of the plot of land sold to him by the defendant, but that it was the 2nd plaintiff who was in its possession. She insisted that the deceased's estate benefits from her cultivation of part of burial land, since she gives some of her produce to her mother. Additionally, it was her testimony that their said mother obtains money for sustenance from the 18 rental units that were built by the deceased. She did not know if the widow had complained against the defendant's construction of more 8 rental units on the estate, from which he collects money for his benefit.
- 63) She asserted that while it was wrong for the defendant to build on the disputed burial land, it was right for her to dig the same land, since her activities were temporary, unlike the defendant's construction, which was permanent. She affirmed that the deceased was a catholic who used to pray at St. Gonzaga Church, although his

requiem mass was conducted at home by a priest who came from St. Gonzaga. She did not know if her father had had a good relationship with the church before his demise. She never saw any newspaper advertisement of the notice of application for letters of administration and the defendant did not meet with family members and the rest of the trustees of the estate before choosing to apply for letters of administration.

64) PW5 was the 6th plaintiff (Christine Nabukalu). Her testimony was inter alia that she was given Plot 184 in the will, but that the defendant sold part of it and gave another portion of it to the 5th plaintiff. The defendant gave her money instead, which was not worth the value of her said plot. Moreover, she had not authorised him to sell the bequest. The defendant also sold Plot 195 which was willed to her mother the late Nakazibwe, an act he admitted in a document dated 3/3/2003 (Exh. P3) and undertook to pay 4,000,000/= to her mother who unfortunately died in February 2020, without receiving the promised payment.

65) It was her testimony during cross-examination that she had read and understood the will, but had not received what was due to her in the said will. Plot 184, bequeathed to her in the will, was sold by the 5th plaintiff without her notice. The defendant sold Plot 195 which was allotted to her mother. She received 3,500,000/= from the defendant, although she did not sign for it. The defendant did not tell her what the money was meant for but thought that it was part of the estate money from the deceased's his bank account.

66) She maintained that a one Mugalu was the family's neighbor and that her late mother had no legal obligations towards him. The witness insisted that the beneficiaries of the estate have never received copies of the land titles for their respective plots of land from defendant. She denied attending any meeting on 22/8/1999 or signing DEX9. She also insisted that her allotted plot of land was comprised of 3 smaller plots

just like the rest of the deceased's daughters who were willed a plot constituting 3 plots in one, while the deceased's wives and sons were each willed bigger plots comprising of 4 smaller plots in one. Her expectation was to receive 5,000,000/= for each of the 3 small plots comprising Plot 184, basing on the market price of similarly sized plots in the area, at the time the defendant sold her plot.

THE DEFENDANT'S EVIDENCE

67) Norah Ndugwa Nanozi testified as DW1. Her testimony was that she lives in Kamuli Kyadondo and that the plaintiffs and defendant are her children. According to her, the plaintiffs were all given land to construct their homes by the deceased. She sold off her bequest from the deceased and lives in their matrimonial home. Her home sits on a big piece of land. The plaintiffs, particularly the 2nd plaintiff has occupied the part of it, that she used to cultivate food and constructed rental houses thereon. The defendant too constructed rental rooms on the said piece of land from which she collects rental proceeds.

68) The 1st and the 3rd plaintiff attempted to chase her away from the disputed land, with the intention of selling it away. The 1st plaintiff kicked her door and threw stones at her house. She reported the incident to police and the 1st plaintiff was arrested and detained.

69) During cross-examination, she testified that the deceased bequeathed a big plot to her, consisting of 3 smaller ones. Her co-wife was called Nakazibwe Leonia, the mother of the 4th and 6th plaintiffs. Nakazibwe Leonia was also given a piece of land in Kamuli, consisting of 3 smaller plots in addition to land on which her matrimonial home was built. The 5th plaintiff was allotted a plot of land and her land was also supposed to be a 3 in one plot, just like the rest of the children. The witness did not know if the 5th plaintiff had received all the land she was entitled to in the will. She was present when the defendant paid the 5th plaintiff cash for her land.

- 70) It was also DW1's testimony that the clan leader, the late Musoke along with Lawrence Mukasa, read the deceased's will in her presence. She insisted that the plaintiffs were claiming for land that the deceased had left for burials and that it was the 2nd plaintiff who grabbed and built on land that the defendant had given Kinene Edmond who is one of her sons, in appreciation for the renovation work that he had done on her residential house.
- 71) The defendant - Mudiima Njuki Osbert Benedict testified as DW2, stating that he is the administrator of the estate of the deceased and is also the customary heir of the deceased as well as the chairperson of the committee of executors of the will of the deceased. According to him, when the rest of the appointed executors of the estate declined to take up their responsibilities due to advanced age, among the excuses they gave him, he sought advice from the Administrator General, who summoned the said executors and subsequently issued him a Certificate of No Objection to apply for letters of administration of the estate. The notice of his application for letters of administration was duly published in the 13th- 19th September 1999 edition of the voice newspapers. None of the plaintiffs raised any objection to his application and he was eventually issued letters of administration of the estate on 11/10/1999.
- 72) When the plaintiffs got to know from the will that he was chairman, heir and chief executor of the deceased's estate, they put him under much pressure to distribute their bequests, even before he was granted letters of administration. He made them acknowledge receipt of their respective allotments on 18/10/1999. Since then, his journey as administrator of the estate has not been an easy one, due to the greediness of the plaintiffs.
- 73) According to the defendant, he made sure that the 5th plaintiff, Galabuzi Stephen, Namakula Solome and Namakula Justine, whose shares had been sold by the deceased during his life time, got pieces

of land or money in lieu, through his own ingenuity. He filed an inventory of the estate in court on 10/4/2007.

- 74) The witness testified that in a meeting held on 22/8/1999, the members of the deceased's family whose allotments had been distributed to them, agreed to surrender land or the money equivalent of land measuring 50 ft x 50 ft from their allocations, in order to provide land to those beneficiaries whose bequests had been sold by the deceased. He later approached each beneficiaries who had not attended the family meeting and explained the family's resolutions to them. Some of them agreed with the said resolutions and signed the minutes in confirmation of their agreement.
- 75) He asserted that since his four step sisters and stepmother lived far away from the estate, they requested him to sell their bequests. He informed them of the sizes of their bequests and afterwards sold their land and handed the proceeds of the said sales to each of them. The proceeds of sale of his stepmother's plot were given to the 4th plaintiff who lived in Ziroobwe Hospital and who was in charge of constructing a new house for his step mother.
- 76) A one Mugalu was a kibanja holder (squatter) on his stepmother's land with her full knowledge. Before he could sell the land, he had to compensate him so he could leave his stepmother's plot. He paid for Mugalu's crops and built for him two pit latrines to compensate him for his kibanja interest. His stepmother's land comprised of about 3 ½ pieces of standard plots measuring 100 ft x 50 ft. He gave one plot to his niece Namakula Justine, whose bequest had been sold by the deceased, thereby meeting her demand. He agreed with his stepmother to give a piece of her plot the squatter in settlement of his demand, as per the agreement that he made with the said squatter (DEX 17).
- 77) It was also his testimony that the 6th plaintiff had permitted him to take off a piece of land measuring 50 ft x 50 ft from her share. He

went to her residence and discussed the matter with her. She verbally asked him to sell the rest of her land but later wrote him a note (DEX14), on 31/1/2000, which according to him confirms their earlier discussion of the matter.

78) The witness stated that proof that the rest of the beneficiaries who never attended the family meeting knew about the resolution requiring them to surrender pieces of land for the benefit of those whose bequests were nonexistent, was DEX16, dated 27/11/1999, addressed to the defendant by the 2nd plaintiff, notifying him that the 7th plaintiff had instructed him (2nd plaintiff) to sell her plot and the fact that he was aware about the decision reached for beneficiaries to contribute land to those beneficiaries whose bequests the deceased had sold.

79) He claimed that 2nd plaintiff was a naturally selfish person who had grabbed 42 decimals of burial land as well as the 10 decimals which the defendant had given to Kinene Edmond.

80) The deceased had during his lifetime showed the defendant where to construct his home. The 2nd plaintiff started constructing near his land but was stopped by the deceased. After the demise of the deceased, 2nd plaintiff resumed building on the said land amidst protests by their grandfather Yakobo Katende, who tried to stop him in vain.

81) The defendant also stated that under the will, he was given 40 decimals of land from the burial land. His plot of land contained an existing road at the front, and another one on one side of the plot. To compensate for the land eaten away by the said roads, he extended the boundaries of his land during the process of surveying his bequest. The certificate of title describes his land as 49 decimals, instead of the willed 40 decimals.

82) The pieces of land he gave the 5th plaintiff, Galabuzi and Namakula did not belong to them; he was merely implementing what

was agreed upon in the family meeting held on 22/8/1999, when it was agreed that land measuring 50 ft x 50 ft be contributed and given to those beneficiaries whose donations were no longer in existence. He testified that the total collection from beneficiaries who had received their allotments would have enabled him distribute pieces of land measuring 100ft X 50ft to all beneficiaries whose donations were sold in the lifetime of the deceased. He explained that he had deducted plots measuring 100ft X 50ft, instead of the size agreed at 50ft X50 ft, from the titles of those beneficiaries who obliged with the family's resolution, since it was not feasible for him to find buyers for the small plots of 50ft X 50ft, but that after selling the big sized plots and paying relevant beneficiaries the cash equivalent for the agreed pieces of land measuring 50ft X 50ft, each contributor would receive back the cash equivalent of a plot measuring 50ft X 50ft.

83) The defendant asserted that his efforts to build a house for the 2nd plaintiff on his own land were frustrated when the latter demolished the said house at the wall plate level. He declared that after distributing the available title deeds in accordance with will, most of the beneficiaries made it impossible for him to implement the family resolution of 22/8/1999. They refused to contribute the agreed plots of land and at the time of his testimony in court, his stepmother's estate, the estate of the late Tusabaomu Loy and the 6th plaintiff were still demanding from him, plots of estate land.

84) The defendant gave a plot of land measuring 100 ft by 50 ft, curved out of Plot 200 to the 5th plaintiff, in addition to what he had obtained from the 6th plaintiff with her consent. The 5th plaintiff exchanged the said piece of land which is next to the family graves, with the 1st plaintiff's piece of land.

85) While conducting a survey of Plot 200, he was surprised to discover that the 1st plaintiff had instead of removing 10 decimals, (the equivalent of 100 ft X 50 ft), removed 15 decimals, wrongfully

acquiring an extra piece measuring 50 ft X 50 ft from burial land. In appreciation of the efforts of his brother Kinene Edmond, in renovating their said mother's house, and in consultation with their mother Norah Nanozi the defendant gave him land of measuring 100ft X 50ft.

86) The 2nd plaintiff grabbed the said piece of land from Kinene Edmond and also fenced off another 42 decimals of the burial land, which part contained their mother's pit latrine and the latrines of her tenants, forcing the defendant to incur expenses in building new pit latrines for his mother and her tenants. In 2012, the 2nd plaintiff and others destroyed their mother's crops using a drying agent in the night. Rev. Fr. Bagenda was called to witness what had happened. Afterwards, the 2nd plaintiff destroyed their mother's potato garden in broad day light and embarked on the constructing a house on that piece of land, from which he collects rent since 2013 to the exclusion of other beneficiaries.

87) The 1st, 2nd and 3rd plaintiffs became extremely hostile and violent towards their mother to the extent that they were eventually charged in court and convicted of the offences criminal trespass, malicious damage to property and threatening violence.

88) Furthermore, it was the defendant's testimony that the deceased pledged 20 decimals of land to St. Gonzaga Catholic Church in his presence and in the presence of a catechist called Joseph Kambugu. The defendant thus after selling 3 plots of land, measuring 100ft X 50ft donated 2,000,000/= to the church, which amount was only half the value of the pledge made by the deceased to the church.

89) The witness narrated that the 6th plaintiff requested him to sell for her a plot of 100ft X 50ft, which request he complied with and delivered the proceeds of the said sale to her in Kakukulu Kigatta village. The said plot was purchased at 3,900,000/= by a one Mwesigye Dan on 12/1/2000. He paid the land brokers 300,000/= and gave 3,600,000/= to 6th plaintiff. In appreciation of his roles, she gave

him back 100,000/=. Subsequently, the 6th plaintiff sent her daughter Oliver to ask the defendant to sell for her another piece of land. The plot was sold at 5,000,000/=. The brokers took 1,000,000/=. The 6th plaintiff picked the proceeds of that sale herself, from his work place in three installments of 2,500,000/=: 1,000,000/= and 500,000/=.

90) The 1st plaintiff on his part continues to make bricks on burial land, despite the defendant's efforts to stop him.

91) The only beneficiaries who had contributed plots of land as agreed in the meeting of 22/8/1999, were himself, the 6th plaintiff, the late Loy Tusabaomu, the 4th plaintiff and Nakijjoba. The 2nd plaintiff and Edmond Kinene did not contribute as agreed, since they were still school going beneficiaries of the estate. Nanozi Norah did not contribute any piece of land because she had shared her bequest with mama Nantongo as their father had requested her to do before his death.

92) In 2010, the defendant gave 2,000,000/= (in lieu of land measuring 50ft by 50ft) to Namakula Solome as his personal contribution, as agreed on 22/8/1999. Unfortunately, the 1st and 3rd plaintiffs and Yayiro Muwanga Mutabulawo declined to contribute. The estate still demands a 50ft by 50ft piece of land from the 1st plaintiff, which the said plaintiff had grabbed from burial land.

93) The defendant declared that it was the deceased and not himself, who sold Plots 179, 188, 189 and 190 to Hon. Sam Lyomoki. He admitted selling only the residue of Plot 179, measuring approximately 50ft by 50ft to said the Hon. Lyomoki, but with the consent of the 2nd plaintiff, their mother (Nanozi Norah) and Edmond Kinene. The proceeds thereof were used to finance the celebration of the deceased's last funeral rites. The entire Plot 189 was sold by the deceased to the late Hon Fred Mukisa and the defendant witnessed the said land sale transaction.

- 94) He stated that the deceased's estate is entirely distributed, save for the burial land, the subject of this suit.
- 95) He clarified that DEX14, which is dated 31/1/2000, is the letter that the 6th plaintiff wrote to him, undertaking to return the money he had handed to her from the sale of her piece of land measuring 50ft X 100ft that was curved out of Plot 184 and stopping him from selling the rest of the said plot. DEX16 dated 27/11/1999, is the letter written to him by the 2nd plaintiff, informing him about an agreement that had been reached between the said plaintiff and the 7th plaintiff, permitting the 2nd plaintiff to sell her plot on her behalf. The reason that the 2nd plaintiff wrote DEX16 was to notify him of the 7th plaintiff's new instructions, since she had earlier told the defendant to sell the same plot for her. In the same letter, the 2nd plaintiff notified the defendant that 7th plaintiff was aware about the fact that some of their siblings had not received their allotments under the will. The defendant subsequently found buyers for the 7th plaintiff's plot before the 2nd plaintiff could do so and sold the plot.
- 96) The witness also explained that DEX17 is the agreement he made with the squatter of Plot 195 in which he undertook to pay for the crops on the land and to build two pit latrines for the squatter on his piece of land elsewhere. He acted under the instructions of his stepmother the late Nakazibwe, who authorised him to sell part of her plot.
- 97) DEX15 is a photograph of the house, built by the 2nd plaintiff on part of the defendant's willed 40 decimals of land on burial land. The deceased stopped the 2nd plaintiff from constructing the said house, but soon after the deceased's demise, the 2nd plaintiff resumed construction. The photograph shows the 2nd plaintiff seated on an incomplete wall at the roof, while their grandfather (now deceased), was the old man who is dressed in a 'kanzu' seated on a chair.

- 98) DEX21 is a photograph of a partly demolished wall of a house that the defendant was building for the 2nd plaintiff in a bid to stop him from constructing on his (the defendant's) land.
- 99) DEX18 is an agreement made between the defendant and Dr Sam Lyomoki in respect of Plot 816, which is one of the residue plots of Plot 179 that was willed to the 5th plaintiff. The other two parts of that land, measuring 50ft X 100ft, had been sold by the deceased himself to Dr. Sam Lyomoki. The witness could not remember what the original land title for Plot 179 title became after its mutation into three plots, including of Plots 815 and 816.
- 100) The defendant declared that the 2nd plaintiff had witnessed the agreement of the sale of Plot 816 made between the deceased and Dr. Sam Lyomoki as shown by DEX18. He mentioned that document ZZZ, (not admitted in evidence) but which was attached his statement, is a photocopy of the agreement of sale for Plot 189, dated 10/11/1996, made between the deceased and Hon. Fred Mukasa (deceased) and witnessed by him. The defendant informed court that the original agreement got lost. The deceased intended to sell Plot 190 to Mr. Mukisa, who failed to take it up. One part of Plot 190 was subsequently sold to Rose Ndagire on 1/7/1997, while the second part was sold to Gashumba Michael Victor on 14/4/1997 as per the agreements of sale.
- 101) DEX19 is the map showing all the plots of land willed by the deceased to his family members. The witness explained that shaded part on the map is Plot 200, which is burial land.
- 102) DEX20 is the agreement made on 17/6/1997, between Dr. Sam Lyomoki and deceased in respect of Plot 815. The defendant was a witness to that said sale transaction.
- 103) The witness asserted that contrary to her claims in DEX14, the 6th plaintiff did not give back to her, the proceeds of the sale of part of her land which the defendant had earlier transmitted to her.

- 104) He had before his testimony in court tried in vain to contact the sons of the deceased Hon Fred Mukisa, concerning the two agreements in their possession which would help his case, but that unfortunately, the custodian of those agreements was in Pakwach at the time of the defendant's testimony in court.
- 105) In cross-examination the defendant testified that the will was given to four people. The defendant obtained a photocopy of the will from Johnson K. Mutumba, a close friend of the deceased. His application for letters of administration was based on the last paragraph of the will at page 4, where executors for Plot 200 were named but there was no clause in the will appointing executors for the whole will. He consulted his siblings who consented verbally to his application for letters of administration.
- 106) The beneficiaries of the estate pressured him to distribute to them land titles in respect of plots willed to them. During the last funeral rites of the deceased, clan elders asked him to hand over the land titles to whoever was bequeathed a plot. He received the available titles from his mother (Nanozi Norah) and immediately handed them over to the respective beneficiaries.
- 107) The appointed seven executors/trustees of Plot 200 were himself, Yakobo Katende (deceased), Johnson K. Mutumba, Eriyazaali Musoke (deceased), Lawrence Mukasa Semakula, Nabatanzi Nakiyaga and Goobi BCA (deceased). Together with the surviving executors of the said plot, he registered it as "Ekigya Kya C.G.E. Ndugwa Sekisambu" according to the will. Later on, he learnt that such registration was improper, since the name "Ekigya Kya C.G.E. Ndugwa Sekisambu", was not a reserved name.
- 108) He conceded the fact that he had demarcated off 49 decimals from Plot 200, instead of 40 decimals bequeathed to him in the will. He registered it in his own name and registered the rest of the burial land separately.

- 109) He maintained that while the 5th plaintiff was willed Plot 179, the deceased sold it himself before his demise to Dr Lyomoki and left a residue of it measuring about 50ft X 50ft, which the defendant sold to the same Dr Lyomoki.
- 110) He admitted the fact that there were no instructions in the will for him to sell Plot 816, to Dr. Lyomoki but explained that the family in a meeting agreed to sell the residue of that plot. There were no recorded minutes of that meeting, but the family members present included the widow (Nanozi Norah) and the 2nd plaintiff who signed the sale agreement of the plot of land (DEX18). He also acknowledged the fact that the 5th plaintiff never authorized him to sell Plot 179, but the fact is that the said plot no longer existed, since the deceased had already sold most of it.
- 111) The defendant sold Plot 191 with the authority of 4th plaintiff who is its rightful beneficiary according to the will.
- 112) He gave part of Plot 184 which was bequeathed to 6th plaintiff to the 5th plaintiff contrary to the will. The 5th plaintiff sold it herself in his presence and in the absence of the 6th plaintiff. He admitted going against the will in so doing.
- 113) Concerning the rest of the plots he carved out of Plot 200, the defendant testified that he surveyed off four standard plots measuring 100ft X 50ft from the said plot. He gave one plot to the 5th plaintiff, the one she exchanged with the 1st plaintiff. He insisted that instead of surveying off a plot of 50ft X 100ft (10 decimals), which the 5th plaintiff was entitled to as agreed, the 1st plaintiff took off 15 decimals.
- 114) The rest of the plots were sold as per his inventory for a total of 14,000,000 shillings used by him to do the following: to cement graves; to construct 12 rental rooms for their mother; and to pay school fees for the 2nd plaintiff, Kinene Edmond and Nalweyiso Monica. He explained that Nalweyiso Monica was not a beneficiary in the will, but was a dependent of their late father. The witness asserted that he

consulted his co-executors in the will, namely: Musoke Eriyazaali, Johnson Mutumba, Yakobo Katende and Lawrence Mukasa before selling the said pieces of land. He conceded that none of his co-executors signed any of the sale agreements in regard to the three plots.

115) The witness asserted that although the will does not authorize him to sell any property bequeathed therein, as chief executor of the estate, he was faced with demands by those beneficiaries of the estate who were not taken care of under the will, necessitating his making of the decisions complained of by the plaintiffs.

116) It was his testimony that he only learnt about the extra land taken by the 1st plaintiff when this court ordered the family to survey all the plots curved out of burial land. The 1st plaintiff's plot is now Plot 1076, and the original Plot 200 became Plot 1235.

117) The defendant confirmed that he had constructed rental units on burial land and had also donated money to St. Gonzaga church, Kamuli sub parish, from the 14,000,000 shillings he obtained from the sale of three plots of burial land. He similarly confirmed the plaintiffs' testimonies that he had given a portion of the burial land to their brother Kinene Edmond. He also confirmed the plaintiffs' rejection of his proposal to give land to Kinene Edmond. He similarly admitted the above transactions he executed in respect of giving out and selling land from original plot 200, including his donation to the church were not authorised in the deceased's will.

118) The defendant testified that the deceased left rental units for the purpose of using their proceeds in the maintenance of his home, the widow (Nanozi Norah) was collecting rent from the said units.

119) His four stepsisters were also willed pieces of land in Kireka by the deceased. The 6th plaintiff is one of them and was allotted Plot 184, from which he mutated a portion and gave the 5th plaintiff.

- 120) He also surveyed off a part of the 4th plaintiff's land, sold it and applied the proceeds thereof in the demarcation of the various plots created and in opening up of boundaries and access roads for the said plots. The will did not authorize him to sell the 4th plaintiff's land, but he obtained permission from her to take off the portion of her bequeathed land measuring 50ft X 50ft.
- 121) As far as the 7th plaintiff is concerned, she was allotted Plot 193. He sold it with her permission and handed the proceeds of sale to her. She authorized him to survey off a portion measuring 50ft X 50ft, which he also used in opening up of boundaries, and road making, as well as for procuring title transfers in respect of the mutated plots of the entire estate, since the 1st and 2nd plaintiffs and the rest of the beneficiaries did not have money to process transfers. He received a total of 2,000,000/= from the sale of the two plots of the 4th and 7th plaintiffs.
- 122) Additionally, the defendant acknowledged the fact that no part of the deceased's will authorized him to survey off any portion of his stepmother Nakazibwe Leonia's plot, or the plots of Tusabaomu Loy and Nabukalu Christine but explained that they had consented to his selling of their said plots in writing in DEX9. He acknowledged however that there was nothing in DEX9 showing that Nakazibwe Leonia authorized him to sell her plot of land.
- 123) It was his statement that as far as the beneficiaries who never attend the meeting established by DEX9 are concerned, he visited them personally and explained what had been discussed to them. He confirmed the fact that the 4th, 6th, 7th plaintiffs, Tusabaomu Loy and his step mother Nakazibwe Leonia didn't attend the said meeting.
- 124) The witness declared that the deceased left 2,000,000 shillings in his account at Grindlays bank which the defendant spent in the upkeep of his mother (Nanozi Norah).

- 125) When he partitioned his step mother's land, he gave one plot measuring 100ft X 50ft to Namakula Justine, daughter of his uncle Aloysius Semakula and sold two portions measuring 100ft X 50ft for his stepmother and handed his step mother, 8,000,000/= from the said sale of her 2 plots. The left over portion was used by him to settle Mugalu William his stepmother's squatter.
- 126) The witness criticized his siblings for going against their word in the resolutions contained in DEX9, undertaking to contribute portions of land measuring 50ft X 50ft to cater for those beneficiaries who had missed out in the will.
- 127) He denied the allegation that the 5th plaintiff and his cousins Namakula Solome, Galabuzi Stephen and Namakula Justine were still demanding any plots of land from him, since he had already given portions of land to each of them, measuring 50ft X 100ft, except for Namakula Solome whom he had given 2,000,000/= in lieu of land. The only beneficiaries he still owes land are 6th plaintiff, the estate of his step mother and the estate Loy Tusabaomu (his deceased step sister).
- 128) In reexamination, the defendant reiterated the fact that after the meeting of 22/8/1999, he met with the 4th and 6th plaintiffs and Loy Tusabaomu, whom he explained to the resolutions of the said meeting. The 6th plaintiff and Tusabaomu agreed with the said resolutions and signed the said minutes. He did not meet the 7th plaintiff in person but sent her a message. She instructed the 2nd plaintiff to sell her plot and is not demanding for any land from him. His brother Muwanga Rock Norbert attended the meeting in issue but refused to sign its minutes, because according to him, he had received only a small plot of land.
- 129) The defendant reiterated his evidence that he gave Kinene Edmond 50ft x 100ft in appreciation for his renovation done on Nanozi Norah's house, which was in a bad state. He maintained that he had donated shillings 2,000,000 to St. Gonzaga church because the deceased had pledged 20 decimals of land to the said church.

- 130) The witness maintained that all members of the deceased's family were given land in the will, but that the deceased subsequently sold off the following bequests before his death: Plot 179 which was bequeathed to Namawuba Agnes (5th plaintiff); Plot 188 bequeathed to Namkula Solome and Namakula Mukwaba Justine and Plot 190 bequeathed to Galabuzi Stephen. These three plots were each over 30 decimals in dimension.
- 131) He confirmed the fact that the 2nd plaintiff was bequeathed Plot 197, while the 1st plaintiff was bequeathed Plot 196 and he (defendant) was bequeathed 40 decimals from Plot of 200.
- 132) He maintained that the reason he acted contrary to the will in some respects was to provide shares of the estate to those beneficiaries whose allotments were sold by the deceased, namely: the 5th plaintiff, Namakula Solome, Namakula Mukwaba Justine and Galabuzi Stephen. At the time of the meeting of 22/8/1999, thirteen beneficiaries were alive but only 7 of them attended that meeting and consented to the redivision of estate land. The 4th plaintiff is the only stepsibling of his, who had refused to consent to the redivision. His siblings Muwanga Rock Norbert and Dorcus Mutabulawo also refused to consent to the said redivision because he had already handed their land titles to them, there was nothing he could do to compel them to comply with the family resolution.
- 133) Regarding his constructing of rental units on Plot 200, he explained that he did so to assist Nanozi Norah look after her grandchildren whom she was caring for. The total number of rental rooms is 15 including the 3 constructed by the deceased. Each room is rented out at about 100,000 shillings monthly.
- 134) At locus in quo, the defendant showed the court the contested portion of land from which the 1st plaintiff took 15 instead of the 10 decimals agreed upon. He also pointed out the 3 plots on burial

ground, which were sold by him as well as the 3rd plaintiff's banana plantation on a piece of land that she had grabbed next to the graveyard. The court was also shown the piece of land given by the defendant to Kinene Edmond, measuring 100ft X 50ft, which the 2nd plaintiff later grabbed. He took the court around his allotted portion which now measured 49 decimals on paper, because Kiwanuka close and Ndugwa Roads take off 9 decimals of it.

135) He showed the court 4 shops, the 12 rental units, the girl's house, as well as the storied house that he is was building next to Nanozi Norah's house. According to him, he was building the said storied house for his mother to collect rental proceeds from, for her sustenance. He admitted the fact that he did not consult his brothers when he decided to build the said house and when he destroyed the house bequeathed to the deceased's sons.

136) During cross-examination at locus in quo, he insisted that he had taken off 49 instead of 40 decimals from Plot 200 in order to compensate for the land that was occupied by the roads mentioned above, which had encroached on part of his willed plot. He stated that Kiwanuka road does not affect the 1st plaintiff's allotment because the road straightens before reaching his plot.

137) He affirmed that Kinene Edmond was bequeathed Plot 186 but that he had also given 10 more decimals from Plot 200 to Kinene, in appreciation of Kinene's renovation work on their mother's house. The defendant declared that his construction of the disputed storied house on Plot 200 was being done in his capacity as heir of the deceased.

SUBMISSIONS OF COUNSEL FOR THE PLAINTIFFS

Issue 1: Whether the defendant mismanaged the estate of the deceased.

138) Mr. Kwizera reiterated the evidence of the plaintiffs witnesses, listing actions of the defendant, which in his view amounted to mismanagement of the estate by the defendant, namely:

- a) Selling of 4 plots of land from land reserved for burial of family members without authority and without consulting all beneficiaries;
- b) Giving Kinene Edmond a piece of land taken from land reserved for burial, on the flimsy ground that he had renovated their mother's house;
- c) Giving Namawuba Agnes (5th plaintiff) part of the 6th plaintiff's plot;
- d) Selling portions of other beneficiaries' bequests without their consent, on the ground that the proceeds thereof would be used for opening up boundaries as well as making access roads;
- e) Surveying off 49 instead of the willed 40 decimals from the burial land;
- f) Demolition of the small house bequeathed to the sons of the deceased, during the pendency of this suit and construction of another house for the defendant on the land where the said house stood.

139) Counsel contended that the defendant had in taking the above mentioned actions, treated the deceased's estate as his own property. He cited the case of **Anecho Haruna Musa (legal Rep of Adam Kelili) versus Twalib Noah & 2 others HCCS No. 009 of 2008**, for the position that an administrator must keep the estate totally separate and apart from his or her own and not intermingle the estate with his or her personal assets. He prayed that this court finds that the defendant had mismanaged the estate of the deceased.

Issue 2: Whether the plaintiffs are entitled to the remedies prayed for

140) Mr. Kwizera averred that the plaintiffs are entitled to the following remedies:

- a) An order of revocation of letters of administration granted to the defendant in respect of the estate of the deceased;
- b) A declaration that the defendant wrongly sold/alienated land and other property of the estate and converted estate money to his own use;
- c) An injunction restraining the defendant from selling, disposing off, alienating and wasting the estate of the deceased;
- d) An order that the defendant gives an account of the proceeds of the sales he made of estate land as well as other monies and properties of the estate; and
- e) General damages, interest and costs of the suit.

141) Concerning the complaint in the defendant's counterclaim against the construction of a house on land given to Kinene Edmond by the defendant by the 2nd plaintiff, counsel submitted that the 2nd plaintiff had explained that he had constructed the said house to prevent the defendant from selling that part of the estate and that he was neither the sole owner of the piece of land nor had he constructed any illegal structures thereon. Counsel prayed that the counterclaim be dismissed with costs.

SUBMISSIONS OF COUNSEL FOR THE DEFENDANT.

142) Counsel Ogwado in his submissions, raised 3 issues, namely:

1. Whether the estate of the late Christopher George Emmanuel Ndugwa Sekisambu was mismanaged by the defendant;
2. Whether the plaintiffs/counter defendants committed acts of intermeddling with the estate of the late Christopher George Emmanuel Ndugwa Sekisambu; and
3. What remedies are available to the parties.

Issue 1: Whether the estate of the late Christopher George Emmanuel Ndugwa Sekisambu was mismanaged by the defendant.

- 143) In respect to the 1st issue, Mr. Ogwado submitted that the plaintiffs made several accusations and false allegations in their evidence, while the defendant supported his evidence in the written statement of defence by filing an inventory in court on 10th April 2007. Counsel pointed out that the plaintiffs started demanding for their shares of the estate from the defendant, long before he was granted letters of administration of the estate, as seen from paragraph 7 of his witness statement. He referred to paragraph 8 of the defendant's witness statement, in which he stated that the beneficiaries got their shares in accordance with the will, save for those whose shares were sold by the testator himself.
- 144) He asserted that the inventory clearly mentions persons whose interests had been sold by the deceased, such as Galabuzi Stephen, Namakula Solome, 5th plaintiff and Namakula Justine. He observed that family meetings were held on 16/5/1999 and 22/8/1999, in which it was resolved that the said beneficiaries be availed some shares of land from the contributions of those who had already received their allotments.
- 145) Counsel directed the attention of the court to paragraph 3 at page 2 of the inventory filed by the defendant, where he states that what was agreed upon in the family meeting was not implemented, making his work of distributing estate land very difficult. He submitted that the defendant took it upon himself as the chairperson of the executors of the estate, to implement the resolutions of the said family meeting.
- 146) He submitted that the defendant had given land to the 5th plaintiff, because DEX20 showed that the testator had sold the plot of land that he had intended to give the 5th plaintiff.

- 147) According to counsel, the defendant gave an accurate breakdown in his inventory to this court, which was admitted in evidence as DEX2, on how he had spent all the funds received from his sale of estate land. He had given all the monies meant for his stepmother to the 4th plaintiff, whose responsibility it was, to renovate her mother's house. DEX17 was evidence that money was paid to compensate the bonafide occupant on the land of his stepmother Nakazibwe Leonia.
- 148) Counsel asserted that the will at paragraph 5(a) named the defendant as heir and chairman of the estate among other executors, in respect of Plot 200, which is currently 1235 and the homes at Kamuli and Kigatta were bequeathed to the two widows of the deceased, Nanozi Norah and Leonia Nakazibwe.
- 149) Counsel noted that paragraph 5(b)(2) of the will is to the effect that the family house in Kireka shall belong to the defendant for purposes of nurturing the deceased's grandchildren and Plot 200 was to be maintained as burial ground and registered in the name of "Ekigya Kya C.G.E. Ndugwa Sekisambu" as per DEX13.
- 150) He submitted that the mud and wattle house on the estate was meant to be used by the sons of the deceased only until they attained majority age, upon which their tenure would automatically lapse and the house would revert to the heir as per the will. Mr. Ogwado observed that all sons of the deceased had attained majority age at the time of filing this suit.
- 151) In counsel Ogwado's opinion, the defendant had properly managed the estate, since the sales of the disputed plots of land were backed by authority from the original owners as per DEX14 and DEX16. Counsel prayed that the court resolves the issue in the negative.

Issue 2: Whether the plaintiffs/counter defendants committed acts of intermeddling with the estate of the late Christopher George Emmanuel Ndugwa Sekisambu.

152) Concerning this issue, Mr. Ogwado submitted that the plaintiffs had come to court with unclean hands, having committed the offence of intermeddling with the deceased's estate. He asked the court to consider the fact that the 1st plaintiff was found guilty of criminal trespass, threatening violence and malicious damage to property by a court of law in NA-KRA-03-CR-CO-187 OF 2013 as shown in DEX4, which is the judgement of His Worship Kenneth Komakech.

153) Counsel averred that the 2nd plaintiff/1st counter defendant owes the estate, since he arbitrarily constructed an illegal structure in it, contrary to the will, for his sole benefit. Similarly, it was averred that the 2nd plaintiff's act of building a house on Plot 200, without the authority of the defendant as administrator of the estate, amounted to intermeddling with the estate, notwithstanding the said 2nd plaintiff's claim that he built a house on burial land with the intention of preserving it, because he did not report the particulars of the property or of the steps he had taken to the administrator general or his agent, as required by the law. He referred the court to DEX11 as evidence of the fact that the 2nd plaintiff was building an illegal structure on burial land. To support his submissions, he relied on **Section 11(1) of the Administrator General's Act**, which provides: *"When a person dies, whether within or without Uganda, leaving property within Uganda, any person who, without being duly authorised by law or without the authority of the Administrator General or an agent, takes possession of, causes to be moved or otherwise intermeddles with any such property, except insofar as may be urgently necessary for the preservation of the property, or unlawfully refuses or neglects to*

deliver any such property to the Administrator General or his or her agent when called upon so to do, commits an offence...”

154) Mr. Ogwado prayed that court finds that the counter defendants had intermeddled with the estate of the deceased.

What remedies are available to the parties.

155) In respect of the issue of remedies, counsel prayed for the vacant possession of Plot 1235 formerly part of plot 200 which is occupied by the 2nd plaintiff/1st counter defendant, the demolition of the illegal structure shown by DEX3, mense profits, general damages, and costs of the suit. Counsel also prayed the main suit is dismissed.

DECISION OF THE COURT

156) I have carefully considered the pleadings, the evidence adduced by the parties, the court’s findings at locus in quo, the submissions of counsel and the law applicable.

157) I think that to correctly determine the dispute between the parties, the following four questions require determination:

- 1. Whether former Plot 200 forms part of the estate of the late Christopher George Emmanuel Ndugwa Sekisambu;***
- 2. Whether the defendant has mismanaged the estate of the late Christopher George Emmanuel Ndugwa Sekisambu;***
- 3. Whether the 1st and 2nd plaintiffs/2nd and 1st counter defendants respectively, have intermeddled with the estate of the late Christopher George Emmanuel Ndugwa Sekisambu; and***

4. What are the remedies available to the parties.

Issue No. 1: Whether former Plot 200 forms part of the estate of the late Christopher George Emmanuel Ndugwa Sekisambu.

158) My response to this issue is in the negative. From the undisputed facts of this case, the deceased died testate on 13/12/1998. In his will dated 9/12/1995, admitted in evidence as Exh. P1 and DEX1, the deceased named the following persons as children born to him, namely: Mutyaba Mutongole Daniel Robert, Semwogerere Gwalambusi Henry Harbaer, Goobi Bagampadde Christopher Albert, Nabukalu Tambula Christina, Nabatanzi Nakiyaga Katherine Immaculate, Nakitende Tebitendwa Gertrude Josephine, Namakula Bayiga Juliet, Mudiima Njuki Osbert Benedict, Nabweteme Nabakiibi Barbra Rita, Nakijoba Nakimu Jackline D, Muwanga Tebusweke Nobert Rock, Ntambi Kyabasinga George Cuthbert, Naluyima Tusabaomu Roy Thelma, Semakula Musoke Yayiro Gilbert, Mutabulawo Lydia Dulukansi, Namawuba Nankinga Julieri Agnes, Lutamaguzi Emmanuel Fulbert S, and Kinenennyumba Nakapanka Edmond.

159) At the time of making the said will, Mutyaba Mutongole Daniel Robert, Nakitende Tebitendwa Gertrude Josephine, Namakula Bayiga Juliet and Semwogerere Gwalambusi Henry Harbaer were already demised.

160) The deceased named Leonia Nakazibwe and Norah Gladys Nanozi as his 1st and 2nd wives respectively. He distributed his properties in respect of Block 230 as follows: Plot 178 to Goobi Bagampadde Christopher Albert, Plot 179 to Namawuba Nankinga J.A, Plot 181- (a passage) to Goobi Bagampadde Christopher Albert, Plot 182 to Goobi Bagampadde Christopher Albert, Plot 183 to his wife Nanozi Norah Gladys, Plot 184 to Nabukalu Tambula, Plot 185 to Nabweteme Nabakiibi Barbra, Plot 186 to Kinene Nakapanka. E.T, Plot

187 to Semakula Musoke Y.G, Plot 188 to Namakula Solome and Justine Namakula Mukwaba, Plot 189 to be sold to obtain money for funeral expenses and for payment of school fees for his school going children, Plot 190 to Stephen Galabuzi his cousin, Plot 191 to Nabatanzi Nakiyaga K.I and his grandchildren Goleti Navubya, Migadde Francis Augustine and Semwogerere S/O Semwogerere, Plot 192 to Mutabulawo Lydia Dulukansi, Plot 193 to Nakijoba Kityo Nakimi J.D, Plot 194 to Naluyima Tusabaomu, Plot 195 to wife Nakazibwe Leonia, Plot 196 to Yakobo Senfuma Katende his father, Plot 197 to Lutamaguzi Emmanuel F.S, Plot 198 to Muwanga Tebusweke N.R, Plot 199 to Ntambi Kyabasinga George S, 40 decimals of Plot 200 to the customary heir, and Plot 201 (a road) to Muwanga Tebusweke.

161) The defendant, the 3rd plaintiff, Yakobo Katende, Johnson K. Mutumba, Eriyazaali Musoke, Leolensio Mukasa Semakula and Goobi B.C.A., were appointed by the deceased as trustees of Plot 200 of Block 230, which he reserved as burial land. The deceased directed that Plot 200 be registered in the name of *“Ekigya Kya C.G.E. Ndugwa Sekisambu”*.

162) The 3rd plaintiff, Goobi B.C.A. and the defendant, were also appointed trustees of Plot 191 of Block 230, which was bequeathed by the deceased to his grandchildren.

163) The plaintiffs’ main contention is that the defendant had mismanaged the estate of the deceased. They enumerated the particulars of his alleged mismanagement as: selling the four plots of land he grabbed from Plot 200, which was reserved for burial of family members; giving Kinene Edmond a plot of land from the same burial land on the flimsy ground that he had renovated their mother’s house; giving away part of the 6th plaintiff’s plot to Namawuba Agnes (5th plaintiff); selling portions of other beneficiaries’ bequests without their consent on the ground that the proceeds thereof would be used for opening up of boundaries as well as making access roads; surveying

49 instead of the 40 decimals bequeathed to him by the deceased from the burial land and the demolition of the small house that was bequeathed to all sons of the deceased, when this suit was going on, in order to construct another house for himself on the same land, where the said house had stood.

164) While the defendant is accused of the mismanagement of several plots of estate land, the dispute between the parties mainly centers around former Plot 200, the reserved burial land, which the plaintiffs accuse the defendant of treating as his personal property. The defendant on the other hand accused the 1st to 3rd plaintiff of intermeddling with the same plot of land. Having considered the evidence of the parties, it is my considered opinion that former Plot 200, which after several subdivisions has become known as Plot 1235 is matrimonial property, which passed to the widow - Nanozi Norah, upon the death of the deceased. I am persuaded in finding so, by the decision of my learned brother, the Hon. Justice Godfrey Namundi in the case of ***Herbert Kolya Vs Ekiriya Mawemuko Kolya (Civil Suit No 150/2016)***.

165) Article 31(1) of the Constitution provides for equal rights in marriage, during marriage and at its dissolution. The 1995 Constitution of Uganda, gave women equal status in, before, during and at the dissolution of marriage. Death automatically dissolves a marriage, but should not be used as an excuse to disposes any surviving spouse of their proprietary rights, as envisaged in Article 31(1)(b) of the Constitution, which provides as follows:

“A man and a woman are entitled to equal rights at and in marriage, during marriage, and at its dissolution.” (Emphasis is mine).

166) Similarly, Article 31(2) requires that the parliament of Uganda makes laws to enable widows and widowers inherit their deceased spouses' property. This article envisions rights by widows and

widowers over property of a deceased spouse and not only matrimonial property. It states:

“Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.”

167) While the parliament of Uganda is yet to effect Article 31(2), the courts of our land have pronounced themselves on what amounts to matrimonial property. The law is that the property a couple chooses to call a home will be considered matrimonial property. Also, property which either spouse contributes to, is matrimonial property. (***See Katuramu versus Katuramu M.A 26/2017, Muwanga versus Kintu High Court Division Appeal No. 135 of 1997***). Although the deceased was the registered proprietor of the land on which the matrimonial home was built (Plot 200), it was not in contest that he lived in it with Nanozi Norah, his 2nd wife and that was the place that they chose to call their home. Most of the other bequests he made in his will to his children and relatives, except his first home in Kigatta surround Plot 200.

168) Consequently, it is my finding that the deceased in considering Plot 200 as burial land and in conditionally bequeathing the house therein to the defendant, acted erroneously, since in doing so, he did bequeath jointly owned property, which was not solely his, and which after his death, became the property of his surviving spouse Nanozi Norah. Thus, upon the death of the deceased, the said property became in my view, the exclusive property of Norah Ndugwa Nanozi and not the property of any of her children or step children, who were specifically catered for by the deceased in his will, notwithstanding the fact that he had sold away some of the plots that he had willed to some beneficiaries. She has full proprietary rights over Plot 200 and is not a mere occupant of it as his will alludes. By directing that the land,

including the part that Nanozi Norah was cultivating, be registered as “*Ekigya Kya C.G.E. Ndugwa Sekisambu*”, the deceased had indirectly deprived Nanozi Norah of her rights over that land as his surviving partner.

169) The deceased may have intended to protect the proprietary rights of his two widows, by including the said property as well as the matrimonial home of his first wife, the late Nakazibwe Leonia in his will, as property that would revert to his specific children upon the demise of his said wives or on their voluntary vacation of the said lands, but his said decision had the effect of promoting the proprietary rights of his children above those of his said widows. He stated that the house of Nanozi Norah would in such circumstances revert to the defendant (the heir), while the daughters born to him and Nakazibwe Leonia, namely: Nabatanzi Nakiyaga K.I, Nakijoba Nakimu Kityo J.D. and Naluyima Tusabaomu R.T. would take over his matrimonial home at Kigatta.

170) His said decision unexpectedly gave those two widows temporary status in their homes. The fact of dispossessing his wives of any proprietary rights over their matrimonial homes highlights the unfortunate but not uncommon mentality in our society, that wives, however elderly, can never have permanency or proprietary rights over their own homes after they become widowed and that widowhood imparts to them the status of mere pilgrims with limited rights in their own matrimonial property. The deceased left the widows incapable of making the relevant decisions as regards those properties after his demise. If they chose to live elsewhere, they would have to forfeit the right to return to the said properties or to deal otherwise with the same, since their children would automatically acquire proprietary rights on the said matrimonial properties.

171) It is little wonder that his said decision and the decision to consider the empty land on that plot as burial land, attracted the

conduct of the 1st, 2nd 3rd plaintiffs against the interests Nanozi Norah whose claim to the land in issue had been diminished to the house that she resided in only.

172) The said plaintiffs committed acts of criminal trespass, malicious damage to her crops and threatening violence against her. The 2nd plaintiff inter alia, broke down his mother's toilets and the toilets of her tenants without giving a damn. His land grabbing antics in reality started while his own father was still alive, when he took part of the defendant's kibanja. The 3rd plaintiff on her part forcibly entered and stayed upon the disputed land, cultivating it, although no criminal charge was brought against her by her mother or the defendant.

173) The plaintiffs' land grabbing conduct deprived their own elderly mother of her own land. They behaved as though the passing of the deceased had ended the tenure of their mother (Nanozi Norah) on the disputed land. Not only did she become invisible to them, but also she became the enemy of their fraudulent proprietary conspiracy, when they openly attacked her physically by throwing stones at her house, spraying poison to crops in her garden and breaking down her pit latrines, among other shameful acts.

174) The 2nd plaintiff shamelessly claimed that the deceased's household property, including tables, suitcases and medals should have also been distributed by the defendant to the beneficiaries of the estate, suggesting that his own mother had no rights over the even the tables in her own house, let alone her late husband's suitcases and medals.

175) To protect his widow, the deceased should have allotted a piece of land for burial with the consent of Nanozi Norah and delineated it from Plot 200 on which their matrimonial home stands, to ensure that the widow's interests are distinct. Notably, the said widow is still playing the role of mother as well as grandmother to the children of her deceased children, who are still in need of care and protection. She

needs land to produce food and to supplement the proceeds from her rental units.

176) At locus, I found that the part currently occupied by graves is a small fraction of the original plot, which comprised of approximately 2 acres of land surrounding the house of Nanozi Norah. The rest of the bequests made by the deceased, are smaller in size. Thus, the fact that the whole of Plot 200 was preserved as burial ground, is responsible for the impression held by the plaintiffs that every beneficiary of the estate was entitled to a slice of it, considering its central location in the estate and in a developing area. In fact, the 2nd plaintiff in his evidence declared that the said land being in the middle of a developing area, should no longer be burial ground. In other words, the plaintiffs are operating under the mistaken belief that they each have a stake in Plot 200.

Issue No. 2: Whether the defendant has mismanaged the estate of the late Christopher George Emmanuel Ndugwa Sekisambu.

177) Upon considering the evidence adduced by the parties, especially the fact that Nanozi Norah supported the defendant's actions of taking off four plots of land from Plot 200, I do not fault the defendant for giving one of those plots of land to the 5th plaintiff. It is the very plot that the 5th plaintiff subsequently exchanged with 1st plaintiff. As a beneficiary of the estate, the 5th plaintiff's willed Plot 184 had been sold by the deceased and most of the beneficiaries who signed the minutes of the family meeting of 22/8/1999 (DEX9) had gone against their word and refused to contribute any pieces of land for those whose allotments of the estate had been sold by the said testator. The defendant's decision to compensate the 5th plaintiff was not in any way detrimental to the estate.

- 178) Apart from giving one plot to the 5th plaintiff, the defendant did not distribute the rest of the 3 plots he got from Plot 200 to the beneficiaries who had missed out on the distribution of the estate. He admitted selling the 3 plots to Sam Njuki, John Okia and Owuma for 14,000,000/=, with the knowledge of Nanozi Norah. He spent the proceeds therefrom as per his inventory filed in this court and admitted in evidence as DEX2.
- 179) DEX2 shows how the defendant spent the 14,000,000/= as follows: he gave 1,500,000/= to the 2nd plaintiff for tuition fees; 3,500,000/= was used by him to pay the tuition fees of Kinene Edmond; 2,000,000/= was donated by him to St Gonzaga church in fulfillment of a pledge his father had made to the said church; 4,000,000/= was used by him to construct rental units for the benefit of his mother and her grandchildren; he used 1,500,000/= for the digging and construction of two pit latrines and 4 gates on the disputed land; 800,000/= was spent by him on the education of Monica Nalweyiso; he spent 500,000/= on putting concrete on the graves and 1,500,000/= was spent by him to feed the mentioned widow and the grandchildren under her care.
- 180) His inventory was challenged by the 2nd plaintiff during his cross-examination, when he declared that the deceased had directed that Plot 189 be sold and its proceeds used specifically for educating the school going beneficiaries of the estate and for the expenses of the deceased's funeral. He informed the court that the defendant gave him only 1,500,000/= instead of 3,500,000/= they had agreed on as tuition fees, for a course that lasted two years at the Institute of Teachers Education Kyambogo (ITEK), which course actually cost him 10,000,000/= in tuition, accommodation, feeding and reading materials. According to him, the burial expenses of the deceased were met through collections made by family members, relatives and friends of the deceased.

181) The defendant's testimony, which this court believes to be true, as will be established below, is that the deceased, during his lifetime, sold some of the plots that he had bequeathed to his children and relatives. This obligated him to call all beneficiaries for the family meeting, to forge a way forward for those beneficiaries whose bequests no longer existed. Also, it is his uncontested evidence that most of the beneficiaries of the deceased's estate who attended the family meeting of 22/8/1999, which is proven by DEX9, turned around and refused to honor their pledges in that meeting, making it difficult for him to fulfill his duties to provide shares of the estate to the concerned beneficiaries.

182) Notably, the said meeting was attended by the defendant, the 1st, 2nd, 3rd and 5th plaintiffs, Mwanga Rock N, Yayiro Musoke. Kinene Edmond, Dorcus Mutabulawo, the 4th and 6th plaintiffs as well as Tusabaomu Loy were absent. It was agreed in the said meeting that all those beneficiaries who had realized their bequests, with exception of Kinene Edmond and the 2nd plaintiff who were school going beneficiaries of the estate at the time, contribute pieces of land measuring 50ft by 50ft or contribute 2,000,000/=, so that land could be purchased for the 5th plaintiff, Namakula Solome, Namakula Justine and Galabuzi Stephen whose bequests had been sold by the deceased. The 1st, 2nd, 3rd, 5th and 6th plaintiffs, Yayiro Musoke, Edmond Kinene and Tusabaomu Loy are the beneficiaries who appended their signatures to the said minutes.

183) The 2nd plaintiff admitted receiving 1,500,000/= from the defendant, confirming the defendant's statement in the inventory concerning that expenditure to be true. No evidence was adduced by the plaintiffs to contradict the defendant's evidence that he paid tuition fees amounting to 3,500,000/= for Kinene Edmond.

184) As for the rental properties constructed, the widow confirmed the fact that she collects rental proceeds from the rooms constructed by

the defendant on Plot 200. When court visited locus in quo, it was able to establish the fact that the said rental rooms were constructed adjacent to the matrimonial house occupied by Nanozi Norah. The inventory shows that the said units cost 4,000,000/=. No evidence was adduced to the contrary.

185) The graves of the departed family members were shown to the court by both parties. None of the plaintiffs challenged the evidence of the defendant in court concerning his renovation of the graves. The inventory shows that the said graves were renovated at 500,000/=.

186) The court was also shown the pit latrines and gates constructed on original Plot 200 for the widow and her tenants at 1,500,000/= and those facts were not contradicted by the plaintiffs.

187) The fact that 800,000/= was spent on the education of Nalweyiso and that 1,500,000/= was spent on food for the widow and her grandchildren as per the inventory were not challenged in evidence.

188) I do not find thus that the defendant's accountability for the 14,000,000/= is exaggerated or amounts to mismanagement of the estate. In any case Nanozi Norah, who has proprietary interests on Plot 200 acquiesced to the sale of plots taken from the said plot.

189) Concerning Plot 189 and 190, the defendant testified that it was initially the intention of the deceased to sell both Plot 189 and Plot 190 to a one Fred Mukisa, who purchased Plot 189, but did not take up Plot 190. He stated that the deceased later sold part of Plot 190 to Rose Ndagire and the residual piece to Gashumba Michael Victor, which transactions he (the defendant) witnessed. He produced copies of the sale agreement made between the deceased and Gashumba Michael Victor and the one made between the deceased and Rose Ndagire. They were admitted in evidence as DEX23 dated 14/4/1997 and DEX24 dated 1/7/1997 respectively.

190) Plot 189 was meant to cater for the funeral expenses of the deceased and for the education costs of the school going beneficiaries

of the deceased while Plot 190 given to Galabuzi. While no documentary proof was adduced to confirm the defendant's evidence that Plot 189 was sold to Fred Mukisa, the defendant's explanation which I accept in light of the truthfulness of his evidence as a whole, is that he had made efforts to obtain the sale original agreement for Plot 189 from the sons of the late Mukisa Fred but that the said agreement was in possession of custodian who could not be reached before his testimony in court. The fact that the said transaction took place, is indirectly confirmed by the 2nd plaintiff when he testified that he had challenged Fred Mukisa the alleged buyer of Plot 189, in a case that he reported to the land protection unit at Kasubi Police, which case was still pending there. That means that the defendant had from the beginning disclosed the fact of the purchase of Plot 189 by Fred Mukisa to the beneficiaries of the estate, the very reason why the 2nd plaintiff reported his alleged complaint to Kasubi Police. The defendant testified that Fred Mukisa is now deceased and that bit of his testimony was not contradicted by the 2nd plaintiff. One wonders why he is still maintaining that criminal report against the late Fred Mukisa whom he knows to be deceased and yet at the same sue the defendant alone for selling the same land without authority.

191) As for the 5th plaintiff, it is clear to me from the evidence of both parties that her bequest was nonexistent at the time of the death of the deceased.

192) On the complaint by the plaintiff that the defendant illegally gave Kinene Edmond another plot of land removed from the land that was reserved for burial, the defendant admitted doing so, with the support of the widow, to reward to Kinene Edmond for the work he had done in renovating their mother's house. From the evidence of both parties, the same piece of land was subsequently grabbed by the 2nd plaintiff, who admitted in his testimony that he took the said piece of land with permission from the rest of the plaintiffs, who encouraged him to put

up a house on it. They did so to frustrate whoever had purchased it from the defendant and to preserve it.

193) The 2nd plaintiff is in possession of that part of land. At locus, the defendant showed the court the 2nd plaintiff's house constructed on the said land that he had given Edmond Kinene. His said decision was reached with the consent of Nanozi Norah, the surviving owner of Plot 200. Hence, I do not find that the said decision was reached in abuse of the defendant's powers as administrator of the deceased's estate.

194) About the 6th plaintiff's complaint that the defendant gave part of Plot 184 bequeathed to her by the deceased to the 5th plaintiff, who subsequently sold it, the defendant during cross-examination admitted demarcating a piece of her land measuring 100ft by 50ft, and handing it to the 5th plaintiff. It was his evidence that he did it with the consent of the 6th plaintiff granted in the family meeting held on 22/8/1999, in which she signed the minutes consenting to surrender a piece of land 50ft X 50ft in size. The defendant sold land measuring 100ft X 50ft upon her request to Mwesigye Dan on 12/1/2000 at 3,900,000/=. He paid the brokers in the transaction 300,000/= and handed over 3,600,000/= to the 6th plaintiff who gave him 100,000/= in appreciation of his role in concluding the said land sale.

195) The agreement of sale (DEX22) made between the defendant and Mwesigye confirms the fact of sale of Plot 184 at 3,900,000/=: corroborating the testimony of the defendant. Notably, during cross-examination the 6th plaintiff admitted receiving 3,500,000/=: but claimed that it was less than what she had expected from the sale of her piece of land. According to her, her said plot constituted 3 small plots and therefore she expected 5,000,000/= from each small plot, basing on what similar plots in the area were fetching at the time. Evidently, except for the issue of the sale price, her testimony supports the defendant's evidence that she authorised him to sell her said land.

196) Also, it was the defendant's evidence that the 6th plaintiff asked him to similarly sell her other plot, but later stopped him from doing do. DEX14 dated 31/1/2000 is the letter addressed to the defendant by the 6th plaintiff, stopping him from going ahead with the sale of her other piece of land and promising to return the purchase price for the piece of land sold by the defendant for her. From the evidence of the defendant, the 6th plaintiff later on changed her mind and sent her daughter to ask him to sell the second plot, which he did. He sold the plot at 5,000,000/=. The brokers who had hiked the price to their advantage demanded for 1, 000, 000/=. The 6th plaintiff picked up the proceeds of the sale of her land from the defendant's place of work in 3 installments. He handed the balance of shillings 2,500,000 to the 5th plaintiff. The 5th plaintiff confirmed receiving the said 2,500,000 during her cross-examination.

197) I accordingly find that the selling of the 6th plaintiff's bequest by the defendant was conducted with the consent of the 6th plaintiff as established by the uncontested DEX14. Her acceptance of the purchase money suffices to prove her consent. She did not return the proceeds that she received from the sale of the first plot to the defendant. DEX9 shows that she signed the minutes of the meeting, despite her absence in the meeting. It was the defendant's testimony that after the family meeting, he visited the 6th plaintiff and Tusabaomu Loy and explained to them the outcome of the meeting, which outcome they accepted and went ahead to append their signatures on the minutes. DEX9 is binding on whoever signed it, including 6th plaintiff who did not challenge that fact.

198) The defendant was also accused of selling without the consent of the respective beneficiaries Plots 188, 179, 191, 193, and 195.

199) Plot 188 is the plot bequeathed to Namakula Solome and Namakula Justine. It was the defendant's evidence that the said plot was sold by the deceased in his lifetime, to Sam Lyomoki. The 2nd

plaintiff in cross-examination confirmed this fact. There was therefore no mismanagement of that land by the defendant, since it is not part of the estate.

200) Concerning Plot 179 bequeathed to the 5th plaintiff, it was the evidence of the 1st plaintiff and of PW3 that the defendant sold her plot. The defendant in his evidence testified that it was the deceased who sold off a chunk of that plot equivalent to 100ft X 100ft. The residue was approximately 50ft X 50ft, which the defendant later sold with the consent of the 2nd plaintiff, his mother (Nanozi Norah) and Edmond Kinene and he used the proceeds to finance the last funeral rites of their late father. The defendant's evidence in that regard was not challenged. DEX18 the sale agreement in respect of residue Plot 816 was endorsed by the second plaintiff.

201) **Section 139 of the Succession Act** defines ademption as follows:

"If anything which has been specifically bequeathed does not belong to the testator at the time of his or her death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject matter having been withdrawn from the operation of the will."

202) Since there is sufficient proof that Plots 179,188, 189 and 190, were sold by deceased in his lifetime, the defendant cannot distribute what did not exist.

203) As for Plot 191 which was bequeathed to the 4th plaintiff, the defendant's evidence in cross-examination was that with the 4th plaintiff's consent, he surveyed off a portion of land 50ft X 50ft in size, from Plot 191 and sold it. He used its proceeds to cater for the costs of the demarcation of the mutated plots, opening up of boundaries and payment of laborers who cleared the access roads to the new plots. He also subsequently sold the residue of Plot 191 with her permission. The 4th plaintiff did not testify. None of the plaintiffs' witnesses rebutted the

defendant's evidence in respect of her having given him consent to the sell her bequest. His evidence stands thus.

204) Concerning Plot 193, which was given to the 7th plaintiff, the defendant's testimony was that the 7th plaintiff asked him to sell her plot and hand her the proceeds thereof. She had initially authorised him to survey off land measuring 50ft X 50ft from the said plot. From that sale of part of the 4th plaintiff's plot, he obtained 2,000,000/=, which he applied for the demarcation and opening up of boundaries and for road clearance labor costs. The 7th plaintiff, just like the 4th plaintiff never testified and the rest of the plaintiffs never adduced evidence to contradict the defendant's testimony in respect of the mutation and sale of part of her bequest. It is apparent to me that the said two plaintiffs had nothing against the defendant, from the fact that they did not testify and none of the plaintiffs' witnesses rebutted the defendant's evidence in respect of their stated consent to the sale of their bequests.

205) As regards Plot 195 willed to Nakazibwe Leonia, the 1st plaintiff and PW5 testified that the defendant sold her land, promising to pay her, but did not do so. Exh. P3 is an undertaking by the defendant to pay his stepmother Nakazibwe Leonia of 4,000,000/= in two installments. The defendant testified that he gave all that money that his stepmother was demanding from him, to the 4th plaintiff, who was in charge of constructing a new house for her own mother. The 4th plaintiff did not attend court of testify.

206) It was also the defendant's evidence that Mugalu William the squatter who was on his stepmother's land with her knowledge had to be compensated for his property and tenancy rights on the land, before he could leave. He paid the said Mugalu for his crops and built for him two latrines as agreed in an agreement admitted as DEX17, dated 27/5/2000, which is a consent agreement between the defendant and Mugalu, to compensate the said Mugalu.

- 207) It was the evidence of the defendant that from his stepmother's plot of land comprised of 3 ½ pieces of standard plots, he gave one piece to Namakula Justine, whose bequest was sold by the deceased and that is the part that the late Nakazibwe was demanding for before her death. The defendant in his cross-examination conceded the fact that his stepmother did not attend the family meeting documented in DEX9. She was not part of that agreement. I find therefore that in giving out a piece of land to Namakula Justine, from his step mother's bequest without her consent, he had erred, since the deceased widow never attended or signed DEX9. The defendant admitted that he owed his stepmother a plot measuring 50ft X 50ft of land. That piece should be returned to her estate.
- 208) As far as shillings 2,000,000 that was in the deceased's Grindlays Bank account, the defendant testified that he spent the money for his mother's upkeep. He did not spend any of it on his stepmother. There is no express corroboration of his testimony in that regard. I do not find that fact to have been well established by evidence and although the will made no directions on the monies at the bank, I think that as administrator of the estate, the defendant ought to have distributed that money more fairly among the two widows of the deceased.
- 209) Regarding the demolition of the house meant for use by the sons of the deceased, it was the 2nd plaintiff's testimony that the daughters on one hand and sons of the deceased on the other hand were given two houses. The daughters of the deceased had since benefited from their bequest, while the defendant has prevented his brothers from benefiting from their bequest, when he demolished their house and put up another house in its place for his personal benefit. According to the 2nd plaintiff, he was never consulted and did not know the motive behind the defendant's demolition of the said house or his reconstruction of a flat in its place.

- 210) While at locus in quo, the defendant showed court the storied house that he was building on the spot that the demolished mud and wattle house stood. He admitted the fact that he did not consult any of his brothers as he believed that they had no more interest in it.
- 211) The will at page 4 states that "*my house in the compound made of mud and wattle is for my sons, whoever reaches mature age will leave.*" According to the defendant, since all his brothers were no longer children or staying in that house, having constructed their own homes, he decided to break up the house and put up a better one that would benefit of the widow. I agree. That demolished house on Plot 200 no longer belonged to the sons of the deceased who had reached majority age and left home. In any case, it is the deceased's 2nd widow, on whose authority and for whose benefit, the defendant is constructing the flat in issue.
- 212) On the accepted fact of surveying off 49 instead of the willed 40 decimals of the burial land, the defendant explained that Kiwanuka and Ndugwa roads had encroached on his bequest and that while surveying off his bequest, he surveyed extra land to accommodate the part occupied by the said roads. His title deed now contains 49 decimals instead of 40 decimals. At locus in quo, the court confirmed that the two roads actually exist on two sides of the defendant's plot and that Ndugwa road bends into the defendant's plot as well as part of Plot 200, but straightens out before reaching the 1st plaintiff's plot. It was not clarified by the evidence of the defendant, whether the said roads are in his title. By adding the extra 9 decimals to his bequest, one would think that the defendant had acted dishonestly and treated the estate as his personal property. However, his piece of land adjoins the matrimonial home of Nanozi Norah. She is directly affected by the decision to take away the said 9 decimals, but did not complain about it and from her evidence, she is pleased with the outcome of the defendant's management of the estate of the deceased.

213) In my considered opinion therefore, the defendant distributed the estate well as per the will and the agreement of the beneficiaries, save for the fact that he did not share the 2,000,000/= in the deceased bank account between both widows of the deceased and acted speciously when he gave to Namakula Justine, (one of the beneficiaries of the estate, whose bequests had been sold by the deceased) a piece of land from the plot allotted in the will to his step mother the late Nakazibwe Leonia, without her express permission. The defendant conceded the fact that his stepmother did not attend the family meeting documented in DEX9 and was not part of those resolutions.

Issue No. 3: Whether the 1st and 2nd plaintiffs/counter defendants intermeddled with the estate of the late Christopher George Emmanuel Ndugwa Sekisambu.

214) Counsel for the defendant relied on **Section 11 of the Administrator General's Act** *supra* which alludes to the 1st and 2nd plaintiffs as intermeddlers. **Section 268 of the Succession Act** defines an intermeddler as “a person who intermeddles with the estate of the deceased and does any act which belongs to the office of the executor, while there is no rightful executor, thereby making himself executor of his or her own wrong. In this case, the actions of the 1st and 2nd plaintiff complained of were executed while there was a legal representative of the deceased. Prior to that, some of the beneficiaries of the estate acknowledged of receipt of their title deeds from the defendant as follows: Rock Nobert Muwanga received the deeds for Plots 198 and 201, the 2nd plaintiff received the deed for Plot 197, 1st plaintiff received the deed for Plot 199, Halima Nabweteme (3rd Plaintiff) received the deed for Plot 185, and Mutabulawo Nakitende received the deed for Plot 192. It is noteworthy that the said people received their respective titles on 18/9/1999, before the defendant obtained letters of administration of the deceased's estate on

11/10/1999. The said beneficiaries accepted their bequests from the same man they now claim to have imposed himself on the estate as its administrator.

215) At that point in time, the said defendant when distributing the said title deeds, was intermeddling with the estate under **Section 268 of the Succession Act**. Nevertheless, no miscarriage of justice was occasioned by his said act, since the distribution of the said titles was made to the rightful beneficiaries, which was the intended result under the will.

216) From 11/10/1999 onwards, after the defendant was granted letters of administration of the estate, so whoever used the deceased's land without permission from the legal representative of the deceased (the defendant) became a trespasser on the estate's land. Trespass to land is the unlawful/ unauthorized entry upon another's land and interfering with another's person's lawful possession of the land. See ***Justine E.M.N Lutaaya vs Stirling Civil Engineering Civil Appeal No. 11 of 2002***.

217) **Section 180 of the Succession Act**, stipulates that an executor/ administrator 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. From their own conduct above stated, including their attendance of the family meeting mentioned above and from the fact that no concrete evidence was adduced by the plaintiffs to show that the defendant had fraudulently obtained letters of administration, I have no doubt in my mind that the defendant is the lawful representative of the deceased.

218) Whereas the deceased had directed that after the heir takes off 40 decimals from Plot 200 and that the rest of the land be registered and reserved for burial, with permission from the widow, the defendant had given a plot of land removed from Plot 200 to Kinene Edmond, in appreciation for his renovation of their mother's house. Unfortunately,

2nd plaintiff /1st counter defendant grabbed that piece of land. Nanozi Norah corroborated the defendant's testimony that the 2nd plaintiff/1st counter defendant built on the portion of land that the defendant had given to Kinene in appreciation for the renovation he made on her house and that 1st and 3rd plaintiffs chased her from the piece of land which the 2nd plaintiff grabbed from Kinene Edmond, intending to sell it.

219) The 2nd plaintiff fenced off 42 decimals of Plot 200, instead of the 10 decimals that was given to Kinene Edmond, without the permission of the defendant who was the legal representative of the estate. That evidence of the defendant is not disputed. The 2nd plaintiff's actions amount to trespass to land which land is legally owned by Nanozi Norah who gave authority to the defendant the heir of the deceased and the administrator of the deceased's estate, to allot it to Kinene Edmond.

220) Additionally, the defendant testified that the 1st plaintiff has continuously made bricks on the burial land, despite the efforts made by the defendant to stop him and that when the 1st plaintiff exchanged his land with 5th plaintiff, instead of maintaining the 10 decimals given to him, he surveyed off 5 more decimals. The 1st plaintiff confirmed that he had taken 15 decimals, instead of the 10 that he was supposed to take. The defendant confirmed this at locus in quo.

221) The court was shown the big chunk of land on which the 2nd plaintiff had constructed the house that he claimed was to benefit all beneficiaries.

222) Without a doubt, the 1st and 2nd plaintiffs are neither executors nor the administrators of the estate. They had no interest or claim of right beyond what the deceased had bequeathed to them. Having disagreed with the administrator of the estate concerning the land given to Kinene Edmond, the said plaintiffs he never consulted or sought the permission of the widow, before making their alleged

decision to 'preserve' the land in issue. They simply imposed themselves over it, making them trespassers not only of the estate but particularly on the land of Nanozi Norah the deceased's widow.

Issue No. 4: *What remedies are available to the parties.*

223) Having found that the defendant has not mismanaged the estate, I decline to grant any of the prayers in the plaint, except that the defendant shall pay the estate of the late Nakazibwe Leonia 1,000,000/= as half of the amount he obtained from the bank account of the deceased. He shall also return to the said estate, the current purchase price of the piece of land that he gave Namakula Justine, without the authority of his said stepmother. I do note however, that while he acted without his stepmother's permission, the defendant did not misappropriate the proceeds of the sale of her said plot, but gave the same to Namakula Justine whose bequest had been sold by the deceased. Therefore, he will apply some of the proceeds refunded by the 1st and 2nd plaintiffs to compensate his stepmother's estate.

COUNTERCLAIM

224) The defendant/counterclaimant prayed for: vacant possession of Plot 200; demolition of the 1st counter defendant's illegal structures erected on Plot 200; mesne profits; general damages; recovery of the Kibanja of the counterclaimant from the 1st counter defendant; costs of the suit and interest.

225) I have determined that the 1st and 2nd plaintiffs/2nd and 1st counter defendants respectively, are trespassers on former Plot 200, who came to court with unclean hands. However, the parties and the surviving widow are members of one family. An order for the demolition of the permanent building constructed by the 1st counter defendant on the Plot 1235 (former Plot 200) will breed more animosity between them. In order to promote reconciliation between the parties,

I instead order that the 1st counter defendant pays the estate of the deceased, the current monetary value of the land that he grabbed from the estate of the deceased (40 decimals).

226) The 1st counter defendant shall also vacate the defendant's kibanja, in which he built an illegal structure and demolish his structure therein since several attempts to stop him, were made by the counterclaimant before he completed his structure which he did not heed. The defendant had also started constructing a house for the 1st counter defendant on his lawful plot, but which house the latter simply demolished.

227) The 2nd counter defendant and the 3rd plaintiffs have no business making bricks in or cultivating Plot 1235 respectively and shall vacate it immediately. The 1st plaintiff shall surrender to the estate, the current monetary value of the extra 5 decimals of land that he took from Plot 200.

In the result, it is hereby ordered as follows:

1. The suit is dismissed in the main, save for the claims in respect of the wrongful distribution of cash amounting to 1,000,000 shillings derived from the deceased's bank account and the piece of land belonging to the estate of the late Nakazibwe Leonia and the counterclaim is allowed;
2. The defendant shall from some of the funds paid to the estate by the 1st and 2nd plaintiffs, and with permission from Nanozi Norah recompense the estate of Nakazibwe Leonia, the current monetary value of the 5 decimals piece of land owed to her estate by the deceased's estate;
3. The counterclaimant shall forward the rest of the proceeds received from the counter defendants to Norah Ndugwa Nanozi, the lawful owner of Plot 1235;

4. The defendant shall from his personal resources pay the legal representative of the estate of Nakazibwe Leonia, 1,000,000/=, being the amount he received from the deceased's bank account;
5. The 1st plaintiff/2nd counter defendant shall pay the estate, within six months hereof, the current monetary value for the 5 decimals of land, which he grabbed from Plot 1235 (formerly Plot 200);
6. The 1st plaintiff/2nd counter defendant shall immediately vacate the part of Plot 1235, from which he has been conducting his brick making activities;
7. The 2nd plaintiff/1st counter defendant is ordered to pay the estate, within six months hereof, the current monetary value for the 40 decimals of land, which he grabbed from Plot 1235 (formerly Plot 200);
8. The 2nd plaintiff/1st counter defendant shall also vacate the defendant's kibanja which he grabbed and shall immediately demolish the illegal structure that he constructed therein;
9. The 3rd plaintiff shall immediately vacate the part of Plot 1235 (formerly Plot 200) that she is using as her garden; and
8. No order is made in respect of the prayers for general damages, interest, and costs of the main suit, as well as in respect of the rest of prayers in the counterclaim, so as to facilitate reconciliation between the parties who are all members of one family.

I so order.

Susan Okalany

JUDGE

4/10/2021