THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CIVIL APPEAL NO. 110 OF 2011

(An Appeal from The Judgment of the Honourable Eldad Mwangusya, J. dated 17.03.2011 in High Court at Kampala (Family Division) Civil Suit No. 550 of 2004)

Yasmin Nalwoga :: Appellant

VERSUS

Abubaker Sebalamu Ganya ::::::::::::::::::::::::::::::::::::Respondent

Coram: Hon. Mr. Justice Remmy K. Kasule, JA
Hon. Mr. Justice Richard Buteera, JA
Hon. Justice Barishaki Cheborion, JA

JUDGMENT

This appeal is against the Judgment of the High Court (Mwangusya, J.) dismissing with costs Civil Suit No. 550 of 2004 on 17.03.2011.

The amended plaint in the said dismissed suit had Grace Namutebi, Yasmin Nalwoga and Sande Steven Serumunye as plaintiffs suing Abubaker Ssebalamu Ganya, Rehema Nansubuga and Sauda Nansubuga as defendants.

The said suit arose out of the estate of the late Moses Ssebitengero Ganya who died on 10.04.1998.

The amended plaint was lodged in Court on 10.10.2006. In the amended plaint the 1st plaintiff Grace Namutebi, sued as a granddaughter of the deceased and beneficiary of the said deceased's estate. The 2nd plaintiff, Yasmin Nalwoga, now the appellant, sued as a daughter of the deceased, while the 3rd plaintiff, Sande Steven Serumunye sued as son of the deceased.

The defendants, Abubaker Ssebalamu Ganya, Rehema Nansubuga and Sauda Nansubuga respectively brother and sisters to the deceased, were being sued as administrators of the estate of the said deceased. They had been granted letters of Administration to administer the decease's estate by the High Court at Kampala (Mukanza, J.) on 20.08.1999 through Administration Cause No. 71 of 1998.

The plaintiffs contended in their suit that the defendants had wilfully and without reasonable cause failed to exhibit a true account of the deceased's estate, thus rendering the estate to be dissipated and that the defendants had fraudulently misappropriated a bigger part of the estate to the prejudice of the plaintiff. The plaintiffs thus prayed Court to revoke the letters of administration granted to the defendants, grant the same to the plaintiffs and/or other beneficiaries of the estate, order that the

estate be distributed in accordance with the will of the deceased and also order that the defendants pay compensation for the loss and damage negligently and wilfully caused to the estate, amongst other orders.

The defendants in opposition to the suit contended that the plaintiffs had no cause of action against them because the 1st and 3rd plaintiffs were not children of the deceased and thus not beneficiaries of the said estate and, at any rate, they had properly administered the estate and had filed in Court appropriate inventories as to how they had carried out their responsibilities as administrators.

The hearing of the suit commenced in the High Court on 09.11.2006 with the plaintiffs adducing evidence from nine witnesses. The defence only adduced evidence of one witness, the respondent to this appeal. Submissions were made by the respective Counsel of the parties to the suit and on 25.02.2011 the learned trial Judge delivered Judgment dismissing the suit with costs. Dissatisfied with the Judgement the appellant lodged this appeal against the respondent.

A number of facts that are relevant to this appeal need to be pointed out. Though the suit was brought against three defendants, by the time of lodgement of the appeal, the two defendants Rehema Nansubuga and Sauda Nansubuga, sisters to the deceased and both appointed to administer the deceased's estate with the respondent to the appeal, had passed on. Hence the appeal is being brought against the single surviving administrator as the respondent.

It also transpired at the trial that the deceased had died testate having executed a valid will on 06.12.1983. This will had however not been annexed to the letters of administration granted to the defendants on 20.08.1999 by the High Court.

In the deceased's will, the deceased had named his son Karim Ganya as his heir and had also bequeathed a substantial part of his estate to this son. This heir still in his 20s and without a child disappeared without a trace in 2004.

The appellant's appeal is on the following grounds:

1. That the learned Judge erred in law and fact when he failed to evaluate the evidence on record to determine the accuracy of the inventory and accounts lodged in the High Court and instead held in error that the respondent/s had duly filed in Court an inventory and accounts in accordance with grant of Letters of Administration vide Administration Cause 710 of 1998.
2. That the learned Judge erred in law and fact when he held that the respondent/s had administered the estate of the late Moses Ssebitengero Ganya in accordance to the latter's will.
3. That the learned Judge erred in fact and in law when he held that there seems to be a mix up between the Estates of the late Aramanzane Ganya and that of Moses Ssebitengero Ganya and that there was a need to carry out an audit to determine what belongs to each of the estate.
4. That the learned Judge erred in law and fact when he refused to add Ismail Ddamulira and Sarah Nansubuga as parties to the suit and later on failed to give details of this ruling in the final Judgment.

5. That the learned Judge erred in law and fact when he failed to pronounce himself on the actual beneficiaries of the estate of the late Sebitengero Moses having taken cognizance of the fact that the late Karim Ganya had gone missing since 2004.

The appellant seeks the following reliefs:

a) The appeal be allowed.

b) The order of the High Court dismissing the appellant's suit be set aside.

c) An order be issued for the revocation of the Letters of Administration granted to the respondent vide Administration Cause no. 710 of 1998 be made.

d) An order be issued to the respondent to file a comprehensive and true and correct statement of account of dealings with the estate of the late Moses Ssebitengero.

e) A declaration be issued that the appellant and other beneficiaries are entitled to their respective shares in the estate of the late Moses Ssebitengero Moses.

f) A permanent injunction be granted restraining the respondent from undertaking any further dealing with the estate of the late Moses Ssebitengero.

g) An order be issued for the respondent to pay compensation for the loss and damage negligently and wilfully occasioned to the estate of the late Moses Ssebitengero Ganya.

h) The appellant be awarded costs of this appeal and those of the Court below.

At the hearing of the appeal Counsel Yese Mugenyi appeared for the appellant while Erick Muhwezi was for the respondent.

We are to resolve grounds 1 and 2 of the appeal together as they are interrelated. Ground 1 faults the learned trial Judge for having failed to evaluate the information contained in the inventories and accounts filed in the High Court and to determine the accuracy of that information before holding that the respondents/administrators of the decease's estate had duly filed inventories and accounts in accordance with the grant of letters of administration in Administration Cause No. 710 of 1998.

On the issue of the inventory and account of the estate being filed, Ground No. 2 holds the learned trial Judge to have been wrong in holding that the respondent/administrators had administered the decease's estate in accordance with the will of the deceased.

The learned trial Judge stated in his Judgment:

> *"The second issue is as to whether the defendants have filed an inventory and filed an account of the estate and it will be answered in the positive. The inventories and accounts were exhibited in this trial and the resolution of the next issue will determine the accuracy of the inventories and accounts filed".*

The next issue that the trial Judge had in mind was what was issue No. 3 at the trial, namely whether or not the defendants administered the estate of the deceased in accordance with the deceased's will. The learned Judge then proceeded to consider the evidence adduced in respect of the various deceased's properties named in the will and concluded by accepting the explanations of the respondent thus:

"I see no reason for interfering with the administration of the estate of Moses Sebitengero Ganya which will remain in the hands of the defendants".

The submissions of Counsel for appellant are that the High Court in Administration Cause No. 710 of 1998 granted Letters of Administration when the fact that the deceased left a will had not been disclosed to that Court. If it had been disclosed then the Court would have made appropriate directions and instructions as to administering the estate in accordance with the will. The respondents as executors of the will failed in their responsibility for not disclosing this fact to Court.

Further, Appellant's Counsel contended that the administrators had failed to exhibit in Court within six (6) months an inventory containing a full and true estimate of all the property in their possession, all the credits and any debts owing to the estate. They had also failed to exhibit within one year an account of the estate, showing the assets that had come to their hands and the manner in which the same had been disposed of. The administrators had not at all obtained the permission of the Court to file Returns outside the statutory period. Appellant's Counsel maintained that the respondent had committed a criminal offence under Section 116 of the Penal Code Act.

With regard to the inventories filed, appellant's Counsel argued that the inventories were not a reflection of the true status of the estate because 17 titles of the land belonging to the estate did not feature in the inventories and yet the administrators had carried out transactions with regard to these titles. A sum of shs. 645

million had also been received by the administrators out of sale of land that constituted part of the estate but not accounted for. The administrator's had so conducted themselves so as to hide the true status of the deceased's estate.

The administrators had also, in breach of Section 277 of the Succession Act, failed to carry out the deceased's funeral rites, appellant's Counsel contended.

Respondent's Counsel submitted, on his part, that the appellant's Counsel had to address Court on matters only concerning the appellant's share in the estate and not those matters to do with other beneficiaries of the estate.

As to the inventory and accounts relating to the estate being filed late, respondent's Counsel submitted that the learned trial Judge was right not to deal with that issue as it was not part of the pleadings before him. Likewise, respondent's Counsel maintained, it was not for the trial Judge to inquire and resolve on the issue as to why no disclosure had been made to the Court that granted the letters of administration that the deceased died testate.

The learned trial Judge, according to respondent's Counsel, properly considered the information in the inventories and was satisfied that the administrators had carried out their responsibilities properly. The appellant had not in any way been prejudiced.

We have carefully considered the submissions of respective Counsel on this point. We have also re-submitted to fresh appraisal the evidence adduced at trial.

An executor is a person who is vested with the power and the duty by the one making a will to carry the provisions of the will into effect. The duties of an executor include to bury the deceased, to prove the will, to collect the estate, distribute the estate amongst those entitled according to the will, pay debts in their proper order, pay the legacies, recover money and/or properties belonging to the estate.

The exercise of the power and duty of an executor must be carried out strictly in accordance with the law. Thus Sections 332 and 333 of the Succession Act impose upon the executor an obligation to make good the loss or damage occasioned by an executor or administrator who misapplies the estate of the deceased or subjects it to loss or damage, or neglects to get in any part of the property of the deceased's estate.

We note that Section 188 of the Succession Act provides that no right, as executor, is established in any Court of Justice, unless a Court of competent jurisdiction within Uganda has granted probate of the will under which the right is claimed or has granted Letters of Administration with the will annexed thereon under Section 181 of the same Act.

It was thus crucial, in our considered view, for the trial Court, given the mandatory position of the law as stated above, to determine the legality of the Letters of Administration that were granted to the respondent and the other administrators in Administration Cause No. 170 of 1998, when it was already known that the deceased died testate, yet the application and the grant was in respect of an intestate estate.

Our appreciation of the law is that the respondent and the other two, now deceased, administrators could only have applied to the High Court for probate of the deceased's will under Section 182 of the Succession Act.

If they chose, to apply for letters of Administration to administer the estate of the deceased either under Section 181 or a limited grant, under part xxx of the Succession Act, then they ought to have attached a copy of the will to Court and/or the Court would have made a grant limited in duration. This was not the case when the respondent and the other administrators applied to administer the deceased's estate. They applied for Letters of Administration to an intestate estate and that is what was granted to them. The decease's will was not attached to the application and no copy of the will was attached to the letters of administration granted to the administrators on 20.08.1999. The estate of the deceased was taken to be intestate, when in fact, it was testate.

When cross-examined about this aspect of the case the respondent was contradictory and less than truthful. The Court record states:

> *"Court:*
>
> *Witness shown a declaration in Administration Cause No. 710 of 1998 and he says:*
>
> *I signed this declaration. I do not understand the nature of the declaration. It was not explained to me. Our lawyer had the will so we could not have declared that the deceased died intestate. Mr. Nsambu's signature is not on this declaration. We got the will before we got the grant of letters of Administration. But by the time we applied we did not have*

the will. Mr. Nsubuga Nsambu is the one who had the will. When he was asked about the will he said it had been misplaced. He was asked to produce it before the grant was issued. He was told to bring it by Justice Mukanza. We applied for letters of Administration while we were still looking for the will".

Thus the respondent did not explain why he signed a declaration that he did not understand and which had not been explained to him and was to the effect that the deceased died intestate. Equally it is illogical that if their lawyer had the deceased's will at the time of signing the declaration, then the respondent could testify like this in Court:

"By the time we applied we did not have the will".

It is also unconceivable that the learned Judge Mukanza (RIP) could have asked lawyer Nsubuga Nsambu to take the will to Court, and then the same learned Judge proceed to grant letters of Administration in Administration Cause No. 710 of 1998 without making any reference at all to the will of the deceased.

We conclude on the evidence that was adduced before the trial Judge that the respondent and his co-administrators applied for letters of Administration in Administration Cause No. 710 of 1998 and did not disclose in that application that the deceased had died testate. That application was wrong in law for contravening Sections 182 and 244 of the Succession Act. An estate administered by an executor of a will is administered in accordance with and pursuant to the dictates of the will, while that administered as an intestate estate by the holder of letters of

Administration is administered in accordance with the statutory provisions of the Succession Act, particularly parts IV and V thereof. We find that it was a grave mistake on the part of the respondent and his co-administrators, who are now deceased, to apply and to be granted letters of Administration to administer the deceased's estate as if it were intestate when in actual fact, it was testate and they were aware of this fact. With the greatest respect to the learned trial Judge, he was in error when he did not address his mind to this issue at all.

We have also observed that the respondent adduced evidence of exhibits D7, D8 and D9 being inventory of assets and liabilities of the deceased's estate filed in Court in Administration Cause 710 of 1998 on 18.03.2002, 07.08.2002 and 20,06.2004. All these inventories were filed more than two (2) years later from the date of the grant of Letters of Administration on 20.08.1999. Yet the Letters of Administration were granted on an undertaking by the respondent and the co-administrators specifically stated in the grant itself:

> *"to administer the same and to make a full and true inventory of the said properties and credits and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint".*

The respondent did not avail any evidence of the High Court having allowed late filing of the inventories in Administration Cause No. 710 of 1998. There was also no evidence of any rendering to that Court a true account of the property and credits of the deceased's estate within one year from 20.08.1999.

We note that Section 278 (1) of the Succession Act imposed this statutory obligation upon the respondent and his co-administrators and that an executor or administrator who intentionally omits to comply with the obligation is deemed to have committed a criminal offence of disobedience of a statutory duty contrary to Section 116 of the Penal Code Act punishable with a sentence of imprisonment of two years. Again with the greatest respect, the learned trial Judge did not at all address himself to this aspect of the case. This was an error of law and fact on the part of the learned trial Judge. We hold the respondent as the surviving administrator to have failed to comply with the law.

As to the inventory of 18.03.2002, the only reference to the deceased's will is at the end in Note (a) that:

"The late Moses Ganya left a will made in 1983 whilst the deceased died in 1998. By the time of his death 15 years later, the deceased had mortgaged and sold off several of the properties reflected therein the will". No copy of the will was attached to this inventory. Otherwise in this whole inventory of 18.03.2002 there is nothing to show that whatever had been done or not done by the administrators was done in implementation of the will of the deceased.

In exhibits D8, and D9 the inventories of 07.08.2002 and 20.06.2004 the administrators do not attach a copy of the deceased's will to the inventories and do not relate the inventory to being an implementation of any part of the deceased's will.

We also observe that in respect of the inventory of 07.08.2002, exhibit D8, the administrators express themselves very vaguely as to the cash flow from the sale of the land comprised in Kibuga Block 38 Plot 141, land at Wandegeya, without any explanation on the basis of the will why the plot had to be sold and at how much, whether the beneficiaries who were adults, were contacted about the sale. The proceeds of the sale are not disclosed and figures are in percentages. We conclude from all this, on our having subjected the evidence adduced at trial to fresh scrutiny, that there was an intention on the part of the administrators not to let the beneficiaries of the estate know the real status of the estate.

Having very carefully gone through the inventories ourselves as well as the will of the deceased and having analysed the evidence adduced at trial, that of the respondent inclusive, we agree with the submission of the appellant's Counsel that the inventories filed in Court by the administrators did not in any way give a true status of the estate of the deceased's estate and could not amount to compliance with the law by the administrators. We accordingly allow grounds 1 and 2 of the appeal.

In ground 3 of the appeal, the learned trial Judge is said to have erred when he held that there was a mix up in administering the estates of the late Alamanzane Ganya and that of Moses

Ssebitengero Ganya and that there was need to carry out an audit to determine what belongs to each estate.

From our analysis of the evidence adduced at trial it was a fact not disputed that Alamanzane Ganya was the father of Moses Ssebitengero Ganya the deceased in High Court Administration Cause No. 710 of 1998. On the death of Alamanzane Ganya, Moses Ssebitengero Ganya had become his heir.

In his will the deceased Moses Ssebitengero Ganya expressly stated that the land at Busomba measuring one square mile, though in the names of his father Alamanzane Ganya, belonged to him and he bequeathed it to specific beneficiaries.

This land has to be dealt with in accordance with the deceased's will. The administrators had not dealt with it by the time their administration of the deceased's estate was challenged by the appellant and other beneficiaries of the estate through this Court litigation.

It is in respect of the land at Seeta that the respondent, as executor of the estate of the deceased, is under obligation to give an account of what exactly went on to the estate of the deceased. This is so because according to the evidence of Pw3 Musemakweeri Leonard, part of this land was sold by the respondent and the other two co-administrators to him as well as to Uganda Co-operative Alliance. They sold as administrators of the deceased's estate. The total proceeds of the sale was more than shs. 640 millions. The estate of the deceased is therefore entitled to a detailed explanation and accountability from the respondent as regards this specific transaction and other transactions relating to this land. The

administrators registered the same into their names as administrators of the estate of the deceased, that is Moses Ssebitengero Ganya, under Administration Cause No. 710 of 1998, and thereafter in that capacity proceeded to dispose of it. The inventories in Court filed by the respondent and his co-administrators hardly give any correct account or at all as regards this land.

On our part we find that the deceased, as son and heir of his father, Alamanzane Ganya, became owner of this land or at least had to have a share, like the rest of the children of the said late Alamanzane Ganya in the land at Seeta and that it was the responsibility of the respondent and his co-administrators to secure this land or the decease's share and account for it to the estate of the deceased.

To the extent as set out above, we agree with the holding of the learned trial Judge that:

> *"There seems to be a need to carry out an audit of the estate of Aramanzane Ganya and that of Sebitengero Ganya in Seeta in order to determine as to what of the estate in Seeta belonged to Aramanzane Ganya and that that belonged to Moses Sebitengero in order to iron out the controversy".*

We only add, that on the evidence that was adduced, it is because the respondent and his co-administrators failed to clearly and explicitly give an account as regards the Seeta land that it is necessary now to carry out an audit. The learned trial Judge was therefore not justified in his Judgment to conclude that:

"From the evidence available to this Court the explanation by the defendants as to circumstances leading to the sale of that land seems plausible and until an audit is done there is no reason to doubt it".

It is our holding, for the reasons already given, that the explanation of the respondent to the trial Court was not plausible and that is why it is necessary to have an audit carried out. We accordingly allow ground No. 3 of the appeal.

In ground No. 4 the complaint is that the learned trial Judge erred in refusing to add to the suit Ismail Ddamulira and Sarah Nansubuga as parties to the suit and failed to give reasons for his refusal in the final Judgement.

The record of proceedings shows that originally Ismail Ddamulira was plaintiff number 4 to the suit as per the original plaint dated 29.07.2004. He was suing as a son of the deceased Moses Ssebitengero Ganya. He was dropped as plaintiff on the amended plaint dated 10.10.2006. No reason was given to Court by Counsel for the plaintiff as for dropping the 4th Plaintiff from the suit.

However on 19.09.07 Counsel for plaintiffs verbally applied to have the same Ismail Ddamulira added as a party to the suit since he was one of the major beneficiaries under the will of the deceased.

As to Sarah Nansubuga, a minor, Counsel for plaintiffs verbally applied that she be joined as one of the plaintiffs because DNA tests had been done upon her.

The application to join the two was opposed by Counsel for the defendants on the grounds that for the minor there was no next

friend disclosed to Court through whom she was to become a party to the suit as the law required. As to Ismail Ddamulira he had withdrawn from the suit and he had to first pay the costs of the withdrawal from the suit before he could lodge a formal application to re-join the suit. No formal order of Court ordering the payment of such costs was presented to the trial Court by the said Counsel.

The trial Judge ruled on the application to the effect that since none of the four issues agreed upon for determination by the Court required the presence of any of the two proposed plaintiffs, the case was to be determined without any addition of any other plaintiff. The Judge undertook to give details of the ruling in the final Judgment.

We have perused the Judgment of the learned trial Judge and, apart from mentioning the fact that Ismail Ddamulira later withdrew from the suit, the Judge does not give in the main Judgment any details for ruling as he had undertaken on 19.09.07. This is an error on the part of the trial Judge.

Be that as it may, we are satisfied that the disallowing of the application to add Ismail Ddamulira and Sarah Nansubuga as two additional plaintiffs to the suit on the ground that none of the agreed upon four issues for determination by Court required the two proposed plaintiffs to be added to the suit was a sound reason. Further, apart from this ground, we observe on our part that the application to add the said two plaintiffs to the suit was very casually presented to Court by Counsel for the plaintiffs. No reason was advanced to Court as to why Sarah Nansubuga, a minor, had to be joined as a plaintiff without a next friend. O.32R

1(1) and (2) of the Civil Procedure Rules required a next friend for the minor applicant with a signed written authority to the advocate for that purpose. This was not presented to the trial Court by Counsel for the plaintiffs.

As to Ismail Ddamulira an adult, there was no explanation at all to Court, as at the time of his withdrawal and also at the time of making the application to re-join the suit, as to why he had withdrawn from the suit and why he wanted to re-join the same suit. It is only later on when testifying as Pw1 on 20.09.2007, after the application had been rejected by Court, that he explained that he withdrew from the suit due to fear for his life after the heir to the deceased, Karim Ganya, who happened to be his brother had been made to disappear.

On reviewing the whole evidence, we have come to the conclusion that although the learned trial Judge erred in not giving detailed reasons in his final Judgment for the ruling he gave of rejecting the addition of the two applicants to the suit, we find that, for the reasons we have stated above, the application had no merit and its refusal did not cause any miscarriage of Justice. We disallow ground 4 of the appeal.

The 5th ground of appeal faults the trial Judge for failing to pronounce himself on the actual beneficiaries of the estate of the late Moses Ssebitengero Ganya having taken cognizance of the fact that the late Karim Ganya had gone missing since 2004.

The three plaintiffs to the suit as per amended plaint, brought the suit, first the plaintiff, Grace Namutebi, as granddaughter and beneficiary of the deceased's estate, 2nd plaintiff, now appellant

Yasmin Nalwoga, as a daughter of deceased and 3rd plaintiff Sande Steven Serumunye as son of the deceased.

The trial Judge held that the 1st (Grace Namutebi) and 3rd (Sande Steven Serumunye) plaintiffs were not named in the will of the deceased as beneficiaries and were not dependant relatives of the estate and as such they were strangers to the estate. The 1st plaintiff on admission was not a daughter of the deceased and the trial Judge, on the evidence adduced, held that the 3rd plaintiff had failed to prove he was a biological son of the deceased.

We have carefully gone through the will of the deceased and we find that contrary to what the 1st plaintiff, Grace Namutebi, who testified as Pw7, asserted to Court, the deceased was emphatic in his will that the money from his estate was to go to support the education of his children. He did not include throughout the will his grandchildren or any other relatives other than his children, amongst those whose education was to be supported by money from his estate. So the 1st plaintiff being not a child, or a named beneficiary by will in the estate of the deceased, cannot claim to be a beneficiary of the deceased's estate. The learned trial Judge thus pronounced himself that way on the 1st plaintiff and we uphold his decision.

As to the 3rd plaintiff, the burden was upon him to satisfy Court, on a balance of probabilities, that he was a biological son of the deceased.

On 17.09.07 Court was informed that evidence of a DNA test was to be availed to Court to enable Court determine whether this plaintiff as well as Sarah Nansubuga, a minor, had been fathered

by the deceased. For reasons not explained to Court this evidence was never availed to Court.

Further, the 3rd plaintiff's mother, Theresa Nabukeera, Pw6, testified that the baptismal Certificate relating to the 3rd plaintiff which was all along at the material time in her custody had been destroyed during the war. However in the testimony of the 3rd plaintiff, Pw5, he produced a baptismal certificate, Exhibit P11, claiming that it was given to him by his mother Pw6. We have looked at exhibit P11 and we too, like the learned trial Judge found, find alterations in that certificate presented to Court. We too agree with the holding of the trial Judge that there was no reliable evidence for Court to pronounce itself on the paternity of the 3rd plaintiff. Therefore, the trial Judge was right to decline to declare that the 3rd plaintiff, Pw5, was a son of the deceased. So the trial Judge pronounced himself on the claim of the 3rd plaintiff being a beneficiary of the estate of the deceased.

The trial Judge held the appellant, Yasmin Nalwoga, to have established her status in the estate, but all the same proceeded to dismiss her case because she had not established any case against the defendants, of which now the respondent is the only one still existing, the other two having passed on.

On our subjecting all the evidence to fresh scrutiny, the appellant as Pw2, established on a balance probabilities, since her evidence was not contradicted, that the will had bequeathed to her a plot of land at Wandegeya, a portion of land at Busomba and as such she had a cause to demand for the same. Her evidence that no satisfactory account had been given by the estate administrators

of the money left by the deceased at Standard Bank, Speke Road, and that land at Seeta had been sold by the same administrators after the said land had been transferred into their names, and as such, they sold it as part of the estate of the deceased without any accountability being given to the beneficiaries of the estate including herself, also established a case against the said administrators, of which the respondent was now the only surviving. This appellant also named the children of the deceased including Serumunye Steven whose paternity the trial Judge rightly refused to confirm on the basis of the evidence that was before him. The appellant also testified that one of the children of the deceased by the names of Akim Kasegela had died, while another Kasim Ganya, the heir, had gone missing since 02.02.2004. She also named Ismail Ddamulira, Nansubuga Laeticia, Moses Nsubuga Ganya, and Nansubuga Sarah as children of the deceased. She was not contradicted in this. The Court on the evidence that was placed before it came to the conclusion that only Sande Steven Serumunye had not established his paternity with the deceased. So from the evidence of this witness it was established that the respondent and the co-administrators were accountable to these five children, namely Nansubuga Laeticia, Moses Nsubuga Ganya, Nalwoga Yasmin, (the appellant), Ismail Ddamulira and Nansubuga Sarah as well as the deceased's named wife Fatuma Nantongo. The respondent, and the other co-administrators in filing in Court inventories that we have held to be unsatisfactory, did not show to the appellant and the other beneficiaries how they carried out any accountability to her and the other beneficiaries of the deceased's estate. There is

estate. There is no evidence of any meetings, regular or otherwise, being held where by the administrators briefed the appellant and the other beneficiaries, of the status state of the estate and also seek the beneficiaries' respective contributions and/or consent or otherwise, as to what was happening in the estate, particularly when it came to disposing of lands of the estate, fixing the prices of sale, distributing the proceeds, and whether or not all that was done was being carried on in strict compliance with the deceased's will. This was a responsibility of the respondent and the co-administrators to the appellant and to the rest of the deceased's children and other beneficiaries of the estate. We accordingly find and hold that, while the learned trial Judge pronounced himself on the appellant as a beneficiary of the decease's estate, the learned trial Judge was not justified to hold that the appellant had not proved her case against the respondent and the two co-administrators. We hold that the appellant established her case against the respondent and the two co-administrators and was thus entitled to judgment against the respondent and the two co-administrators.

Pw1 Ismail Ddamulira, aged 28 years is the other child of the deceased who is also specifically mentioned in the will. He stopped in Primary 7 in 1994 and in 1998 his father, the deceased, died.

It was unexplained by him why he did not pursue further education. The respondent as administrator of the deceased's estate also offered no explanation in this regard. The sum total of the evidence of the respondent was that, now and then, the respondent was giving to him some money and telling him that the

said money was his share in the proceeds of some land at Mengo or Seeta that the administrators had sold. He was never involved in any decision making as to the sale of that land, except when he requested them in writing to sell off some land at Mengo. Our decision, on review of the whole evidence, is that the respondent was vague and unclear and not at all forth right as to the entitlements of this beneficiary in the estate.

The learned trial Judge in his Judgment did not come out clearly to state as to who were the other beneficiaries of the deceased's estate to whom the respondent and the co-administrators had, at the material time, responsibility to account for what was going on in the estate. This was necessary given the fact that the deceased did not name all his children in his will. We have reviewed all the evidence that was adduced and we have come to the conclusion that the following are the living children of the deceased's (Moses Ssebitengero Ganya) estate:

1. Yasmin Nalwoga, Pw2, adult, the appellant, daughter of the deceased, named in the will.
2. Ismail Ddamulira, Pw1, adult, son of deceased, also named in the will.
3. Nansubuga Laeticia, adult, daughter of deceased, not named in the will.
4. Moses Nsubuga Ganya, adult, son of the deceased, not named in the will.
5. Nansubuga Sarah, this one was a minor at the time of trial in the High Court in 2007. She is a daughter of the deceased. She is not named in the will.

The following children of the deceased:

i) Akim Kasegela died while an adult

ii) Karim Ganya, the named heir of the deceased in the deceased's will disappeared on 02.02.2004 He was aged about 22 years old. He is named in the will.

Other beneficiaries of the estate named in the deceased's will because they were bequeathed some land in the said will are:

a) Fatuma Nantogo, adult, female, wife of the deceased.

b) The executors and

c) The deceased's Lawyer Nsubuga-Nsambu

Accordingly we partly allow ground 5 of the appeal by letting this Court pronounce itself, as we have done above, as to who are the beneficiaries to the deceased's estate according to the evidence adduced, including the will of the deceased.

This appeal has partly succeeded in grounds 1,2,3, and 5. It has not succeeded in respect of ground 4 which has been disallowed. We accordingly partly allow this appeal and order that:

1. The order of the High Court dismissing the case of the 1st plaintiff Grace Namutebi and the 3rd plaintiff Sande Steven Serumunye against the defendant, now respondent, in HCCS (Family Division) 550 of 2004 is hereby upheld.
2. The Order of the High Court dismissing the case of the 2nd plaintiff, now the appellant, in the said suit is set aside and Judgment is entered for the said 2nd plaintiff/appellant against the respondent in the following terms:

a) The letters of Administration granted to the respondent and the other two co-administrators vide Administration Cause No. 710 of 1998 are hereby revoked on condition however that whatever transaction was carried out by the holders thereof as from the date of the grant of 20th August, 1999, up to the date of revocation shall remain valid as between the administrators and all other third parties dealt with. However, the administrators are to remain liable to render an account to the and/or the beneficiaries of the deceased's estate in respect of those transactions and where any loss due to fraud or dishonesty is proved, then the respondent shall make good that loss to the children and/or the beneficiaries concerned or to the whole deceased's estate, as the case may be. For purposes of limitation, the cause of action in respect of such a loss shall be as from the date the respondent files in Court a statement of account of dealings with the deceased's estate as per Order 2(d) hereof.

b) The children/beneficiaries of the estate of the deceased now living, and pronounced in this Judgment are to meet within 30 days from the date of delivery of this Judgment under the chair of the appellant and choose from amongst themselves or any other persons, two other persons to join the appellant, to apply to the High Court of Uganda for a grant of letters of Administration with the will of the late Moses Ssebitengero Ganya annexed thereon to administer the estate of the said deceased in accordance with the deceased's stated will.

c) A declaration is hereby granted that the appellant and the rest of the children and beneficiaries of the estate of the deceased as

pronounced in this Judgment are entitled to their respective shares and due participation in taking decisions in the administration of the estate of late Moses Ssebitengero Ganya in accordance with the deceased's stated will.

d) An order is hereby issued to the respondent to file in High Court, in Administration Cause No. 710 of 1998 and also in High Court Civil Suit No. 550 of 2004 a comprehensive, true and correct statement of account of dealings with the deceased's estate, and in case of land transactions, showing the particulars of title, where the land was situate, when the title was transferred to the respondent and other administrators as administrators of the deceased estate, when the said land was disposed of, to whom it was sold or transferred, or otherwise disposed of, how much money was paid, whether the selling or disposal was with the prior participation and/or consent of the beneficiary, in case such beneficiary was named in the will, how were the proceeds of the sale disbursed and, in particular, how much did the beneficiary and/or the deceased's estate, get of these proceeds. The Return is to contain any other information that the respondent may feel is necessary to explain any particular aspect. The respondent is to file in Court, serve a copy to the appellant and to all the other living children and beneficiaries of the deceased's estate within a period of sixty (60) days as from the date of this Judgment.

e) The appellant, children/beneficiaries of the decease's estate shall be free to respond to any aspect of the return filed in Court by the respondent within a period of thirty (30) days after receipt of service of the return from the respondent and where any loss

is disclosed due to fraud and/or dishonesty on the part of the respondent and/or other co-administrators, then Court shall be appropriately moved by the new administrators of the deceased's estate or any particular child and/or beneficiary of the deceased's estate, subject to the law, for orders that the respondent as administrator of the deceased's estate to make good that loss to a particular beneficiary or to the whole estate, as the case may be.

f) As to the missing heir, Karim Ganya, it is ordered that the new administrators on being appointed by Court take immediate steps to deal and resolve the issue of Karim Ganya, in accordance with the law on missing persons.

As to costs, we, on subjecting all the evidence to fresh scrutiny, find that the litigation is within the family members of the estate of late Moses Ssebitengero Ganya, and that resolution of issues regarding this estate is likely to take some time while still in the Courts of law and/or amongst the children/beneficiaries of the estate. Accordingly we find it appropriate to order, and we hereby do, that each party is to bear the costs of this appeal and those in the Court below.

Dated at Kampala this.....13th..... **day**.....October of **2017**.

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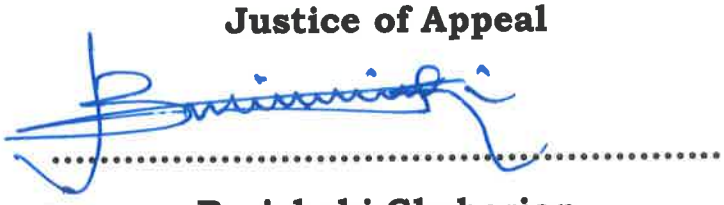
Remmy Kasule

Justice of Appeal

Richard Buteera

Justice of Appeal



Barishaki Cheborion

Justice of Appeal