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**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**[Coram: Katureebe CJ; Arach-Amoko; Tibatemwa; Mugamba and  
Buteera JJSC]**

**CIVIL APPEAL NO. 09 OF 2014**

10

**BETWEEN**

**SILVER BYARUHANGA::: APPELLANT**

**AND**

**1.FR. EMMANUEL RUVUGWAHO**

**2.RUDEJA**

}  
:RESPONDENTS

15

*(Appeal from the Judgment of the Court of Appeal ( Mwangusya, Mwondha, and Kiryabwire, JJA) dated 26<sup>th</sup> May, 2014 at Kampala in Court of Appeal Civil Appeal No. 113 of 2011).*

**JUDGMENT OF HON. JUSTICE M.S.ARACH AMOKO, JSC**

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This is a third appeal. It originates from the decision of the Court of Appeal which upheld the decision of the High Court in Civil Appeal No. 113 of 2011 against the appellant.

***Background***

25

The appeal arose from the decision of the Chief Magistrate Mpigi in **Civil Suit No. 007 of 2006** filed by the appellant against the respondents claiming ownership of a piece of land measuring

5 approximately 450 acres comprised in **LRV 1162 Folio 11 Block  
58 Plot 2 at Kyabobo, Gomba, Mpigi District** (hereinafter referred  
to as the “suit land”). Originally, the registered proprietor of the suit  
land was Edward Wilson Mukasa Kakooza. He died testate and  
appointed four executors, namely, Edward Kalusi, Lukyamuzi  
10 Mukasa, John Mayanja and Sebastian Matovu (hereinafter for  
brevity referred to as “the executors”). Subsequently, the executors  
applied to the High Court for Probate vide **Misc. Administration  
Cause No.21 of 1990**. Probate was granted to them on the 3/10/  
1999.

15 On the **20/03/2000**, Edward Kalusi, one of the executors got  
himself registered on the Certificate of Title of the suit land as the  
proprietor in his personal capacity. He then sold the suit land to the  
1<sup>st</sup> Respondent, Rev. Fr. Emmanuel Ruvugwaho under a sale  
agreement dated the **20/12/2000**. Thereafter, the 1<sup>st</sup> respondent  
20 sold it to the 2<sup>nd</sup> respondent.

The following year, four of the children of the late Edward Wilson  
Mukasa Kakooza, namely, Mutazindwa Paul, Stephen Kakooza,  
Nabakooza Sarah and Nansasi Florence Kakooza, instituted **HCCS  
No. 469 of 2001** against the executors alleging mismanagement of  
25 their late father’s estate. The parties reached a consent where the  
aforesaid grant of Probate was revoked and the plaintiffs were  
granted Letters of Administration instead. The parties also agreed  
that any property belonging to the estate which had not been  
disposed of in accordance with the will should revert to late

5 Kakooza's estate. The Consent Order containing the above terms signed by the High Court Registrar is dated **20/06/2002**.

On the **27/08/2003**, the plaintiffs acted on the basis of the Consent Order and sold the suit land to Sylvester Byaruhanga the appellant for Shs.20,000,000 (twenty million shillings).

10 Remarkably, the High Court did not issue to them the Letters of Administration until the **8/11/2004**, naming the said Mutazindwa Paul, Stephen Kakooza, Nabakooza Sarah and Nansasi Florence Kakooza as the administrators of the estate of their late father (they are hereinafter referred to as "the new set of administrators").

15 Thereafter, the new set of administrators were registered by the Registrar of Titles on the suit land in that capacity on the **4/10/2005 at 3.40 p.m** vide **Inst. 358996** and were issued with a Special Certificate of Title. They immediately transferred the suit land to the appellant who was in turn straightaway registered as  
20 the proprietor that same day at 3.50 pm vide Ins. 358999.

Apparently, when the appellant attempted to access the suit land, the respondents resisted. The 1<sup>st</sup> respondent specifically claimed that he was the lawful owner thereof, saying he had purchased the same on the 20/12/2000 from the registered proprietor called  
25 Edward Kalusi. Consequently, he lodged a caveat on the Certificate of Title of the suit land on the 21/12/2005 in a bid to protect his interest.



5 Inexorably, a dispute arose between the parties over ownership of  
the suit land which prompted the appellant to file **Civil Suit No. 48  
of 2006** against the respondents in the High Court at Nakawa  
seeking for, *inter alia*, a declaration that he was the registered  
owner of the suit land, an order of eviction, and for removal of the  
10 caveat from the suit land, damages, a permanent injunction,  
interest and costs.

In their defence and counterclaim, the respondents resisted the  
appellant's claim and prayed for its dismissal with costs and  
judgment on their counterclaim.

15 That suit was later on transferred to Mpigi Chief Magistrates Court  
and registered as **Mpigi Civil Suit No. 007 of 2006**. The issues  
before the trial Chief Magistrate were:

***“1. Whether the plaintiff was a bonafide purchaser for  
value without notice.***

20 ***2. Whether at the time the plaintiff purchased the suit  
land, the vendors had authority to pass title of the suit  
land (sic).***

***3. Whether the defendants have any claim to the suit  
land.***

25 ***4. Remedies to the parties.”***

In the judgment delivered on the 19.12.2010, the Chief Magistrate  
found *inter alia*, that the sale of the suit land to the respondents  
was a nullity since Edward Kalusi had no powers to dispose of the  
suit land in his personal capacity. With respect to the sale of the

5 suit land to the appellant, she found that although it was based on the Consent Order before the new set of administrators had obtained the Letters of Administration, it was lawful since the Consent Order had granted them such powers and the sale was also later on validated by the grant of the Letters of Administration.

10 The learned Chief Magistrate as a result, answered issues 1 and 2 in the affirmative; and issue 3 in the negative and entered judgment in favour of the appellant as follows:

15 ***“ (a) A declaration that the plaintiff is the registered owner of the 450 acres of land comprised in Leasehold Register volume 1162 Folio 11 Block 58 Plot 2 , at Kyambobo, Gomba, Mpigi.***

***(b) An eviction order against the defendant.***

20 ***(c) The caveat registered on the Land Office Registry copy of the title for the suit land was unlawfully lodged and is hereby lifted.***

***(d) A permanent injunction restraining the defendants from entering, grazing or cultivating on the suit land or claiming ownership thereof.***

***(e) General Damages amounting to shs.10, 000,000 /=***

25 ***(f) Interest on (e) at the rate of 8% p.a.***

***(g) Costs of the suit.”***

5 The respondents were dissatisfied with that judgment and appealed to the High Court vide **High Court Civil Appeal No. 13 of 2010** on the grounds that:

10 ***“(1)The trial Magistrate erred in law and fact when she found in her judgment that Edward Kalusi had no power to dispose of the suit land when he sold it to the 1<sup>st</sup> appellant.***

***(2) The trial Magistrate erred in law and fact when she found in her judgment that the sale agreement between Edward Kalusi and the 1<sup>st</sup> appellant was a nullity.***

15 ***(3) The trial Magistrate erred in law and fact when she found in her judgment that the appellants were not in occupation of the suit land at the time it was sold to the respondent.***

20 ***(4) The trial Magistrate erred in law and fact when she did not find in her judgment that Mutazindwa Paul, Stephen Kakooza Mutagubya, Nabakooza Sarah and Nansasi Florence who sold the land to the respondent did not have any right to sell the land at the time.***

25 ***(5) The trial Magistrate erred in law when she awarded exorbitant general damages and interest thereon against the respondent without taking into consideration the legitimate claims and rights of the appellants.”***

The learned High Court Judge who heard the appeal found that:

- 5 1. Edward Kalusi had power under the Succession Act to dispose  
of the suit land when he sold it to the 1<sup>st</sup> respondent. The sale  
agreement between Edward Kalusi and the 1<sup>st</sup> respondent was  
therefore valid.
- 10 2. The sale of the suit land by the new set of administrators to  
the appellant on the 27/8/2003 was a fiasco because they  
were not the registered proprietors and did not have Letters of  
Administration by then. The purported sale was therefore null  
and void for lack of authority and also because the subject  
matter of the sale had already been sold to the respondents.
- 15 3. The general damages were reasonable and did not warrant  
interference by court.

As a result of the above findings, the learned Judge made the  
following orders in favour of the respondents:

- 20 ***“(1) The appeal is allowed and all orders of the lower  
court are set aside.***
- (2)The appellants (now respondents) are to continue in  
possession and ownership of the suit land.***
- (3) The purchase of the respondent (now appellant) is  
declared null and void.***
- 25 ***(4)The respondent’s (now appellant’s) name on the  
Certificate of title be cancelled.***
- (5) Costs of the appeal in the lower court and in this court  
to the appellants (now respondents.)”***



5 The appellant was aggrieved by that decision and appealed to the Court of Appeal vide **CACA No.113 of 2010** raising six grounds:

***“1.That the learned judge erred in law and in fact in holding that one Edward Kalusi had powers to dispose of the suit land to the 1<sup>st</sup> respondent.***

10 ***2. That the learned judge erred in law and in fact when he held that the sale agreement between Edward Kalusi and the 1<sup>st</sup> respondent was valid.***

15 ***3. That the learned judge erred in law and in fact when he relied on documents which were not tendered in court record as exhibits to hold that the respondents lawfully purchased the suit land.***

20 ***4. That the learned judge erred in law and in fact when he held that Mutazindwa Paul, Stephen Kakooza Mutagubya, Nabakooza Sarah and Nansasi Florence who sold the said land to the respondent (now appellant) did not have the powers / authority to sell the suit land to the appellant.***

25 ***5. That the learned judge erred in law and in fact when he held that the Letters of Administration did not have a retrospective effect to legitimise the actions of Mutazindwa Paul, Stephen Kakooza Mutagubya, Nabakooza Sarah and Nansasi Florence who sold the suit land to the appellant.***



5           **6. That the learned judge erred in law and in fact when he failed to properly evaluate the evidence on record and thereby reaching a wrong conclusion.”**

At the hearing of the appeal counsel for both parties agreed on three issues, namely:

10           **a) Whether the second set of administrators of the estate of late Edward Wilson Mukasa Kakooza had powers to sell the suit land to the appellant.**

**b) Whether the appellant is a bonafide purchaser for value without notice.**

15           **c) What are the remedies available to the parties?**

After duly considering the appeal, the Court of Appeal in its judgment dated the 26.05.2014 was of the view that the issues before them raised points of law pertaining to the authority of an administrator of an estate who disposes of the property without the participation of his or her co-administrators and made the following findings:

25           1. That Section 185 of the Succession Act provides that when several executors are appointed, probate may be granted to them all simultaneously, or at different times. In this case, Edward Kalusi applied with the other executors for and obtained a grant of probate as executors of the deceased's estate. However, only Edward Kalusi registered his name on the Certificate of Title.

- 5        2. That pursuant to the grant of probate and registration of his  
name on the certificate of title, Edward Kalusi went ahead and  
sold part of the suit land to the 2<sup>nd</sup> respondent (*the sale  
agreement actually indicates that he sold to the 1<sup>st</sup> respondent*).
- 10       3. That according to section 272 of the Succession Act, this is  
permissible since the section provides that when there are  
several executors and administrators, the power of all may, in  
the absence of any direction to the contrary, be exercised by  
any one of them who has proved the will or taken out  
administration.
- 15       4. That Edward Kalusi was entitled to sell the suit land under the  
above provision and unless his co-executors raised any  
objection to his action(s), whoever he sold to, obtained good  
title.
- 20       5. That the fact that he was not reflected as an executor on the  
Title is of no consequence regarding proof of what capacity he  
got his name entered thereon.
- 25       6. That the second set of administrators could not have had the  
power to sell the suit land to the appellant because the suit  
land had already been validly sold off to the respondent by  
Edward Kalusi.
7. That the sale of the suit land to the appellant was a fiasco  
since the new set of administrators had not obtained Letters of  
Administration at the time of that sale.

5 As a result, the Court of Appeal dismissed the appeal by the appellant and upheld the judgment of the High Court with costs to the respondents in that court and the two courts below.

The appellant was still dissatisfied with that decision. He therefore lodged the instant appeal after obtaining a Certificate of Importance  
10 from the Court of Appeal to lodge a third appeal in this Court.

***Ground of Appeal***

The record of appeal filed in this Court did not include a copy of the Certificate and the Order from the Court of Appeal indicating the point of law of great public importance to be decided by this Court  
15 as required by Rule 83 of the Supreme Court Rules. However, the sole ground of appeal set out in the Memorandum of Appeal filed in this Court is that:

**The learned Justices of the Court of Appeal erred in law in holding that under section 272 of the Succession Act one  
20 Edward Kalusi had powers to dispose of the suit land to the 1<sup>st</sup> respondent without the authority or consent of his co-administrators.**

The appellant prayed this Court to:

a) Allow the appeal, set aside the judgment of the Court of  
25 Appeal and reinstate the judgment and Orders of the learned trial Chief Magistrate with costs to the appellant.

b) Make a declaration that S.272 of the Succession Act does not confer powers on a single Administrator to singularly



5 exercise powers vested in the joint administrators without consent or authority of the co-Administrators.

### ***Representation***

Mr. Paul Muhimbura and Mr. Stanley Omony represented the appellant, while Mr. Nelson Nerima represented the respondents.  
10 They filed written submission which they orally highlighted before Court on the hearing day.

### ***Submissions by Counsel for the appellant***

Counsel for the appellant divided his submissions under (a) and (b).

Under (a) Counsel submitted that although the Court of Appeal had  
15 set out its duty as a second appellate Court as well as the principles outlined in the case of **Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997 [1999] KALR 50 at p.57**, in its judgment, it fell short of applying them in determining the appeal before it.

20 Regarding the ground of appeal, Counsel contended that the Court of Appeal misconstrued Section 272 of the Succession Act when it held that Edward Kalusi had power to dispose of the suit land to the 1<sup>st</sup> respondent without the authority or consent of his co-executors. According to counsel, Edward Kalusi had no such  
25 powers because the proper construction of section 272 means that where several executors or administrators are appointed jointly, they must also act jointly at all times. He added that under that



5 section, none of them can act singly and bind the estate without the consent or authority of the other executors or administrators.

He argued that this position of the law is clarified by section 273 of the Succession Act which provides that where one of the executors or administrators passes on, all the powers of the office shall  
10 become vested in the survivors. He contended that, if having two or more executors or administrators was irrelevant as was held by the Court of Appeal, then Section 273 of the same Act would not have provided so.

With respect to section 185 of the Succession Act, Counsel  
15 submitted that it deals with a situation where the testator appoints by a will, two or more executors and permits either all of them to prove the will at the same time (that is, simultaneously) or at different times. He argued that under that section, there must be a justification for only one out of the several executors to step forth to  
20 prove a will to the exclusion of his or her co-executors and that it is a question of fact which has to be appraised by the competent court. In his view, the purpose of the section is to ensure that the absence of one or more of the several executors should not create a vacuum in the management of the estate of a deceased person.

25 Counsel further submitted that, with respect to conveyancing, section 272 of the Succession Act must be read together with section 134 of the Registration of Titles Act. He submitted that Section **134 (3)** of the Registration of Titles Act specifically requires all appointed executors or administrators to sign all instruments  
30 relating to transfer of land of a deceased's estate. He added that

5 Section 134(1), on which the Court of Appeal relied to justify the  
actions of Edward Kalusi actually contradicts their conclusion in so  
far as it requires the holder of Probate or Letters of Administration  
to apply to the Registrar of Titles with proof of the grant as a  
precondition for being entered on the Register Book or the  
10 Duplicate, and the capacity in which the entry is made must be  
stated. According to counsel, the rationale for stating the capacity of  
the applicant is intended to protect the estate of a deceased person  
for the beneficiaries and to act as a notice to the whole world that  
such executors or administrators are holding the property in trust  
15 for their benefit. He argued that both sub sections are couched in  
singular terms but must be construed *mutatis mutandis* in plural  
where there are two or more executors or administrators.

In further support of his submissions, Counsel also relied on a  
statement in **Volume 17 of Halsburys Laws of England,**  
20 **paragraph 1082, page 562,** and asserted that the learned authors  
have stated in that paragraph that a conveyance of real estate  
requires concurrence of all executors or administrators to be valid.

He submitted that, for the Court of Appeal to hold that Edward  
Kalusi, one of the several executors was entitled to solely apply to  
25 be registered on the certificate of title after having obtained the  
grant of Probate jointly with others and thereafter, to solely exercise  
the powers vested in him and his co-administrators including  
disposing of the suit land, was not only a misconstruction of  
sections 272, 185 and 273 of the Succession Act but was also  
30 contrary to section 134 of the Registration of Titles Act. He

5 contended that this misconstruction, if upheld by this Court, would render the appointment of two or more executors or administrators an academic exercise which could not have been the intention of the Legislature.

Counsel also submitted that the finding by the Court of Appeal that  
10 there was no evidence that Edward Kalusi's co-executors had protested to his being registered alone on the certificate of title of the suit land was not supported by evidence on record. He stated that it was an extraneous matter which this Court should ignore. Instead, Counsel asserted that there was actually no evidence that  
15 Edward Kalusi was authorized by his co-executors to exclude them in the sale transaction or that they permitted his sole registration on the Certificate of Title of the suit land. He also questioned how the Court of Appeal expected Edward Kalusi's co-executors to protest to an underhand act of Kalusi being secretly registered on  
20 the Certificate of Title of the suit land.

He submitted that Uganda is a highly polygamous and segmented society where testators of wills and families of an intestate try to create an intricate balance *inter alia* by appointing many executors or administrators to ensure that the interests of the various  
25 beneficiaries are safeguarded. He argued that for the Court of Appeal to suggest that one out of several executors or administrators can act singly and bind his co-executors or administrators even in a conveyancing transaction, is not only a misconstruction of the above provisions but will set a bad precedent



5 in the management of deceaseds' estates in Uganda as well. He prayed that this Court so find.

Counsel further submitted that if the legal position espoused by the Court of Appeal is left to stand, it will promote massive fraud and dishonesty in the management of estates of deceased persons in  
10 Uganda by allowing a single executor or administrator who was jointly appointed with others to usurp the powers jointly conferred upon all of them for selfish purposes. He contended that this could not have been the intention of the Legislature.

Counsel further submitted that there is already confusion in  
15 judicial pronouncements regarding the interpretation of section 272 of the Succession Act as seen from the recent case of **Rosemary Kabataizibwa Lwemamu v. Francis Sembuya & Anor, HCCS No. 226 of 2005**. According to him, it is only this Court that can correct this anomaly. He did not however avail us a copy of the  
20 judgment as required under Rule 27 of the Supreme Court Rules to enable us verify his assertion. Nonetheless, I was able to find a copy from the High Court record and I will comment on it later on in this judgment.

Under (b), Counsel submitted that the above stated misconstruction  
25 of Section 272 of the Succession Act had influenced the decision of the Court of Appeal to uphold the findings of the High Court. To prove this point, Counsel referred to the record and insisted that at the time the appellant purchased the suit land, it was still registered in the name of Edward Kalusi and there was a Consent  
30 Order reverting the suit land to the estate of late Kakooza. He



5 argued that the Court of Appeal was swayed by a wrong interpretation of section 272 of the Succession Act to disregard material facts on record which would otherwise have led it to the conclusion that the purported sale agreement between Edward Kalusi (DW1) and the 1<sup>st</sup> respondent (DW2) was a sham carefully  
10 crafted to defeat the revocation of the grant of Probate to Edward Kalusi and his co-executors.

In conclusion Counsel prayed that the appeal should be allowed on the basis of his submissions above, with costs in this Court and the courts below, that the orders of the Court of Appeal be set aside and  
15 that the judgment and orders of the trial Magistrate be reinstated

***Submissions by Counsel for the respondents***

Counsel for the respondents on the other hand supported the decision of the Court of Appeal. His response to the criticism that the Court of Appeal had failed in its duty as a second appellate  
20 court and to the authority cited by counsel for the appellant was that this is a third appeal which has its origin from the decision of a Chief Magistrate. He argued that under section 6(2) of the Judicature Act, the duty of the Supreme Court as a third appellate court is limited to matters of law of great public or general  
25 importance, or if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard. Counsel submitted that in the instant case, the appellant had obtained a certificate of importance from the Court of Appeal that the appeal concerns a matter of great public or general importance and that

5 point of law is the subject of the sole ground of this appeal. He submitted that as such, there is no room for re-appraisal of evidence by this Court.

Still on the same point, Counsel added that Rule 30 of the Supreme Court Rules only allows the Supreme Court to decide matters of law  
10 or mixed fact and law where the Court of Appeal has reversed, affirmed or varied a decision of the High Court acting in its original jurisdiction. He submitted that this is not the case in this appeal.

Regarding the alleged misconstruction or misinterpretation of section 272 of the Succession Act, he contended that the Court of  
15 Appeal had correctly interpreted that section. He submitted that this is because the words of section 272 of the Succession Act are plain and unambiguous. He stated that the literal rule of statutory interpretation should thus be applied. He explained the rule to be to the effect that the words of a statute must be given their natural or  
20 ordinary meaning where they are plain and unambiguous. He added that the intention of the legislature must be deduced from the language of the enacting words. He said that it follows therefore that the said Section 272 should be given its plain and ordinary meaning. He said that the section says that “*any*” executor or  
25 administrator who has proved the will or taken out administration can exercise the powers of all, “*unless there is a direction to the contrary*”. He contended that there was no evidence that there was any direction to the contrary in this case or that Edward Kalusi’s co-executors objected to his actions. He argued that that is why the

5 co-executors and the new set of administrators did not even deem it fit to join the appellant's suit.

Regarding the consequence of allowing a single executor or administrator to bind the estate without involving the co-executors or co-administrators, his response was that it is apparent that the  
10 appellant's counsel is inviting this Court to inquire into the wisdom of the statute. He contended that the law must be applied as it is and that any shortcomings can only be cured by amendment of the legislation, not by court.

With respect to section 134 of the Registration of Titles Act, Counsel  
15 submitted that the appellant has no locus to complain that Edward Kalusi's co-administrators did not sign the sale documents. According to him, it is only the said co-administrators who can complain or sue but he pointed out that instead they chose not to do so.

20 On the assertion by counsel for the appellant that practically all the findings of the courts below were premised on section 272 of the Succession Act, he contended that the application of that section was just a part of the decision of both the High Court and the Court of Appeal because the High Court also made the following findings  
25 in its judgment:

- That the sale of the land to the appellant by the new set of administrators in 2003 was a fiasco because at the time they were not the registered proprietors and they did not have Letters of Administration.



- 5       • That the purported sale was null and void for lack of authority and also because the subject matter of the sale had already been sold to the respondents.

He submitted that based on the said findings, the High Court then proceeded to order *inter alia* that:

10       (3)The purchase of the Respondent (the instant appellant) is declared null and void.

(4)The Respondent's name on the certificate of title be cancelled.

Counsel submitted that it is clear from the above that the appellant had lost the appeal in the High Court on two grounds, namely,(i)  
15 the invalidity of his purchase and (ii) the fact that the land had already been sold. According to him, section 272 of the Succession Act is relevant only to the second front of the High Court decision. He submitted that the appellant did not challenge the said findings of the High Court as well as orders (3) and (4) in his appeal to the  
20 Court of Appeal. He contended that the Court of Appeal upheld the decision of the High Court in its entirety and dismissed the appeal. He argued that even without the application of section 272 of the Succession Act, the applicant had no valid claim to the suit land in view of the above findings and orders of the High Court.

25 In the premises, he submitted that, even if this Court were to allow the appeal on the basis of section 272 of the Succession Act only, that would not enable the appellant to recover the suit land since his ownership was cancelled as stated above and he did not appeal that decision. He contended that this would render his appeal moot



5 and academic since the decision would not necessarily reverse the decision of the Court of Appeal.

In answer to the questions put to him by Court seeking for clarification on the issue whether an administrator or executor has power to administer an estate for himself or herself, counsel stated  
10 that the powers granted to an administrator are to administer the estate on behalf of the beneficiaries.

With respect to the issue on the requirements for registration under section 134(1) of the Registration of Titles Act, Counsel agreed that it is a legal requirement that when one gets Probate or Letters of  
15 Administration, the section requires one to be registered on the title as executor or administrator of the estate, not as a proprietor. Counsel also conceded that it is irregular for an administrator or executor to be registered as proprietor. He stated that an administrator or executor must register himself on the certificate of  
20 title as an administrator or executor of the estate. He however added that it is the duty of the Registrar of titles to indicate so.

Counsel acknowledged that in this case, four executors were appointed by the testator, but only one of the executors, Edward Kalusi had gone to the Land Office and was registered on the title  
25 as a proprietor in his personal capacity. Asked whether he agreed with the finding by the Court of Appeal that the registration of Kalusi in that manner was of no legal consequence, Counsel conceded that as a matter of law, it is consequential. Counsel thus conceded that the position of the Court of Appeal that supported

5 that finding by the learned High Court Judge was incorrect in view of the provisions of section 134 of the Registration of Titles Act.

Counsel however agreed that this is an adjudication of a land dispute where there were four executors. He admitted also that an executor was registered on the title without indicating that he is an  
10 executor, and in the year 2000, he sold the land to the 1<sup>st</sup> respondent. A suit was filed against him and by consent, the Probate to all executors was revoked and a new set of administrators was appointed. It was not contested that whether done legally or illegally, an innocent party had purchased the suit  
15 land and a certificate of title was actually handed over to him. He contended that, in the circumstances, this Court should not nullify that transaction because section 272 of the Succession Act speaks for itself where it provides that if there are more than one administrator, any one of them may act, in the absence of any  
20 direction to the contrary.

He further maintained his position that there are certain findings regarding the appellant which should not be disturbed irrespective of the decision of this Court. He said that one such is set out in the  
25 3<sup>rd</sup> paragraph of the judgment of the High Court which stated that the sale of the suit land between the new set of administrators and the appellant on the 27<sup>th</sup> August, 2003 was a fiasco because they had not yet received the Letters of Administration. The other order is the one for cancellation of the Special Certificate that was issued to the appellant because he is still holding on to it since the  
30 findings were not challenged on appeal. He added that the estate

5 itself never joined the suit right from the beginning. He argued that in the premises, it would be unfair for the appellant to acquire ownership of the suit land.

Lastly, counsel emphasised that this Court should not lose sight of the context that there is a third party who is involved in the matter because the 1<sup>st</sup> respondent had actually sold the suit land to the 2<sup>nd</sup> respondent.

Counsel prayed that:

- (a) The appeal should be dismissed with costs here and in the courts below or,
- 15 (b) In the alternative, even if the appeal is allowed with regard to section 272 of the Succession Act, the nullification of the appellant's purchase of the suit land and the cancellation of his title should be maintained because that decision was not appealed.

### **Rejoinder by appellant's counsel**

20 In his rejoinder, Counsel for the appellant agreed with submission in respect of the jurisdiction of the Supreme Court under section 6(5) of the Judicature Act and the limitation imposed on the Court under that section in third appeals. He further agreed that in the instant case, the Court of Appeal had considered this appeal as raising a question of great or general importance and had framed the question to be determined by this Court.

He however contended that although Section 6 (5) of the Judicature Act restricts the ground of appeal to a point or points of law, it does



5 not bar the Court from making reference to the facts that gave rise  
to the point or points of law. He contended that the appellant's  
submissions are on points of law and reference to the facts that  
gave rise to the appeal does not translate the ground into mixed law  
and fact as insinuated by Counsel for the appellant. He submitted  
10 that reference to Rule 30 of the Supreme Court Rules was thus  
uncalled for.

With respect to the interpretation of section 272 of the Succession  
Act, Counsel again agreed with the respondent's counsel that the  
wording of the section is plain and unambiguous and that the  
15 literal rule of interpretation should be applied. He submitted  
however, that the section has two simple meanings: **firstly**, that  
under a will, two or more executors can be appointed but not all of  
them may proceed to prove the will in court. He contended that in  
the legal system of this country, a will is proved in the case of  
20 executors, by filing a petition for the grant of Probate by the  
applicant appearing for identification before it is granted to him or  
her. He argued that, if one of the several executors proves the will,  
and the grant of Probate is made to him or her, then such executor  
may, if there is no objection to the contrary, exercise the powers  
25 otherwise exercisable by all the executors appointed under the Will.  
**Secondly**, that in the case of intestate succession, where two or  
more persons to whom a Certificate of No Objection has been issued  
by the Public Trustee under the Administrator General's Act to  
apply for Letters of Administration but where only one of them goes  
30 ahead to file a petition, gets identified and obtains a grant of Letters



5 of Administration, then he or she, may, in the absence of any direction to the contrary, exercise the powers that should have been exercised by all of them.

However Counsel maintained his contention that section 272 of the Succession Act does not have the same application if two or more  
10 executors or administrators have proved the will jointly or taken out Letters of Administration jointly like in the instant case. He contended that in such cases, such executors or administrators must act jointly. He added that to suggest that any one of the joint executors or administrators can act singly without the authority or  
15 concurrence of the other would defeat the very purpose of joint executorship or administration envisaged by the law of succession and conveyance.

Counsel also maintained his submission that in the case of conveyancing, sections 185 and 272 of the Succession Act as well  
20 as section 134 of the Registration of Titles Act should be read together to decipher the intention of the Legislature.

He emphasized that under section 134 of the Registration of Titles Act, it is mandatory for joint executors or administrators to concur in every instrument whether it is a lease, mortgage, transfer, etc. He  
25 argued that it was an error for the Court of Appeal to hold that the capacity in which Edward Kalusi held the suit property was immaterial for purposes of dealing with the deceased's property, even after finding that he was one of the several executors who had jointly proved the Will of the late Edward Mukasa Kakooza.

5 Counsel further submitted that it is a cardinal rule of construction that the various sections of a Statute(s) should be applied or interpreted as a whole with no provision destroying the other but sustaining each other. He said that this is the rule of harmony and completeness. He relied on the decision of this Court in **Paul K.**  
10 **Ssemogerere v AG, Constitutional Appeal No. 1 of 2002 (SC)** that was followed in **Wesley Tusingwire v Attorney General, Constitutional Appeal No. 4 of 2016 (SC)**.

He maintained his argument that there was no evidence to prove that Edward Kalusi co-executors consented to him singly dealing  
15 with the suit land. He argued that in any case, the ultimate beneficiaries for whose benefit Edward Kalusi and his co-executors held the suit land in trust had even sued them vide **HCCS No 469/2001** for mismanaging their late father's estate which resulted into revoking their grant of probate.

20 Regarding the alleged shortcomings in the wording of section 272 of the Succession Act or section 134 of the Registration of Titles Act, he denied that any existed to require amendment as suggested by the respondents' Counsel but contended that if there were any shortcomings, then they were in the construction and application of  
25 the said sections by the Court of Appeal.

Regarding the relevance section 272 of the Succession Act to the decision of the Court of Appeal, Counsel submitted that the appellant had raised six grounds of appeal in that Court in which he had challenged all the findings of the High Court. The Court of  
30 Appeal had upheld the decision of the High Court on the basis that

5 under section 272 of the Succession Act, Edward Kalusi, one of several executors, had powers and authority to sell the suit land as he did, yet the trial Court had pointed out the questionable circumstances surrounding the purported sale between Edward Kalusi and the respondents.

10 Counsel maintained his position that the decision of the Court of Appeal was hinged on the misconstruction of section 272 of the Succession Act when it held that the new set of administrators could not sell the suit land to the appellant because the land had already been sold to the respondents. He asserted therefore that, if  
15 section 272 of the Succession Act only applies to the second front of the finding by the High Court ( i.e. that the land had been validly sold by Edward Kalusi) as submitted by counsel for the respondents, then it means that, if this Court finds that Edward Kalusi could not sell the suit land without concurrence of his co-  
20 executors, then the sale of the suit land by Edward Kalusi to the respondents would be null and void and the cancellation ordered by the High Court on that basis would accordingly be reversed.

According to counsel, the contention by counsel for the respondent that it would merely serve academic purposes if the sole ground of  
25 appeal is answered in the affirmative is incorrect. He argued that to the contrary, it would afford protection of the property of deceased persons in Uganda and that would curb the massive fraud often orchestrated to the utter detriment of usually less sophisticated beneficiaries.



5 Counsel reiterated his earlier prayers.

***Consideration by Court***

*The jurisdiction of the Supreme Court*

This is a third appeal from the decision of the Chief Magistrate Mpigi in exercise of its original jurisdiction. It went through the  
10 High Court and to the Court of Appeal as a second appeal. The jurisdiction of the Supreme Court in third appeals is governed by section 6(2) of the Judicature Act which provides that:

**“6. Appeals to the Supreme Court in Civil Matters**

**(1)...**

15 **(2) Where an appeal emanates from a judgment or order of a Chief Magistrate or Magistrate grade 1 in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the Certificate of the  
20 Court of Appeal that the appeal concerns a matter of law of great public or general importance, or if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard.”**

Under the above section, third appeals to the Supreme Court are  
25 concerned with matters of law of great public or general importance set out in the Certificate of importance issued by the Court of Appeal in granting the appellant leave to appeal, or where the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard.

5 The procedure is found in Rule 83 (2) (h) of the Supreme Court Rules which requires that the record of Appeal shall contain:

**“(h) In the case of a third appeal the certificate of the Court of Appeal that a point or points of law of great public or general importance arise.”**

10 Although I have not found any certificate or the Order from the Court of Appeal on the record of appeal, it is clear from the sole ground of appeal and the submissions of counsel, that the appeal was lodged after obtaining a certificate from the Court of Appeal required under section 6(2) and the point of law to be determined by  
15 this Court is:

**Whether section 272 of the Succession Act authorizes a single executor or administrator of an estate to execute and complete a conveyancing transaction on behalf of the estate without the involvement of the other co-**  
20 **administrators of the same estate appointed jointly with him or her.**

This Court is therefore precluded in this appeal from re-evaluation of evidence or interference with the concurrent findings of fact by the High Court or the Court of Appeal. Further, and as learned  
25 counsel for the respondents rightly pointed out, Rule 30 of the Supreme Court Rules only allows the Court to decide matters of law or mixed law and fact where the Court of Appeal has reversed, affirmed or varied a decision of the High Court acting in its original jurisdiction, which is clearly not the case here. In my view, this

5 Court is however, not barred from making reference to the evidence on record that formed the basis of the decision by the lower courts, where relevant, in determining a third appeal.

In this judgment, I have thus restricted myself to that sole point of law that has led to this appeal.

10 *How did the Court of Appeal determine this point?*

This is how the Court of Appeal dealt with the issue in its judgment:

***“Edward Kalusi applied with the other executors for and obtained a grant of probate as executors of the deceased’s estate. Section 185 of the Succession Act provides:***

***‘When several executors are appointed, probate may be granted to them all simultaneously, or at different times.’***

***In this case, all executors were granted probate. However, only Edward Kalusi registered his name on the Certificate of Title. According to section 272 of the same Act, this is permissible. It provides as under:***

***‘When there are several executors and administrators, the power of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.’***

***Pursuant to the grant of probate, Edward Kalusi went ahead and registered himself on the Title and sold part of the suit land to the 2<sup>nd</sup> respondent (the sale agreement***



5           indicates that he sold to the 1<sup>st</sup> respondent). **He was entitled to do so under the above provision and unless his co-executors raised any objection to his action(s), it is our view that whoever he sold to obtained good title.”**

...

10       (The underlining was added for emphasis).

The gist of the contention by learned Counsel for the appellant is that the decision by the Court of Appeal was erroneous because under sections 272 of the Succession Act read together with section 134 of the Registration of Titles Act, an executor or administrator  
15 has no authority to dispose of land on behalf of the estate without the authority or involvement of the other co-executors or administrators appointed jointly with him or her.

Counsel for the Respondent on the other hand supported the decision of the Court of Appeal as the correct interpretation of the  
20 law.

*Interpretation and application of section 272 of the Succession Act*

This appeal necessitates the interpretation of section 272 of the Succession Act and its application to cases of conveyancing of estates of deceased persons.

25       Section 272 of the Succession Act reads as follows:

**“272. Powers of several executors, etc. exercisable by one. When there are several executors or administrators, the powers of all may, in the absence of any direction to the**

5           **contrary, be exercised by any one of them who has proved  
the will or taken out administration.”**

I agree with both counsel that the language of the section is plain and unambiguous. Therefore, the literal rule of statutory interpretation applies. The rule is to the effect that if the words of a  
10 legislation are precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense. The words themselves in such a case best declare the intention of the legislature. Therefore, they must be given their natural and ordinary meaning. **(See: Paul K Ssemwogerere v Attorney General (Supra)**

15 In my view, the starting point is Section 185 of the Succession Act which deals with the grant of probate. The section allows the grant of Probate to be made simultaneously or at different times where several executors are appointed by a deceased person. The section reads:

20           **“185. Grant of probate to several executors**

**When several executors are appointed probate may be granted to them all simultaneously or at different times.”**

When the literal rule of statutory construction is applied, Section 272 of the Succession Act means in my opinion, that where several  
25 executors are appointed by a deceased person in his will, any one of them who has proved the will and obtained a grant of Probate, may exercise the power of all of them, provided there is no direction in the will to the contrary or objection from his or her co-executors. In case of a person who has died intestate, where several people have

5 applied for Letters of Administration, any one of them who has taken out Letters of Administration, may exercise the power of all, provided there is no direction to the contrary as well.

However, in the case of executors or administrators who have jointly applied for Probate or Letters of Administration and obtained  
10 the grant simultaneously or all together, they must act jointly at all times because Section 272 of the Succession Act does not allow them to act singly. Otherwise it would defeat the purpose for appointing joint executors or administrators.

In the case of transactions involving conveyancing of land of the  
15 deceased by executors or administrators, the law on the application of section 272 of the Succession Act is settled. The section must be read together with section 134 of the Registration of Titles Act Cap.230. Under section 134(3) thereof, in cases where Probate is granted to several executors as in the instant case, all of them must  
20 concur in every instrument, surrender or discharge relating to the land. The subsection reads as follows:

**“134. Succession on death**

**(1)...**

**(2)...**

25 **(3) If in any case probate or administration is granted to more person than one, all of them for the time being shall join and concur in every instrument, surrender, or discharge relating to the land, lease or mortgage.”**

(Underlining was added for emphasis)



5 I am fortified in my conclusion by the ~~decision~~ decision of the Court of  
Appeal for Eastern Africa in the case of **Henry De Souza**  
**Figueiredo v George Blacquere Talbot and Another [1962] EA**  
**167**. The brief facts of that case are that, the respondents, George  
Blacquere Talbot and Betty Gwyneth Talbot were appointed jointly  
10 as executors of the will of Frederick George Talbot. They were  
registered as proprietors under a leasehold house and land in  
Kampala. By a document entitled "sublease", Mrs. Talbot purported  
to sublet the property to Mr. Henry Figueirdo the appellant for a  
term of 10 years with effect from July 1<sup>st</sup>, 1953. In pursuance of the  
15 sublease, the appellant entered into possession of the property and  
made extensive renovation and alterations thereto amounting to shs  
58,000/=. According to her, she deposited the duplicate certificate  
of title with the appellant for safe custody, while the appellant  
maintained it was as security for the shs. 58,000/=. In 1955, the  
20 appellant registered a caveat on the title claiming that by virtue of  
an agreement dated May 23, 1953, he was interested as equitable  
mortgagee in the interest of the second respondent in the property.  
In February, 1961, a notice was issued from the Registry of Titles to  
the appellant's advocates stating that the registered proprietors had  
25 applied for registration of a transfer of the property by them to  
purchasers and that unless the appellant took action under s.149  
of the Registration of Titles Ordinance, the caveat would lapse after  
30 days. The appellant applied to court for a continuation of the  
caveat but the Judge dismissed the application holding that the  
30 deposit of the certificate was not for the purpose of creating an

5 equitable mortgage and that the caveat noted on the register was wrong.

On appeal to the Court of Appeal for Eastern Africa, in the lead judgment which all the members of the Coram agreed with, Sir Alistair Forbes, VP, held:

10 **“There is no evidence whatsoever that that Mr. G.B. Talbot joined Mrs. Talbot in depositing the duplicate certificate of title with the appellant with intent to create security thereon. In my opinion unless both executors joined in such deposit, the deposit would be**  
15 **ineffective to create an equitable mortgage. Reference was made to s.274 of the Succession Ordinance (Cap 34) which reads (Omitting the illustrations):**

**‘274. When there are several executors or administrators, the powers of all may, in the absence of any direction to**  
20 **the contrary be exercised by any one of them who has proved the will or taken out administration.’**

**That general provision must, however, be read subject to the specific provisions of the Ordinance, which is also the**  
**later enactment. Section 143 of the Registration of Titles**  
25 **Ordinance provides, inter alia:**

**‘ If in any case probate administration is granted to more persons than one, all of them for the time being shall join and concur in every instrument, surrender, or discharge relating to the land, lease or mortgage.’**

5            **While this does not specifically refer to the creation of an equitable mortgage by deposit of title deed, it is the obvious intention of the legislature that, in relation to registered land, all executors must concur in transactions affecting the land.**

10        (Underlining was added for emphasis).

It is instructive to note that sections 274 of the Succession Ordinance is now section 272 of the Succession Act, Cap.162 of the Laws of Uganda, while section 143 of the Registration of Titles Ordinance is now section 134 of the Registration of Titles Act.

15        This position is further elaborated upon by **Halsburys Laws of England, 4<sup>th</sup> Edition, volume 17 at page 562 paragraph 1082** relied on by counsel for the appellant, where regarding joint executors, the learned authors state as follows:

20            ***“1082. Joint representation. A joint representation is regarded as a single person. Accordingly, one of the several executors may give good discharge for a debt due to the estate and settle accounts with a person accountable to the estate, even if it would appear against dissent of the co-executors and it seems the same principle applies to joint administrators. A conveyance of real estate requires the concurrence of all proving executors or all administrators or an order of court. If one of two personal representatives contracts to sell real estate expressly on behalf of both, he seems to have***

25



5            authority to bind the other personal representative, but if  
in fact the express authority is lacking, he will not  
obtain specific performance of the contract because the  
contract purporting to be made by two executors jointly  
cannot be enforced as if it were a contract by one  
10           executor severally...”

Further, as the appellant’s counsel rightly argued, Section 134(1) of the Registration of Titles Act requires an executor or administrator to attach a copy of the Probate or Letters of Administration to the application for registration and the Registrar of Titles to indicate the  
15           capacity of such an applicant on the Record book.

The sub-section reads:

**“134 Succession on Death**

(1)Upon the receipt of an office copy of the probate of  
any will or of any letters of administration or any order  
20           by which it appears that any person has been appointed  
the executor or administrator of any deceased person,  
the registrar shall, on application of the executor or  
administrator to be registered as proprietor in respect  
of any land, lease, or mortgage therein described, enter  
25           in the Register Book and on the duplicate instrument ,  
if any, when produced for any purpose, a memorandum  
notifying the appointment of the executor or  
administrator and the day of the death of the proprietor  
when the day can be ascertained, and upon that entry  
30           being made that executor or administrator shall become

5           **the transferee and be deemed to be the proprietor of**  
such land, lease or mortgage , or of such part of it as  
then remains unadministered, and shall hold it subject  
to the equities upon which the deceased held it, but for  
the purpose of any dealings therewith the executor or  
10           **administrator shall be deemed to be the absolute**  
**proprietor thereof.”**

I find no merit in the submission by counsel for the appellant that there is confusion in judicial pronouncements with regard to interpretation of section 272 of the Succession Act in our courts.

15           The decision in the case of **Rosemary Kabataizibwa Lwemamu v Francis Sembuya & Anor (supra)** that counsel for the applicant relied on to illustrate that point is actually to the contrary. In that case, the plaintiff’s co-administrator executed a transfer of land without the plaintiff’s consent and signature. This is what the  
20           learned Judge stated in the relevant part of his judgment:

***“I have also observed the wrong proposition advanced by counsel for the defendants that even if the plaintiff had not signed or consented, under section 272 of the Succession Act, the co-administrator DW4 could transfer land without the input of the plaintiff. Section 272 (supra) provides as follows:***

25           ***...***

***However, submissions by counsel for the defendant based on the above provisions is legally unsustainable in light***

5 of section 2 of the Registration of Titles Act Cap. 230  
which provides as follows:

“(1) Except so far as it is expressly enacted to the  
contrary, no Act or rule so far as inconsistent with this  
Act shall apply or be deemed to apply to land whether  
10 freehold or leasehold which is under the operation of this  
Act.”

Therefore, the provisions of the Succession Act (*supra*)  
relied on by counsel for the defendants do not take away  
the proprietary interest the plaintiff had by virtue of  
15 Letters of Administration of the estate. Where there are  
co-Administrators registered as proprietors of land, both  
are required to sign and consent to transfer. Although  
the Succession Act (*supra*) provides for powers of joint  
Administration of an estate, in transfer of land  
20 registered under the Registration of Titles Act (*supra*) the  
registered proprietors must all be involved.”

(The underlining is added for emphasis.)

#### *The Legal Consequence*

The Court of Appeal said the following regarding the consequence of  
25 Kalusi’s actions:

**“This far is our finding that the learned judge correctly  
found that Kalusi was duly registered on the Certificate  
of Title, we find that the fact that he was not reflected as  
an executor on the Title is of no consequence regarding**



5            ***proof of what capacity he got his name entered on the Title.***

With respect to the learned Justices of the Court of Appeal, such conclusion was erroneous. As counsel for the respondents rightly conceded, under the law, an executor or administrator is the legal  
10 representative of the estate of the deceased. As such, he or she is duty bound to administer the estate on behalf of the beneficiaries. In so doing, he or she must at all times comply with the laws governing the administration of estates.

It is important to note that the administrator or administrators  
15 exercise <sup>the</sup> power to administer the estate of a deceased person not for themselves but in trust for the estate. They get registered as executors or administrators not as personal proprietors.

In this case, Edward Kalusi was bound to comply with sections 272 of the Succession Act and Section 134(1) and (3) of the Registration  
20 of Titles Act. He was therefore required under section 134 (1) of the Registration of Titles Act to apply together with the co-executors to the office of the Registrar of Titles for registration as proprietors of the suit land and they had to attach a copy of the probate indicating that they had all been appointed executors of the estate  
25 of the late Edward Mukasa Kakooza. The Registrar of Titles was required upon receipt of their application, to enter in the Register Book, a memorandum notifying their appointment as executors, and the date of the death of the late Edward Mukasa Kakooza, the proprietor thereof. The fact that Edward Kalusi not only applied

5 alone to be registered as proprietor of the suit land, but was  
actually singularly registered without indicating his capacity and  
the name and <sup>date</sup> day of death of late Edward Mukasa Kakooza  
contravened section 134 (1) of the Registration of Titles Act, as was  
the purported sale agreement that he executed in that capacity with  
10 the 1<sup>st</sup> respondent.

Secondly, Edward Kalusi was required under section 134(3) of the  
Registration of Titles Act to involve all the other named executors  
who had proved the will together with him and had been granted  
Probate, in all transactions involving the suit land. The fact that he  
15 proceeded to singly execute the sale agreement with the 1<sup>st</sup>  
respondent for the sale of the suit land and to sign the documents  
of transfer without involving the co-executors contravened section  
134 (3) of the Registration of Act.  
↑  
^

I therefore agree with Counsel for the appellant that the Court of  
20 Appeal erred when it held that Edward Kalusi had authority to  
dispose of the suit land without involving the co-executors.  
Therefore the registration of Kalusi on the title was illegal and the  
sale of the suit land to the 1<sup>st</sup> respondent was invalid. The same  
applies to the sale of the suit land to the 2<sup>nd</sup> respondent.

25 *Relevance of the section 272 of the Succession Act to the decision of  
the Court of Appeal and the High Court*

The case involved two separate transactions. The first is the one  
between Kalusi and the 1<sup>st</sup> respondent, which is the subject of the  
instant appeal. Both courts found that the registration of Kalusi as

5 proprietor in his personal capacity and the sale of the suit land by  
him to the first respondent was lawful under section 272 of the  
Succession Act, since his co-executors did not raise any objection to  
his actions. It was held that the respondents obtained good title.

10 The second transaction was between the second set of  
administrators and the appellant. Regarding that transaction the  
Court of Appeal observed and held as follows:

15 ***“We find that the second set of administrators could not  
have power to sell the suit land to the appellant because  
the suit land had already been sold off by Edward Kalusi.  
To hold otherwise would mean that the grant obtained by  
Edward Kalusi and his co-executors was void whereas not  
and by virtue of section 272 of the Succession Act  
already cited the action of Edward Kalusi to sell the land  
was also valid.”***

20 It is clear that this finding was premised on section 272 of the  
Succession Act. However, the record shows that among the findings  
of the High Court that the Court of Appeal upheld for dismissing  
the appellant’s appeal was one that the second set of administrators  
did not have authority to sale the suit land to the appellant because  
25 they did not have the Letters of Administration by then. It is  
therefore not true as alleged by counsel for the appellant that all of  
the findings of the two Courts for dismissing the appellant’s appeal  
were premised on section 272 of the Succession Act.



5 The record further indicates that the High Court allowed all the grounds of appeal and nullified the appellant's purchase of the suit land and ordered cancellation of the appellant's name from the certificate of title. This finding was upheld by the Court of Appeal. It was not challenged in this Court since it never formed part of the  
10 grounds of appeal. In my view, it was a correct decision. It therefore stands and as Court observed during the course of the hearing, two wrongs do not make a right.

The rest of the submissions by counsel for the appellant appear to invite this Court to re-evaluate the evidence on record as if it were a  
15 second appellate Court. This is particularly with regard to the validity of the sale of the suit land by the second set of administrators to the appellant. As stated earlier in this judgment, and as both counsel acknowledged, this is outside the jurisdiction of this Court which is limited in this kind of appeal to the point(s) of  
20 law set out by the Court of Appeal in the certificate of importance. That is why I have limited the scope of this judgment. I have therefore declined the invitation to interfere with the concurrent findings of the lower courts in the matter.

Similarly, I have ignored the submissions by counsel for the  
25 appellant regarding the highly polygamous and segmented society of Uganda because it was a statement from the bar that was not supported by any evidence.

*Appropriate reliefs*

5 The last issue for consideration are reliefs. The appellant prayed this Court to:

a) Allow the appeal, set aside the judgment of the Court of Appeal and reinstate the judgment and Orders of the learned trial Chief Magistrate with costs to the appellant.

10 b) Make a declaration that S.272 of the Succession Act does not confer powers on a single Administrator to singularly exercise powers vested in the joint administrators without consent or authority of the co-Administrators.

The respondents on the other hand prayed to this Court to:

15 a) dismiss the appeal with costs here and in the courts below,

b) or, in the alternative, their prayer is that even if the appeal is allowed with regard to section 272 of the Succession Act, the nullification of the appellant's purchase of the suit land and the cancellation of his title should be maintained because that

20 decision was not appealed.

### *Orders*

Consequent upon my findings above, I make the following declaration and orders:

1. The appeal is partly allowed with the following specific terms:

25 (a) The decision of the Court of Appeal is set aside save for the order for nullification of the appellant's purchase of the suit land and cancellation of his name from the title.

5 (b) A declaration is hereby made that S.272 of the Succession Act  
does not confer powers on a single executor or administrator to  
singularly exercise powers vested in the joint executors or  
administrators with respect to conveyancing of land belonging to  
the estate of a deceased person without the express consent or  
10 authority of the co-executors or co-administrators.

(c) The sale and transfer of the suit property to the respondents is  
hereby nullified.


(d) The suit property shall revert to the estate of the late Edward  
Kakooza Mukasa to be administered in accordance with the law.

15 (e) An eviction order is hereby issued against the respondents or  
any other occupants or users of the suit land.

2. Parties shall each bear their own costs since each of them  
acquired the suit property illegally and caused this unnecessary  
litigation.

20

Dated at Kampala this.....10<sup>th</sup>.....day of.....September.....2020



.....

25

M.S.ARACH-AMOKO, JSC  
JUSTICE OF THE SUPREME COURT



**REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
**AT KAMPALA**

(CORAM: [KATUREEBE, CJ; ARACH-AMOKO; TIBATEMWA; MUGAMBA AND BUTEERA, JJ.S.C)

**CIVIL APPEAL NO: 09 OF 2014**

**BETWEEN**

**SILVER BYARUHANGA** ..... **APPELLANT**

**AND**

- 1. FR. EMMANUEL RUVUGWAHO** ..... **RESPONDENTS**  
**2. RUDEJA**

[Appeal from the Judgment of the Court of Appeal (Mwangusya, Mwondha, and Kiryabwire, JJA) dated 26<sup>th</sup> May, 2016 at Kampala in Court of Appeal Civil Appeal No. 113 of 2011).

**JUDGEMENT OF KATUREEBE, CJ (EMERITUS)**

I have had the benefit of reading in draft the judgment of my learned sister, Arach-Amoko, JSC.

I concur with her judgment and the reasoning therein. I also concur in the orders she has proposed.

As the majority of the members on the coram agree, this appeal is hereby partially allowed on the terms as proposed by the learned Justice.

Dated at Kampala this.....10<sup>th</sup>.....day .....SEPTEMBER 2020

  
Bart M. Katureebe  
**CHIEF JUSTICE (EMERITUS)**

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**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

[CORAM: KATUREEBE, CJ; ARACH-AMOKO; TIBATEMWA-EKIRIKUBINZA; MUGAMBA;  
BUTEERA; JJSC.]

**CIVIL APPEAL NO. 09 OF 2014**

10

**BETWEEN**

**SILVER BYARUHANGA ::::::::::::::::::::::::::::::::::::::: APPELLANT**

**AND**

15

**1. FR.EMMANUEL RUVUGWAHO }  
2. RUDEJA } ::::::::::::::::::::::: RESPONDENTS**

*[Appeal from the judgment of the Court of Appeal in Civil Appeal No.47 of 2012 before (Mwangusya, Mwondha and Kiryabwire, JJA) dated 26<sup>th</sup> May, 2016 at Kampala.]*

20

**JUDGMENT OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC.**

I have had the benefit of reading in draft the Judgment of my learned sister, Justice Arach-Amoko, JSC and I agree with her analysis and conclusion as well as the Orders she has proposed.

25

Dated at Kampala this 10<sup>th</sup> day of SEPTEMBER 2020.

30

*Lillian Tibatemwa*  
.....  
**JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**  
**JUSTICE OF THE SUPREME COURT.**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

*[CORAM: KATUREEBE CJ, ARACH-AMOKO, TIBATEMWA, MUGAMBA, BUTEERA.  
J.J.S.C.]*

**CIVIL APPEAL NO. 09 OF 2014**

**BETWEEN**

**SILVER BYARUHANGA :::::::::::::::::::::::::::::: APPELLANT**

**AND**

**1. FR. EMMANUEL RUVUGWAHO**


**2. RUDEJA ::::::::::::::::::::::::::::::RESPONDENTS**

*[An Appeal from the judgment of the Court of Appeal in Civil Appeal No. 113  
of 2011 dated 26<sup>th</sup> May, 2014 (Mwangusya, Mwendha and Kiryabwire, JJ.A)]*

**JUDGMENT OF HON. JUSTICE MUGAMBA, JSC**

I have had the benefit of reading in draft the judgment prepared by my learned sister Hon. Justice Arach-Amoko, JSC. I agree with her reasoning and the declarations and orders she proposes.

Dated at Kampala this...<sup>10<sup>th</sup></sup>.....day of...~~SEPTEMBER~~.....2020

.....  
  
**HON. JUSTICE PAUL MUGAMBA**  
**JUSTICE OF THE SUPREME COURT**



**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**(CORAM: KATUREEBE, CJ; ARACH-AMOKO; TIBATEMWA;  
MUGAMBA AND BUTEERA, JJ.S.C)**

**CIVIL APPEAL NO. 09 OF 2014**

**BETWEEN**

**SILVER BYARUHANGA :::::::::::::::::::::::::::::::::::APPELLANT**

**AND**

**1. FR. EMMANUEL RUVUGWAHO::::::::::::::::::::::::::::: RESPONDENTS**

**2. RUDEJA**

(Appeal from the Judgment of the Court of Appeal (Mwangusya, Mwondha and Kiryabwire, JJA) dated 26<sup>th</sup> May, 2016 at Kampala in Court of Appeal Civil Appeal No. 113 of 2011).

**JUDGMENT OF BUTEERA, JSC**

I have had the benefit of reading in draft the judgment of my learned sister, Arach-Amoko, JSC.

I concur with her judgment and the reasoning therein. I also concur in the orders she has proposed.

Dated at Kampala this...<sup>10<sup>th</sup></sup>.....day of...SEPTEMBER.....2020.



**RICHARD BUTEERA  
JUSTICE OF THE SUPREME COURT**