

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NUMBER 011 OF 2016

<p>1. WENDI BYABAGAMBI 2. KAY BYABAGAMBI 3. DAPHIN NANZIRI MURUNGI 4. DAISY NAKABO 5. JORDAN BAHINDURA (SUIING THROUGH SILVER BAHINDURA HIS NEXT FRIEND)</p>	}	===== PLAINTIFFS
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VERSUS

KYAJUSIMIRE LILLIAN BYABAGAMBI ===== DEFENDANT

JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA

1.0 Introduction

The first and second plaintiffs are the children of the late Charles Byabagambi while the third, fourth and fifth plaintiffs are the children to the late Evelyn Akugizibwe. The deceased were brother and sister who passed away at different times.

Charles Byabagambi left property at Kasambya LCI, Kikerege Parish , Buhanika, Bugahya county in Hoima , which he purchased from Byenkya in 1989 and a plot of land at Para Cell Zone Namasuba Parish , Makindye Sub county , Wakiso while Evelyn Akugizibwe Abwooli left a plot of land at Nyanama Cell , Mutundwe Zone, Rubaga Division Kampala with a two in one rental property and another plot of land at Nyanama Cell , Mutundwe , Rubaga Division , Kampala developed with a substantially built storied house.

The first and second plaintiffs alleged that the defendant without any claim of right took over their land at Kasambya LCI and sold it to her son, a one Kumurubuga. The plaintiffs also averred that the defendant also took over their late father's land at Para Cell and has been using and deriving rental income from the properties without their authority and accounting to them. The third, fourth and fifth plaintiffs accused the defendant, who is their auntie, of taking over the property of their late mother without their consent and deriving rental income from the property without accounting to them.

The plaintiffs by this suit are seeking the following remedies: -

- A declaration that the plaintiffs are the rightful owners and or beneficiaries of the suit estates of their respective parents;
- A declaration that the Defendant has no protectable interest in the suit states of the late Byabagambi Charles and Evelyn Akugizibwe Abwooli;
- An order for cancellation of the sale between the defendant and her son Benson Komurubuga in respect of land measuring approximately 4 acres of land located at Kasambya LCI, Kikerege Parish, Buhanika Sub County, Bugahya County, Hoima district.
- An order for the defendant to file a comprehensive, true and correct statement of account of dealings with the estate of the late Byabagambi Charles and Evelyn Akugizibwe Abwooli including all property and money received from the said properties;
- An order for the payment of money fraudulently withheld and or received by the defendant from the suit property estate to the Plaintiffs;
- A permanent injunction restraining the defendant and her agents from unlawfully interfering with the plaintiffs use and quite enjoyment of the suit property or further dealings in the same;
- General damages;

- Mesne profits;
- Costs of the suit;
- Interest at 35% p.a on (e), (g), (h) and (i) from the date of judgment till payment in full
- Any other and further relief as this Honorable court deems fit.

The defendant on the other hand, averred that the property claimed by the first and second plaintiffs was her property, which she developed and that it does not therefore belong to them. She averred that she bought the land at Kasambya with the late Byabagambi and the two of them were tenants in common and that upon his death, the property passed to her as the surviving tenant. The defendant admitted that she sold the property to her son because she had every right as the owner to dispose of it. Furthermore, the defendant averred that she owns the property at Para Cell, which she bought with her own resources and that it therefore does not belong to the first and second plaintiff.

With regard to the property claimed by the third, fourth and fifth plaintiffs, the defendant admitted that the properties belonged to the late Evelyn Akugizibwe, who entrusted it to her under a will to keep them until the youngest child reaches the age of 25 years. She also averred that she has always been willing to account to the beneficiaries but the beneficiaries, who live abroad have never sought her out.

The suit proceeded *ex parte* as the defendant and her counsel never appeared for the hearing of the suit.

2.0 Representation

The plaintiffs were represented by Mr. Simon Kasangaki.

3.0 Summary of the evidence

In this matter, the plaintiffs called only one witness. Kubalikenda Yosamu, an old man of 75 years testified that he knows the 1st and 2nd plaintiffs as the children of Byabagambi Charles, his late young brother who died on 5th February 2000. He also testified that the 3rd, 4th and 5th Plaintiffs are the children of Evelyn Akugizibwe Abwooli, his late young sister, who passed away in 2012.

According to Kubalikenda, his late brother owned approximately ten acres of land situated at Kasambya LCI in Bugahya Sub County, Hoima district which he bought from Byenkya in 1989. He also owned a plot of land in Para Zone Cell, Namasuba, Makindye Sub County, Wakiso with a two in one house apartment, that was fully developed.

On the other hand, his late sister owned a plot of land at Nyanama Cell, Mutundwe, Rubaga, Division Kampala developed with a two in one house apartment with tenants. She also owned another plot in the same are with a substantially built storied house.

It is his evidence that his later brother had entrusted him with keeping the land at Kasambya and that he had continued to do so even after his death. That it was in 2013, when the defendant approached him and evicted him from the land claiming that the land was hers. Later on, she brought her son called Benson Komurubuga to stay on the land and eventually sold the land to him without the consent of the 1st and 2nd plaintiffs.

It was also his evidence that the defendant has been receiving rent from the properties of his later brother and sister's houses in Kampala and Wakiso without accounting for it to the plaintiffs, who are the real beneficiaries of their late parent's estates. The defendant has also insisted that she owns the properties in question.

4.0 The issues

1. The issues that were framed for this trial are:
2. Whether the suit property belongs Akugizibwe Abwooli;
3. Whether the defendant illegally sold the land measuring approximately 10 acres at Kasambya to her son Benson Komurubuga;
4. Whether the defendant inter meddled with the estate of the late Charles Byabagambi and late Evelyn Akugizibwe Abwooli;
5. Whether the defendant is liable to render a true account to the estate of the late Charles Byabagambi and Evelyn Akugizibwe and pay proceeds thereto, if any?
6. What remedies are available to the parties?

5.0 Resolution of the issues

5.1 Whether the suit property belongs to the estate of the late Charles Byabagambi and Evelyn Akugizibwe?

Counsel for the plaintiff submitted that the plaintiffs, had established from the of Kubalikenda Yosamu, established that the late Charles Byabagambi owned land at Kasambya LCI, which he which he entrusted him to keep and that he did so and continued to do so after his death.

Secondly that the plaintiffs had established that the defendant without any color of right evicted Kabilieknda from the land and eventually sold the land to her son.

Thirdly, counsel submitted that the plaintiffs had established that the defendant has been receiving rent from the properties of their parents from Wakiso and Kampala and that she has misappropriated the same without caring to account to the beneficiaries.

Fourthly counsel submitted that the actions of the defendant constitute intermeddling in the estate of a deceased persons contrary to the law. He relied on the case of **Annet Namirimu Ndaula vs. Reverend Alani Mulondo and 2 Others HCCS 27 of 2011**, where it was held that a person who intermeddles with the estate of the deceased and does any act which belongs to the office of the executor while there is no rightful executor thereby makes himself executor of his or her own wrong.

From the evidence on record, there is no doubt that the late Charles Byabagambi, bought approximately ten acres of land from Byenkya in 1989 and asked Kubalikenda to keep it for him. Kubalikenda, kept the land during the lifetime of Byabagambi and continued to do the same after his death. I am satisfied by the evidence presented that the defendant without any color of right in 2013, after the death of Charles Byabagambi, claimed for this land and evicted Yolamu Kubalikenda, who was keeping it. The defendant, thereafter put her son, called Komurubuga, in the land. It was alleged by Yolamu Kubalikenda, that the defendant sold this land to her son. However, I did not receive evidence about the sale of the land and if at all the land was sold, how much the defendant sold the land to Komurubuga.

But even if I was to accept that the defendant sold the land to her son, her son did not acquire good title to the land because under section 191 of the Succession Act, no right to a property of a person who has died intestate shall be established in any court of law unless letters of administration have first been granted by a court of competent jurisdiction. In **Annet Namubiru Ndaula vs. Rev. Aloni Mulondo and 2 others HCCSS 27 of 2011**, it was held that sale of the estate property without letters off administration or probate constitutes intermeddling and is illegal. It therefore follows that the actions of the defendant in taking over the late Byabagambi's land at Kasambya LCI and passing it over to her son constitutes intermeddling in the estate of the deceased and is illegal for violating section 191 of the Succession Act.

With regard to property at Para Zone Namasuba, Kubalikenda testified that the late Charles Byabagambi had property at Para Zone Cell, Namasuba, in Wakiso district with a two in one rental apartment. I had no doubts regarding this evidence and I am satisfied that the house at Para Zone Cell, Namasuba, belongs to the estate of the late Charles Byabagambi.

Turning to the estate of the late Evelyn Akugizibwe, Kubalikenda testified that his late sister had two properties in Mutundwe; one with a two in one rental apartment and the other, a substantially built up storied building. The defendant, in paragraph 4 (f) of her written statement of defense admitted that indeed, the properties belonged to Evelyn Akugizibwe. I will quote the relevant aspects of the written statement of defense where the defendant admitted that she:

“... has never claimed and /or converted any of the two estate properties and has at all material times been available to provide an account to the beneficiaries who have not sought for them and stay abroad most of the time”.

This admission by the defendant that the suit properties belong to the estate of the late Evelyn Akugizibwe, is an admission under **Order 13 rule 6 of the Civil Procedure Rules**, which for emphasis provides as follows:

A party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she is may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.

The admission by the defendant is unequivocal and is therefore enough evidence for judgment to be entered against her that the two properties belong to the estate of the late Evelyn Akugizibwe; whose beneficiaries are the 3rd to the 5th Defendants.

It will also follow that since the defendant, by her own written statement of defense is willing to render a true account of her activities in these two properties to the beneficiaries, an order shall be entered against her directing her to account to the beneficiaries and the administrator of the estate of the late Evelyn Akugizibwe.

This issue is therefore answered in the affirmative.

5.2 Whether the defendant illegally sold the land measuring approximately 10 acres at Kasambya to her son Benson Komurubuga?

The plaintiffs claimed that the defendant sold the land of the late Charles Byabagambi at Kasambya to her Benson Komurubuga. The defendant in her written statement of defense admitted that she sold the land to her son because the land was her, having devolved to her upon the death of Byabagambi who owned the property with her as joint tenants. The evidence on the record did not support the defendant's claim. Yolamu Kubilikenda testified that the late Byabagambi bought this land from Byenkya and thereafter entrusted it with him to care take and continued to do so even after his death. I was satisfied with this evidence and I hold that the land at Kasambya belongs to the estate of the late Byabagambi.

Did the defendant have the right to sell the land to her son? The defendant, who was not the owner of the land had no rights whatsoever to sell the land to her son, a one Benson Komurubuga. The sale of the land was therefore invalid as no one can sell the property of a deceased unless if the same has been dealt with

under the Succession Act. Benson Komurubuga, does not have good title to this land and should therefore vacate it.

This issue is therefore answered in the affirmative.

5.3 Whether the defendant inter meddled with the estate of the late Charles Byabagambi and late Evelyn Akugizibwe Abwooli?

The evidence of the plaintiffs is that the defendant is inter meddling with the estates of their late parents. Evidence of intermeddling was given by Yolamu Kubalikenda, who testified that the defendant has taken over all the properties of his late young brother and sister and is using them to her benefit without regard to the interests of the beneficiaries.

A person intermeddles with the estate of the deceased if that person deal with the property of a deceased, without letters of administration or probate or without the authorization of the Administrator General in accordance with section 11(1) of the Administrator General's Act. There are exceptions, where in situations of urgency, a person not being the administrator or executor may interfere with the property of a deceased to preserve it. Section of the Administrator General, which is relevant to this exception provides that:

When a person dies, whether within or without Uganda, leaving property within Uganda, any person who, without being duly authorized by law or without the authority of the Administrator General or an agent, takes possession of, causes to be moved or otherwise intermeddles with any such property, except in so far as may be urgently necessary for the preservation of the propertycommits an offense (the offense of intermeddling with the property of a deceased)

Therefore, for one to be exempted from intermeddling with the property or estate of the deceased, he or she must show that there was an emergency; that they acted to preserve the property for the benefit of the estate and that after the emergency, they withdrew from dealing with the affected property, within a reasonable time. Section 11 (1) of the Administrator General's Act is strict to preserve the property of a deceased person so that it can lawfully be dealt with in accordance with the Succession Act. It is for this reason that those who deal with the property of a deceased, before the court appoints an administrator or executor can only do so when the emergency of the case demands for preservation of the property.

In this matter, the defendant, who is not the administratrix or executrix of the estate of Byabagambi and Evelyn Akugizibwe, cannot claim the protection of section 11 (1) of the Administrator General's Act because: she took over the land at Kasambya without authority and unlawfully entrusted it to her son; she has been managing the properties of the late Evelyn Akugizibwe in Mutundwe, since 2012, without the authority of the owners or the Administrator General. She has also managed the property of the late Charles Byabagambi in Para Zone, Namasuba without authority. The defendant for all intents and purposes is an intermeddler.

In the result, this issue is answered in the affirmative.

5.4 Whether the defendant is liable to render a true account to the estate of the late Charles Byabagambi and Evelyn Akugizibwe and pay proceeds thereto, if any?

The plaintiffs asked the court to order the defendant to render a true account of her activities in the estates of their late parents. I see no reason why the defendant should not be ordered to render a true account and inventory of all her activities in these two estates as she has intermeddled in their management

and in the case of the estate of the late Evelyn Akugizibwe, offered to render the accounts to the beneficiaries. Therefore, the defendant, will submit the account of the two estates to the court within thirty days from the date of this judgment. The defendant will also pay the proceeds from the suit property in court, within sixty days from the date of this judgement, to be held in trust for the beneficiaries until administrators for the estates are appointed under the Succession Act.

5.5 What remedies are available to the parties?

I have found that the late Charles Byabagambi and late Evelyn Akugizibwe left property at Kasambya, in Wakiso and Kampala. These properties have never been dealt with in accordance with the Succession Act. These properties, rightly belong to the estates of the late Charles Byabagambi and Evelyn Akugizibwe and the plaintiffs who are their children are the rightful beneficiaries to the said estates.

I have found that the defendant has been managing the estates outside the provisions of the Succession Act and without authority of the Administrator General. Accordingly, I direct the defendant to stop forthwith with intermeddling in the property and to render a true account of her dealings in the property within thirty days from the date of this judgment. The accounts will be submitted to the Registrar of the court, from whom the plaintiffs shall access the same.

The plaintiffs asked the court for an order of payment for money fraudulently withheld or received by the defendant. No evidence of fraud on the part of the defendant was presented by the plaintiffs and I am therefore unable to make this order.

The plaintiffs asked for a permanent injunction restraining the defendant from interfering with their quiet enjoyment of the suit properties. In view of the fact that nobody has taken out letters of administration or probate to the estate of

the late Charles Byabagambi and late Evelyn Akugizibwe, I can only issue an injunction stopping the defendant from intermeddling with the two estates.

The plaintiffs asked for general damages and mesne profits for the injuries and embarrassment the defendant has occasioned the plaintiffs. Counsel, did not however guide court on the appropriate quantum of general damages the plaintiffs were seeking. As a result, the court has to consider from the available materials the nature and extent of loss that the plaintiffs suffered as a result of the defendant's actions. In **Kabandize Baptist and 21 others vs. KCCA Civil Appeal 36 of 2016 (Court of Appeal)** Justice Kenneth Kakuru (JA) held that:

The general rule regarding general damages is that the award is such sum of money that will put the party who has been injured or who has suffered as adjudged by the court in the same position as he or she would have been had he or she not sustained the wrong for which he or she is getting compensation. See: **Livingstone vs. Rowyards Coal (1880) 5 App Cas. Cited with approval in Robert Coussens vs. Attorney General (supra).**

It is of course true that the plaintiffs have suffered financial loss and embarrassment as a result of the defendant's actions that have deprived them of the use of properties to which they are entitled to as beneficiaries should the properties be given to them under the Succession Act. Their losses are however, very difficult to quantify with precision and certainty given the limited evidence the plaintiffs presented to the court. The best that I can do in the circumstances is to award each of the plaintiffs nominal damages of five million shillings as acknowledgment of the suffering that they have been put to by the unauthorized actions of the defendant. The damages will attract interest of 12 p. a from the date of this judgment till payment in full.

Lastly, the plaintiffs asked for the costs of the suit. In accordance with section 27 of the Civil Procedure Act, I direct the defendant to pay the costs of this suit.

6.0 Decision

Judgment is entered in favour of the plaintiffs with the following orders: -

- a) The land at Kasambya LCI, Bugahya Sub County, Hoima and the land at Para Zone Cell, Namasuba Makindye, Wakiso belongs to the estate of the late Charles Byabagambi and therefore the 1st and 2nd plaintiffs are entitled to them as beneficiaries of their late father's estate;
- b) The defendant had no right to sell the late Byabagambi's land at Kasambya to Benson Koumurubuga. Benson Komurubuga, who obtained title to the land through the defendant does not have good title to the land and should therefore vacate the land.
- c) The two plots land with their developments at Nyanama, Mutundwe Zone, Rubaga districts belong to the estate of the late Evelyn Akugizibwe and therefore the 3rd to 5th plaintiffs are entitled to them as beneficiaries;
- d) The defendant shall render a true account of her dealings in the estate of the late Charles Byabagambi and Evelyn to the beneficiaries through the Registrar of the court within thirty days from the date of this judgment;
- e) The defendant shall pay the proceeds from the two estates in court within sixty days from the date of this judgement and the same shall be held in trust for the beneficiaries until administrators to the estates are appointed under the Succession Act.
- f) A permanent injunction is issued against the defendant stopping her from inter meddling with the estate of late Charles Byabagambi and Evelyn Akugizibwe;

- g) The plaintiffs are awarded each a sum of five million shillings as general damages with interest of 12 p.a from the date of judgment till payment in full; and,
- h) The defendant will pay the costs of the suit.

It is so ordered.



Gadenya Paul Wolimbwa

JUDGE

10th June 2020.

The Judgment will be emailed to the parties today the 10th of June 2020, by the Registry of the court.



Gadenya Paul Wolimbwa

JUDGE

10th June 2020.