

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
HIGH COURT CIVIL SUIT NO. 0010 OF 2014

ELIZABETH NYAMAIZI

ADA TIMBIGAMBA MUGENYI

(ALL SUING AS BENEFICIARIES TO THE ESTATE OF THE LATE ERASTO BIRAKURATAKI) ===== **PLAINTIFFS**

VERSUS

DAUDI SSENTOGO ===== **DEFENDANT**

JUDGEMENT BY JUSTICE GADENYA PAUL WOLIMBWA

The plaintiffs, who are the children of the late Erasto Birakurataki, filed this suit against Daudi Ssentongo, their nephew and a grandson to the late Erasto Birakurataki for the following orders:

- a) A court declaration that the defendant is intermeddling in the estate of the late Erasto Birakurataki;
- b) An order for the defendant to account to the beneficiaries for all the proceeds the defendant has been getting from the estate;
- c) An injunction restraining the defendant from further inter meddling in the estate of the deceased;
- d) Eviction order against the defendant;
- e) General damages;
- f) Costs of the suit, and
- g) Any other relief court may deem fit.

The brief facts of this case are as follows.

The late Erasto Birakurataki, whom I shall refer to as Erasto for ease, had three wives namely Leya, Nyangoma and Zeruya, who gave him four children, namely Erina Barwogeza, Ada Mugenyi, Elizabeth Nyamaizi and Musa Mugasa Kutegeka.

Each of the late Erasto's wives was living in their separate places. Leya, the mother of Musa Mugasa Kutegeka lived at Nyamirima; Nyangoma, the mother of the plaintiffs lived at Bwijanga and Zeruya, the mother of Erina Barwogyeza, lived at Kasunga. In the course of his life, Erasto got saved or became born again and because of his new faith, he decided to wed Zeruya and somewhat left the other two wives, whom he had married under custom. He never divorced the two wives he left.

In 1969, Erasto passed on. He did not leave a will and none of his relatives or widows applied for letters of administration to his estate. Each of the widows continued to stay where the deceased had established homes for them with their children. All the wives, also passed on and so did the two of the four children to wit Erina Barwoegeza, the mother of the defendant, who was staying at Kasunga and Musa Mugasa Kutegeka, who was the only male child of the deceased all passed away at different times leaving behind children.

The plaintiff's claim that the defendant has unlawfully taken over the late Erasto land at Kasunga, hereinafter called the suit land and has even applied to convert the suit land into freehold title. The plaintiffs have also accused the defendant of selling part of the suit land, hiring it and burning charcoal on it at their expense of them.

The plaintiffs, further allege that they have tried on several occasions to call the defendant to order but he has refused and to date continues to inter meddle in the estate of their late father. The defendant is also accused by the plaintiffs of preventing them to use or access the suit land. Furthermore, the plaintiffs claim that the defendant as a grandson whom they called '*omwihwa*' is not entitled to any share in the estate. I must say this is not correct because, the defendant has a beneficial interest in the estate, being a child of the plaintiffs step sister.

The defendant on his part claims that he owns the suit land because it was given to him by his mother, the late Erina Barwoegeza Birakurataki, who inherited the same from her mother Zeruya Birakurataki, who was the official wife of Erasto. He also claims that the suit property was the matrimonial home of his grandmother and that after her death the property devolved to his mother, who upon her death passed it over to him.

The defendant also alleges that the deceased had two concubines, one of them being the mother of the plaintiffs, who was settled in Bwijanga while, Leya, the mother of Erasto's only son, the late Mugasa, was settled in Nyamirima.

The defendant alleged that the plaintiffs were given their share of Erasto's at Bwijanga but they sold of the land and are now keen on grabbing his land, which he lawfully inherited from his mother, the late Erina Barwogezi and that moreover, the suit land does not form part of the estate of the late Erasto.

Lastly the defendant denied intermeddling with the estate of the late Erasto. He claimed that he was only managing the estate of his late mother, Erina Barwogezi, who was the heir and beneficiary of the late Zeruya Birakurataki. At the trial, the plaintiffs and defendant each called four witnesses.

Representation

The plaintiffs were represented by Mr. Guma while the defendant was represented by Mr. Muhumuza.

Evidence

First, the evidence of the plaintiffs:

Ada Timbigigamba Mugenyi, (PW1) a daughter to the late Erasto Birakurataki testified that their late father had land at Kasunga Village Kyabigambire measuring 600 acres. He also had land at Kigowa also in Kasunga

She testified that when their father died on 7th November 1969, the late Zeruya Gafabusa Birakurataki, was appointed as an administrator to look after the estate and that when she also died, Erina Birakurataki her daughter and their eldest sister remained in charge of the family land.

Erina Birakurataki, unfortunately also died. That after her death, she and her sister, Nyamaizi held a meeting for purposes of distributing the land. That the land was divided amongst all their late father's four children. For their siblings who had passed on, land was given to their children. She testified that Minutes were made of this meeting. These minutes were tendered in evidence as exhibit PE1.

Exhibit PE1 cannot be called minutes of a meeting but is rather a letter authored by PW1 and her sister, Elizabeth Nyamaizi addressed to: All the children of the late Musa Mugasa Kutegeka and the defendant, entitled **family meeting in respect to the estate of the late Erasto Birakurataki** dated 29th November 2013. The gist of this letter was to call for a family meeting because the plaintiffs as the only surviving children of the late Erasto were **'disappointed by the manner in which the Estate of the late has been so badly off mismanaged though efforts to previously settle this dispute has yielded nothing until the matter was taken to court by the aggrieved children of the late Musa Mugasa Kutegeka.** Exhibit PE1, followed a directive by Justice Byabakama made on 7th November 2013 , where he asked the family members of the estate of the late Erasto to use the clan and close friends of Erasto to resolve a simmering dispute amongst the beneficiaries of the estate.

PW1, also testified that the defendant was not invited to the meeting because he is not of the Ababwongo Clan. PW1, further testified that after the meeting, they tried to implement the resolutions of the meeting but the defendant, was uncooperative and is still occupying the suit land.

PW1 also accused the defendant of renting out the suit land for charcoal burning and attempting to lease out the land. She also told court that their father's house is being occupied by the defendant's daughter.

PW1 further testified that she wants the court to divide the suit land amongst the children of the late Erasto Birakurataki and that the defendant is entitled to receive a share of the land that will go to his late mother's estate , less the land that he has unlawfully sold. In cross examination, PW1 testified that her father had one wife at the time he died but in his life time he had three wives. The

wives were Tezira Nyangoma, Leya and Zeriya Gafabusa, who all had children. Tezira Nyangoma gave birth to the plaintiffs and another child who passed on. Leya, was the mother of Musa Kutegeka and Zeriya Gafabusa was the mother of Erina Barwogeza. She also testified that her late father had land at Nyamirima and Kasunga. Zeriya was staying at Kasunga while Leya was staying at Nyamirima.

Furthermore, PW1 testified that after her father got saved, he decided to wed Zeriya. He then sent away her mother, who was staying at Nyamirima to return to her parents. She denied that her father had land at Bwijanga. She testified that Leya never stayed on their father's land that when she died she was at Nyamirima, on a separate piece of land that did not belong to her father. She also testified that the land at Nyamirima belongs to the Kingdom. PW1, further testified Muhuma a son to their late brother Mutegeka, is occupying the land at Nyamirima.

Yaled Byairungu (PW2) testified that the plaintiffs' father had two wives to wit Zeriya and Leya. He had four children. He further testified that the defendant has denied the plaintiffs access to the suit land. With regard to the land at Nyamirima, PW2 testified that the land belongs to Bunyoro Kingdom. He also said that Leya, one of the widows to Erasto had a Kibanja at Nyamirima. Like PW1, PW2 confirmed that no body applied for letters of administration to administer the estate of the late Erasto.

Babyenda Temiteo (PW3), gave more less the same evidence like the previous two witnesses save that he added that the plaintiffs are not on good terms with the defendant over the land at Kasunga. He said that efforts to reconcile the warring had failed. He also testified that the late Erasto never left a will and that his heir, Mutegeki, the only son he had passed on.

Fred Muhumuza (PW4) , a cousin to the defendant and a son to Musa Kutegeka, the deceased son to the late Erasto , testified that Erina Barwogeza, wrote to him a letter marked exhibit PE2 regarding the suit land at Kasunga, complaining against the defendant for renting it out without authority and inviting him to discuss issues concerning the suit land. I will reproduce Exhibit PE2, below for effect:

MAKERERE

P. O. Box 7062,
Kampala Uganda
website: www.clcs.mak.ac.ug



UNIVERSITY

Tel: +256 - 414 - 530106
Email: celacos@chuss.mak.ac.ug

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2016

COLLEGE OF HUMANITIES AND SOCIAL SCIENCES (CHUSS)
CENTRE FOR LANGUAGE AND COMMUNICATION SERVICES

ur Ref:

ur Ref:

CLCSDC/D014/18/04/2016



Kasunga-Kisabagwa

1/2/2016

My child in Jesus Atwoki Muhuma,

I greet you in the name of Jesus and I thank you for whatever you are doing; I am also there like that, Jesus is still keeping me with my weakness, I dont have energy.

But my son, I sent for you to come; didnt' the person I sent dliver the message? I appeal to you to come so that we discuss about this land which is for us as Ababwonga clan and I want you to be their leader. Please come and we see what to do; Muhuma, imagine people who are not known have started renting the land because they know I don't have energy to walk around and check. Please come and we talk before I pass on; don't fear and don't delay to come. After you have received and read this letter come immediately on the second day. But Muhuma, I feared telling your sibling Ayebare Bisereko, that one failed and I don't want a drunkard.

My days are already gone. I am now at the mercy of Jesus, do not fear but come when I am still living, Muhuma, I want you to come and we talk about your studies and we see what to do.

Convey my greetings to my mother in law, and my boys, they dont know me.

Let God protect you,

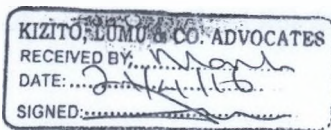
Yours,

Your Mother

Abwoli Erina

Convey my greetings to my wife, say to her 'how is life?

Translated to English by L.G, Centre of Languages, Makerere University



COORDINATOR

PW4 testified that Erina Baryogeza, told him that the land at Kasunga belonged to the Ababwonga clan, the clan of her father.

The evidence of the defense:

Daudi Ssentogo, the defendant testified that the suit land was his personal property, which he inherited from his late mother Erina Barwogeza, who had inherited the same from the late Zeruya. He testified that Erasto, his grandfather, had three wives, namely Leya, Nyangoma and Zeruya. Leya was staying at Nyamirimu, on a piece of land purchased by his grandfather. Elizabeth Nyamaizi, the mother to the plaintiffs was staying at Bwijang. Zeruya, his grandmother was staying with Erasto, at Kasunga.

The defendant also testified that a will was read after the death of Erasto, although in court, he could not remember much of the said will. He also testified that nobody has ever applied for letters of administration to administer the estate of the late Erasto.

With regard to the involvement of the plaintiffs in the suit land at Kasunga, the defendant told court that the plaintiffs started harassing him over it in 2013 after the death of his mother Erina Barwogeza, a sister to the plaintiffs and yet their late father had given them their share of the land in another place.

He also told court that he was sued by Fred Muhumuza, Benon Muhumuza and Ayesiga Jacob in HCCS 20 of 2013, Alfred Muhumuza and 2 others vs. Daudi Ssentogo, over the suit land. This suit was mediated and a consent judgment was signed where each party was allowed to stay in their separate places/ pieces of land, where they were resident. He presented the consent judgment which was received in evidence as exhibit DE1, which appears here below:

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MASINDI
CIVIL SUIT NO. 0020 OF 2013



1.FRED MUHUMA

2.BENONI MUHIMUZA.....PLAINTIFFS

3.AYESIGA JACOB

VERSUS

DAUDI SSENTONGO.....DEFENDANT

DE
W
Judge
20/2/2016

CONSET ORDER

By consent of both parties in presence of their counsel, and in the presence of the Deputy Registrar **H/W BYARUHANGA JESSE R.**

IT IS HEREBY AGREED AS FOLLOWS:

1. That the plaintiffs shall continue to reside and occupy land situated at Nyamirima, Hoima District being part of the estate of the late **ERASTO BIRAKURATAKI.**
2. That the Defendant shall continue to reside and occupy land situated at Kasunga, Kisabagwa, Kyabigambire ,Hoima District being part of the estate of the late **ERASTO BIRAKURATAKI.**
3. The Plaintiffs have withdrawn the Civil Suit No. 20 of 2013 against the Defendant .
4. Each party shall bear their own costs.

Signed Fred Muhuma
.....
FRED MUHUMA
PLAINTIFF

Signed MUHUMUZA BENONI
.....
BENONI MUHUMUZA
PLAINTIFF

It is worth noting the suit land and land Nyamirima in the consent judgment are described as being part of the estate of the late Erasto despite claims by the defendant that the suit land is his and that the land at Nyamirima, was distributed to other beneficiaries of the estate.

In cross examination, the defendant told court that he was born and has lived on the land at Kasunga for all his life. He was staying with the late Erasto until his death in 1969. He also told court that his Erasto, his grandfather bought the land at Bwijanga and Nyamirima and that the land at Kasunga, was 200 acres.

Tinkasimire Wilson (DW2) testified that he was the head of the Abwobonga clan for 25 years, where the plaintiffs are born. He testified that Erasto had three wives. Nyangoma was staying at Bwijanga, Leya at Nyamirima and Zeruya at Kasunga. The land at Nyamirima was about 30 acres. He testified that after the death of Erasto no meeting was called to discuss the management of his estate. He testified that the land at Kasunga, belongs to the defendant because it originally belonged to his mother. With regard to suit land, he said the conflict involved Muhumuza, Ada, Nyamaizi and the defendant. The dispute was resolved by agreeing that each of the parties remains to stay in the land which they were occupying. In cross examination DW2 told court that when the head of the family dies, his property devolves to the widow and children. In cross examination by court, DW2 told court that he was 12 years old when Erasto passed on. He said that the late Erasto left a will that was kept by Erina. Lastly, that Erina Barwogyezi, the grandmother to the defendant was the heir to Erasto Birakurataki, who was his wedded wife.

Raphael Ndabitunga, DW3, a neighbor to the defendant testified that the land at Kasunga is for the defendant. Ali Guma Bantebya (DW4), a son to the defendant testified that the dispute over the suit land at Kasunga, started in July 2013 after the death of Erina Barwogyeza. He also told court that in 2014, after a mediation process, it was agreed that each of the parties remains on the land they where they occupying.

The issues for trial

The following issues were framed at the beginning of the trial

1. Whether the plaintiffs are entitled to a share in the suit land
2. What remedies are available?

Arguments of counsel for the plaintiffs

Counsel for the plaintiffs submitted that the plaintiffs are entitled to the suit land because they are the biological daughters of the late Erasto, who died intestate in 1969, unlike the defendant who is a grandson and has his inheritance elsewhere.

He submitted that the plaintiffs had established that the defendant, who is a grandson to the late Erasto had denied them access to the suit land at Kasunga, which he was using and profiteering from at the disadvantage of the plaintiffs.

He submitted that since Erasto died intestate the court should deal with the deceased's property in accordance with sections 24 to 28 of the Succession Act.

Lastly, counsel implored court to use section 98 of the Civil Procedure Act to ensure that justice is done to the plaintiffs, who have suffered at the hands of the defendant and grant them the following remedies:-

An order for the defendant to account to the beneficiaries for all the proceeds the defendant has been getting from the estate:-

- An injunction restraining the defendant from further inter meddling in the estate of the deceased;
- Eviction order against the defendant ;
- General damages;
- Costs of the suit, and
- Any other relief court may deem fit.

Arguments of the Defendant –

Counsel for the defendant submitted that all the witnesses of the defense supported the defendant's claim that he owns the suit land, where he has lived and continues to live. He submitted that the plaintiffs and their witnesses never disputed this evidence.

Counsel for the defendant submitted that on the contrary the plaintiffs, have dirty hands since they sold off their share of land at Bwijanga and Nyamirima which their late father left for them and have no right to disturb the defendant, who has enjoyed quite possession of the suit land, from the time he inherited it from his late mother in 1993.

He submitted that the late Erasto, was a smart man, who made separate provision for each of his three wives and children by giving and settling them in distinct areas and that his will should be respected.

In this regard, counsel informed the court that Leya the mother of Musa Mutegaki was given land at Nyamirima, which is now being occupied by Muhumuza, a daughter to Musa Mutegeka; Nyangoma, the mother of the plaintiffs was given land at Bwijanga, which the plaintiffs inherited and Zeruya, the mother of Erina Barwogeza, who was the mother of the defendant was given the suit land, at Kasunga, which the defendant is occupying having inherited it from his from his late mother.

He submitted that since the defendant's mother, was not given a share of the land at Bwijanga and Nyamirima, it is clear that the beneficiaries of the late Erasto respected the way their father had distributed his land during his lifetime and so the defendant, who is her son should be left to enjoy the suit land at Kasunga.

Lastly, counsel asked the court to dismiss the suit but argued that should the court in the unlikely event order that the land Kasunga be shared by the children of the late Erasto, then all the three pieces of land that used to be owned by the late Erasto, should be merged and shared out among the beneficiaries including the defendant.

Consideration of the case.

Issue number 1: Whether the land at Kasunga forms part of the estate of the late Erasto?

It is the case of the plaintiffs that the land at Kasunga forms part of the estate of the late Erasto, since it has never been distributed. On the other hand, the case for the defendant is that the land belongs to him because he inherited it from his mother, who had also inherited it from her mother, the wedded wife to the late Erasto.

I have reviewed the evidence and arguments of counsel in this case and below is my factual analysis of the case relating to this issue.

Firstly, the plaintiffs and the defendant all agree that the late Erasto died intestate without will. The late had three wives out of which he had three daughters and one son. Each of the wives lived in their separate places. The mother of the plaintiffs lived at Bwijanga; the mother of Musa Mutegeka lived at Nyamirama and the mother of Erina Bwogezi, the mother to the defendant and the wedded wife to the late Erasto lived at Kasunga.

Secondly the late Erasto had land in three areas, to wit Bwijanga, Kasunga and Nyamirima, although the land at Nyamirama is said to be the property of Bunyoro Kingdom.

Thirdly, after the death of Erasto, no effort was made to apply for letters of administration. The family appears to have been contented with Zeruya, the wedded wife of Erasto managing his estate. Upon Zeruya's death, Erina Barwogeza, took over the administration of this estate with specific regard to the suit land. Issues, however, fell out of hand or control, when Erina Barwogeza passed on in 2013. Ever since then efforts by the plaintiffs, who are the only surviving children of the late Erasto to take control of the suit land, have been resisted by the defendant, who claims to be the rightful owner of this land through inheritance

Fourthly, the claim by the defendant that the land at Kasunga, belonged to the estate of Zeruya, the wife to Erasto, is not supported by the evidence because none of the witnesses called by the defendant gave a factual background on how the defendant acquired the land. Exhibit DE1, which the defendant submitted in evidence says that the land at Kasunga, is the property of the estate of the late Erasto. The defendant is therefore estopped by record from claiming that the suit land is his. It is immaterial that the defendant and his witnesses claimed that the defendant, has for all his life lived on the suit land. On the contrary, the plaintiffs gave uncontroverted evidence that the land at Kasunga, belonged to their father and that their father lived on it with the grandmother of the defendant, who was the wedded wife, among his three wives.

Fifthly, although the defendant and Tinkasimire Wilson (Dw2) claimed that the late Erasto, made a will in which he distributed all his property to his four children and made Zeruya his heiress of his estate, no will was produced in court to support this claim. Before taking leave of this matter, I saw a letter written by M/s Baryabanza & Co Advocates on behalf of Erina Barwogeza Abwooli to the plaintiffs about the land at Kigawa Kisabagwa Parish. This letter made reference to a will by Erasto, but again the said will was not attached to the letter, which was attached to exhibit PE1. In the absence of this will and against the weight of evidence which supports the notion that Erasto never made a will, it is the finding of this court that the late Erasto did not leave a will providing for the distribution of his estate. Erasto, therefore died intestate in accordance with Section 24 of the Succession Act which provides that. **A person dies intestate in respect of all property which has not yet been disposed of by a valid testamentary disposition.**

This then leads me to the question of whether, the grandmother to the defendant legally got the land at Kasunga from her late husband's estate. Since the late Erasto, died intestate, his property under section 25 of the Succession Act, devolved upon his personal representative, to hold in trust for his beneficiaries who are entitled to the property.

Section 25 of the Succession Act is reinforced by section 180 of the Succession Act which provides that:

The executor or administrator, as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such.

According to Section 2(r) of the Succession Act , **a personal representative as means the person appointed by law to administer the estate or part of the estate of a deceased person.**

In this case, it is admitted that no person has applied for letters of administration to the estate of the late Erasto and by virtue of this , his property, legally still belongs to the estate unless the claimant to the property - in this case the defendant ,can meet the criteria set out in section 191 of the Succession Act. Section 191 provides that:

Except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

According to the record , no body including the grandmother to the defendant through whom he claims the right of inheritance to the suit property, applied for letters of administration to the estate of the late Erasto or was the given this property by anyone who had applied and got letters of administration to this estate. It therefore, follows that the Zeruya Birakurataki, the defendant's grandmother did not legally get the suit land at Kasunga, in as much as she was entitled to either all or part of this land under the law of Succession. Because of this default, the late Zeruya Birakurataki, could not also pass on the land at Kasunga to Erina Barwogezi, the mother to the defendant and by the same reason, the mother to the defendant did not also legally pass on the land to the defendant.

In conclusion the land at Kasunga, is still the property of the estate of the late Erasto Birakurataki and all his children, who include the plaintiffs are entitled to a share in this property as beneficiaries.

Issue number one is therefore answered in the affirmative.

Issue number 2: What remedies if any are available to the parties?

The plaintiffs asked for several remedies against the defendant as here below:

A court declaration that the defendant is intermeddling in the estate of the late Erasto Birakurataki:-

- An order for the defendant to account to the beneficiaries for all the proceeds the defendant has been getting from the estate;
- An injunction restraining the defendant from further inter meddling in the estate of the deceased ;
- Eviction order against the defendant ;
- General damages;
- Costs of the suit, and
- Any other relief court may deem fit.

Some of the remedies were rendered untenable as they were neither addressed in the evidence, issues and arguments of counsel. As I will show shortly as I deal with each of the remedies.

(i) A court declaration that the defendant is intermeddling in the estate of the late Erasto Birakurataki;

Although the plaintiffs prayed for this declaration, this point was neither argued at the trial nor framed as an issue and I will therefore not grant it.

(ii) An order for the defendant to account to the beneficiaries for all the proceeds the defendant has been getting from the estate;

Like the previous remedy this point was neither argued nor framed in the issues. I will also not grant it.

(iii) An injunction restraining the defendant from further inter meddling in the estate of the deceased;

The plaintiffs asked for an injunction to restrain the defendant from inter meddling in the estate of the deceased. Given that there is evidence that the defendant has been hiring out the suit land and has even tried to convert the land into freehold for his personal benefit, I deem it appropriate to issue an injunction stopping the defendant from alienating or selling the suit land.

(iv) Eviction order against the defendant;

The plaintiff asked for the defendant to be evicted from the suit land at Kasunga. I do not consider it appropriate to evict the defendant from the suit land, since he has a beneficial interest in the suit land being a grandson to the late Erasto. The defendant, who has survived his mother, who is a direct beneficiary to her estate, which includes her share in her late father's estate including the suit land, should remain on the land until it has been administered in accordance with the Succession Act.

(v) General damages;

The plaintiffs asked for general damages against the defendant for intermeddling in the suit property. The plaintiffs are entitled to general damages for the loss, injury and emotional harm and embarrassment they were exposed to as a result of the defendant's action. Unfortunately the plaintiffs did not however, guide me on the extent of the injury that they had suffered as a result of the defendant's action. In the absence of the evidence about the quantum of damages and in the spirit of seeking to resolve conflicts in the estate of the late Erasto through peaceful means, I will only not award the plaintiffs nominal damages of five million shillings.

(vi) Costs of the suit

This matter being a family matter, I do not consider it appropriate to award costs to the plaintiffs as it is in the best interests of this family that issues surrounding the estate of the late Erasto Birakurataki be resolved amicably. I am therefore invoking my discretion under section 27 of the Civil Procedure Act to order each party to meet their own costs.

(vii) Other remedies deemed appropriate by court

I have noted that conflicts in the estate of the late Erasto Birakurataki, will never be resolved until his estate is administered in accordance with the Succession Act that is to say when an administrator or administrators is or are appointed by the court to take care of the estate and distribute it in accordance with Part V of the Succession Act. I have noted that the estate of the late Erasto Birakurataki is not organized and is riddled with many disputes that cannot satisfactorily be resolved by the beneficiaries administering the estate. The estate needs an empowered administrator to administer it in accordance with the law, who in this case is the Administrator General. In public interest, I therefore direct the Administrator General to take over the estate of the late Erasto Birakurataki for purposes of administering and distributing it in accordance with the Succession Act. The expenses of the Administrator General will be met from the proceeds of the estate. For purposes of clarity, all the land that the late Erasto Birakurataki, form part of his estate that the Administrator General will administer.

Decision

Judgment is given in favour of the plaintiffs with the following orders:

- a) That the land at Kasunga forms part of the estate of the late Erasto Birakurataki and that the plaintiffs are therefore entitled to part of it;
- b) The defendant will pay general damages of five million shillings to the plaintiffs. The general damages will attract interest of 10% per annum from the date of this judgment till payment in full;
- c) The defendant is permanently stopped from alienating or disposing off the suit land at Kasunga;
- d) That the Administrator General takes over the management of the estate of the late Erasto Birakurataki and distribute it to the beneficiaries in accordance with part V of the Succession Act;
- e) The Administrator General's costs for managing and distributing the estate of the late Erasto Birakurataki will be paid for by the estate; and

f) Each party will meet their own costs.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE