THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[Coram: Opio-Aweri, Tibatemwa- Ekirikubinza, Mugamba, JJSC, Nshimye, Tumwesigye Ag.JJSC]

CIVIL APPEAL NO. 14 OF 2017

BETWEEN

ABUBAKER SEBALAMU GANYA:: APPELLANT

AND

YASMIN NALWOGA:: RESPONDENT

[An appeal from the judgment of the Court of Appeal in Civil Appeal No. 110 of 2011 before (Hon Justices: Kasule, Buteera, Cheborion, JJA), dated 12th October, 2017.]

Representation

At the hearing of the appeal, the Appellant was represented by Mr. Eric Muhwezi of C/O The Muhwezi Law chambers Advocates whereas Mr. Yesse Mugenyi of Mugenyi & Co. Advocates represented the respondent.

JUDGMENT OF A.S.NSHIMYE,AG.JSC

Brief facts

This is a second appeal concerning the administration of the estate of the late Moses Ssebitengero Ganya who died testate on 10th April 1998.

In his will, the deceased named the current appellant, Abubaker. S. Ganya together with his two sisters as executors of his will. Subsequently the

appellant and the two sisters applied for a grant of Letters of Administration.

On 20th August 1999, the High Court granted the appellant and the two co-administrators Letters of Administration. It is on record however, that the will was not attached to the application for the grant of Letters of Administration.

The appellant and two sisters administered the estate from 20th August 1999 until 30th July 2004. Subsequently the two sisters died. The respondent together with other beneficiaries challenged the grant of the Letters of Administration to the appellant on ground of mismanagement of the estate and its diminution.

The respondent sued the appellant in the High Court vide HCCS No. 550 of 2004. At the High Court, the following issues were framed for determination:

(i) *Whether Grace Namutebi and Sande Steven Serumunye are children of the deceased and are beneficiaries to his estate.*

(ii) *Whether the defendants* (current appellant) *have filed an inventory and account of the estate.*

(iii) *Whether the defendants have administered the estate in accordance with the will.*

(iv) *Whether the plaintiffs are entitled to the reliefs sought.*

The High Court found in favour of the appellant and held inter alia that Grace Namutebi and Steven Serumunye were not beneficiaries since they were not named in the will. Furthermore, that although the respondent (Nalwoga) was a bonafide beneficiary, she had not established her claim against the appellant.

The respondent was dissatisfied with the decision of the High Court and appealed to the Court of Appeal on the following grounds:

1. *The learned Judge erred in law and fact when he failed to evaluate the evidence on record to determine the accuracy of the inventory and accounts lodged in the High Court and instead held in error that the respondent/s had duly filed in Court an inventory and accounts in accordance with grant of Letters of Administration vide Administration Cause No.710 of 1998.*

2. *The learned Judge erred in fact and law when he held that the respondent/s had administered the estate of the late Moses Ssebitengero Ganya in accordance with the latter's will.*

3. *The learned Judge erred in law and fact when he held that there seems to be a mix up between the estates of the late Alamanzane Ganya and that of Moses Ssebitengero Ganya and that there was a need to carry out an audit to determine what belongs to each of the estate.*

4. *The learned Judge erred in law and fact when he refused to add Ismail Ddamulira and Sarah Nansubuga as parties to the suit and later on failed to give details of his ruling in the final judgment.*

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

On grounds 1 and 2, the Court of Appeal held that it was crucial for the High Court Judge to determine the legality of the Letters of Administration that were granted to the appellant (Abubaker Ganya) and the co-administrators when it was known that the deceased died testate. Furthermore, the Court of Appeal made a finding that the appellant did not avail any evidence to the High Court of the true account of the property and credits of the deceased's estate within one year from the grant of the Letters of Administration.

On ground 3, the Court of Appeal held that there was no mix up of the estates of the late Ssebitengero and his deceased father (Alamanzane Ganya). The Court of Appeal found that the late Ssebitengero was heir to his father's estate through which he obtained property at Busomba. In the will, the late Ssebitengero had indicated that whereas the said property

was still in the names of his late father, the property was bequeathed to him and formed part of his estate.

In regard to ground 4, the Court of Appeal held that none of the issues for determination at the High Court required the proposed plaintiffs to be added to the suit. Therefore, the application for their addition had no merit.

On ground 5, the Court of Appeal upheld the High Court finding that Grace Namutebi and Steven Serumunye were not named in the will as beneficiaries. The court went ahead and listed five beneficiaries it deemed bonafide from the testimony of the respondent. These were: Nansubuga Laeticia, Moses Nsubuga, Nalwoga Yasmin, Ismail Ddamulira, Nansubuga Sarah and Fatuma Nantongo (widow).

In conclusion, the Court of Appeal allowed the respondent's appeal save ground 4 and ordered the revocation of the Letters of Administration granted to the appellant. The court further made an order that the respondent identifies two other family members to apply for grant of letters of Administration and that the estate should be administered in accordance with the will.

The appellant (Abubaker Ganya) was dissatisfied with the decision of the Court of Appeal and appealed to this Court on the following grounds:

1. The learned Justices of Appeal erred in law and fact in faulting the learned trial judge for not addressing the following issues when they were not raised for determination:

   (i) Legality of the Letters of Administration for the estate of the late Ssebitengero Ganya.

   (ii) The appellant and his co-administrators to apply and to be granted Letters of Administration as if the deceased's estate was intestate when in fact it was testate and were aware of this fact.

   (iii) The appellant and his co-administrators filing inventories and rendering to court a true account of the property and the credits of the deceased's estate late without evidence of the High Court allowing the late filing.

2. The learned Justices of Appeal erred in law and fact in holding that there was an intention on the part of the estate administrators not to let the beneficiaries of the estate know the real status of the estate.

3. The learned Justices of Appeal erred in law and fact in making various decisions and orders in the judgment in favour of persons

that were not named in the deceased's will as beneficiaries of the deceased's estate, when the suit was not a representative one.

4. The learned Justices of Appeal erred in law and fact when they allowed ground 3 of the appeal criticizing the learned trial judge for his holding and decision that there was a mix up of estates of Alamanzane Ganya and that of Moses Ssebitengero Ganya and that there was need to carry out the audit for the estate land at Seeta, yet the learned justices themselves upheld that decision.

5. The learned Justices of Appeal erred in law and fact in holding that the learned trial judge did not come out clearly to state who other beneficiaries of the deceased's estate were and who the justices named, when the true beneficiaries were only those mentioned un the uncontested will which the respondent sought in the suit to be enforced by the appellant.

6. The learned Justices of Appeal erred in law and fact in ordering that the appellant files a comprehensive true and correct statement of account within 60 days from the date of judgment when persons to carry out the audit of the said two separate estates were not named and not given time-lines.

7. The learned Justices of Appeal erred in law and fact in holding that the learned trial Judge was not justified to hold that the respondent

had not proved her case against the appellant and this made them make a wrong decision that the respondent had proved her case and thus entitled to judgment against the appellant.

8. The learned Justices of Appeal erred in law and fact in revoking the Letters of Administration held by the appellant for the estate of late Ssebitengero Ganya when the respondent had not proved any justifiable reason for it.

The appellant prays that the appeal be allowed with costs and the judgment of the Court of Appeal be set aside.

Appellant's submissions:

Ground 1

The appellant submitted on ground 1 (i)-(iii) that the learned Justices of Appeal framed issues of illegality on their own yet the said issues were neither pleaded nor was the appellant given an opportunity to be heard on the same. It was submitted on his behalf that the trial judge could not be faulted for not resolving the issue of illegality which was not framed for determination.

Ground 2

The appellant submitted that the learned Justices of Appeal gave him and the deceased co-administrators wide powers to manage the estate without interference from any person. He stated that the High Court was

therefore right to accept the appellant's distribution of the sale proceeds of the land at Wandegeya. Furthermore, the appellant submitted that he had made the respondent aware of her legacy and entitlement in the will.

Ground 3

On this ground, the appellant's counsel faulted the learned Justices of Appeal for not limiting their decision to the respondent only. Counsel argued that the learned justices of Appeal erred by mentioning other beneficiaries who were not mentioned in the will. That those mentioned in the will were Nansubuga Leticia, Moses Nsubuga Ganya and Nsubuga Ganya.

Ground 4

The essence of the submissions under this ground was that, the High Court was right in holding that there was a mix up of the two estates contrary to what the Court of Appeal held. It was submitted that although the Court of Appeal, like the High Court ordered an audit of the two estates to be carried out, the Court of Appeal erred in holding that there was no mix- up.

For the appellant, it was also argued that the mix up was evidenced by the fact that the 53 acres of land left by the late Alamanzane did not solely belong to the late Ssebitengero. It was submitted that part of the 53 acres was burial grounds and was to be shared with other beneficiaries of the late Alamanzane. Furthermore, that there was on

record a letter from the Administrator General to the administrators of the estate of the late Ssebitengero to distribute the 53 acres among the beneficiaries of late Alamanzane's estate with each getting 2 acres.

Ground 5

Under this ground, counsel for the appellant submitted that the learned Justices of Appeal erred in including other beneficiaries of the estate of the late Moses Ssebitengero when the same were not named in the will. Counsel stated the beneficiaries named in the will were Karim Ganya, Fatuma Nantongo, Yasmin Nalwoga and his lawyer Nsubuga Nsambu. Counsel also argued that the Court of Appeal was not entitled to name as beneficiaries other persons from the rest of the deceased's children who were not mentioned in the will.

Grounds 6 and 8

The essence of the submissions in these grounds was that the orders made by the Court of Appeal were wrong.

According to the grounds of appeal the impugned orders are:

(i) Order to file a comprehensive true and correct account of the distribution within 60 days.

(ii) Order of revocation of letters of administration held by the appellant,

Ground 7

Under this ground, the appellant contended that the learned trial judge reached a correct finding that the respondent had not established her claim against the appellant. According to the appellant, the finding was reached based on the following evidence:

(a) The respondents were not named executors of the will.

(b) The respondent was bequeathed one plot and at the time of death two plots were still available for disposal which the executors of the will sold and gave the respondent her share.

(c) The respondent's legacy of land at Busomba was not distributed to her because it was still in the names of the deceased's late father- Alamanzane Ganya.

Premised on the above, the appellant submitted that the High Court judge was justified in holding that the respondent had not established her case against the administrators of the estate of the late Ssebitengero

Respondent's submissions:

Grounds 1, 2, 6, 7 and 8

The respondent contended that the issue of whether the respondent (now appellant) had administered the estate in accordance with the will raised at the High Court covered the question of illegalities. Counsel for the

respondent further submitted that, the fact of the appellant obtaining Letters of Administration where a will existed was an illegality itself.

As regards the filing of inventories by the appellant as an administrator of the estate, the respondent argued that the appellant did not comply with Section 278 (1) and (4) of the Succession Act which requires inventories to be filed within six (6) months of the grant. He added that the appellant's failure to file the inventories in the prescribed time amounted to an offence according to Sections 94 and 116 of the Penal Code Act.

Grounds 3 and 5.

It was submitted for the respondent on these grounds that the Court of Appeal was right in specifically mentioning the beneficiaries of the estate of the late Ssebitengero. It was argued that had the court not done so, the appellant would be the only administrator as well as a beneficiary since the rest had died and the heir (Karim Ganya) had disappeared.

Furthermore, it was argued for the respondent that, the appellant as administrator did not present a true inventory of the estate and that where proceeds were received from sale of property, a small amount was presented to the beneficiaries. It was submitted that in light of these circumstances, the Court of Appeal was right in revoking the Letters of Administration granted to the respondent and ordering the appellant to convene a family meeting to appoint new administrators.

Ground 4

In response to the submission that there was a mix-up of the estate of the deceased (Ssebitengero) with that of his late father (Alamanzane), it was contended for the respondent that there was no mix-up and that the learned trial Judge was wrong when he held that there was a mix-up of the two estates.

The respondent submitted that uncontroverted evidence in respect of 100 acres of land was adduced showing that the late Ssebitengero had inherited the said property from his late father. He added that although, the property was still in the names of his father, it became part of his estate since he was the heir and beneficiary to his late father's estate.

The respondent prayed that the judgment and orders of the Court of Appeal be upheld with exception to the order of costs. Furthermore, respondent prayed that this Court makes a finding that the appellant's failure to comply with the orders of Court of the Appeal to file a true statement of account amounted to contempt of court.

Rejoinder:

In rejoinder, counsel for the appellant reiterated his earlier submissions. However, in regard to the respondent's prayer that the appellant be found guilty of contempt of court, he submitted that the submission falls outside the purview of the appeal and should be ignored.

As regards the mix-up of the estates especially the 100 acres, the appellant submitted that the said property was not mentioned in the will as part of the respondent's legacy.

Cross-Appeal:

The respondent filed a cross-appeal on two grounds seeking to vary the following orders of the Court of Appeal:

1. The learned Justices of Appeal erred in law and fact when they held that the sales made by the appellant as an administrator and not as an executor of the will were valid and lawful.

2. The respondents prayed for costs of the appeal in both this Court and the Court of Appeal.

Respondent's submissions on the Cross-appeal:

On ground 1, counsel for the respondent submitted that for the appellant to establish his right as an executor, he had to prove he had a will appointing him an executor. He added that without the will the appellant did not have powers to sell the assets of the estate without the beneficiaries' consent.

Furthermore, counsel submitted that without the grant of probate, the appellant was like any other intermeddler and could not pass any title to any purchaser as he had no authority to do so. He stated that even if there were grant of Letters of Administration, the fact that the estate was

being mismanaged and intermeddled with by the appellant meant the said grant could not validate the illegal acts of diminution. In support of this argument, counsel relied on Section 193 of the Succession Act which provides that:

> ***Letters of Administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.***

Premised on the above, counsel prayed that this Court declares all transactions made out of the estate invalid.

In regard to ground 2, counsel for the respondent submitted that costs in this appeal and in the Court of Appeal be granted to the respondent since it was the appellant's conduct that led to the institution of the present appeal. In addition, counsel relied on Section 27 (2) of the Civil Procedure Act which is to the effect that costs follow the event unless for good reason the court directs otherwise. Counsel submitted that the appellant had not given any good reasons to disentitle the respondent of the costs of the suit in the High Court and the Court of Appeal.

Appellant's submissions in reply to the cross appeal:

Ground 1

The appellant raised a preliminary objection that the cross-appeal be expunged because it was filed and served out of time without

the leave of Court. This notwithstanding, the appellant submitted that this ground is not tenable because it was not based on the decision of the Court of Appeal but rather on the orders of the court.

The appellant's counsel also submitted that the issue of invalidating the sale transactions was not among the grounds raised at the Court of Appeal. The appellant prayed that ground 1 of the cross-appeal be disallowed.

Ground 2

The appellant supported the Court of Appeal's finding and reasoning that each party bears its own costs. It was submitted that upon refusal to award costs to the successful party the court proceeded to give its reasons for not doing so.

The appellant prayed that the cross-appeal be dismissed with costs.

Consideration of Court:

Preliminary Objection.

I will first deal with the preliminary objection raised by the appellant against the late filing of the 2nd and 3rd respondent's submissions.

Filing of court documents should strictly comply with the statutory timelines save where the leave of Court is sought and granted. The 2nd and 3rd respondents did not seek for the leave of Court. However, in the exercise of this Court's inherent power provided for in **Rule 2 (2)** of the **Rules of this Court** and in the interest of

justice, this Court shall consider the affidavits and submissions made there under.

Ground 1 and 2

The appellant faulted the Court of Appeal for determining issues of legality of Letters of Administration and filing inventories yet the same had not been raised at the High Court.

Before resolving the contention, it is pertinent to state the renowned duty of a first appellate court which has been laid down in a plethora of authorities. The first appellate court must review the evidence and consider the materials adduced before the trial court, make up its own mind on the evidence and come to its conclusion. [See: ***Pandya vs. R [1957] E.A 336, Kifamunte Henry vs. Uganda SCCA No.10 of 1997***.]

In carrying out the above duty, the first appellate court subjects the evidence on record to a fresh analysis. In the process, the court can determine issues not raised by the parties if the determination of such issues will aid the court come to a logical conclusion. I am alive to Rule 98 (a) of the Rules of this court which is similar to Rule 120 of the Court of Appeal Rules which prohibits litigants from arguing grounds not raised in their memoranda of appeal. Be that as it may this Court in ***Elizabeth Nalumansi vs. Jolly Kasande & 2 Ors SCCA No. 10 of 2015*** held that,

Although parties are restricted from raising new grounds, court may on its own motion in exercise of its inherent powers consider a legal issue not presented and agreed upon by the litigants.

I only wish to add that when court raises a new legal issue, it should hear the parties on the issue before making a decision on it. The principle has been reiterated by the court in various decisions. These include ***Oriental Insurance Brokers Ltd vs. Transocean (U) Ltd, Civil Appeal No. 55 of 1995 and Fang Min & anor vs Belex Tours & Travel Ltd, Supreme Court consolidated Civil Appeal Nos 06 of 2013 and 01 of 2014*** Secondly the legal issues raised should emanate from the pleadings of the parties.

As such, the Court of Appeal was not restricted to consider only the issues or grounds placed before it for determination by the parties. Consequently, the learned Justices of Appeal cannot be faulted for having determined issues of legality of the Letters of Administration. In fact, the question of legality of the letters of Administration was pertinent in determining the issue of whether or not the estate was administered appropriately as raised by the parties.

I therefore come to the conclusion that grounds 1 and 2 should fail.

Grounds 3 and 5.

The major contention in these grounds concerns who the beneficiaries of the estate of the late Sebitengero are. The Court of Appeal held that two of the beneficiaries - Grace Namutebi and Sande Steven - failed to prove that they were children of the deceased.

The Court of Appeal went ahead and listed beneficiaries deemed to be bonafide according to the testimony of the respondent. These were Nansubuga Leticia, Moses Nsubuga Ganya, Nalwoga Yasmin, Ismail Ddamulira, Nansubuga Sarah and Fatuma Nantongo (See page 454 of the record). The appellant argues that this was an error by the court.

A beneficiary is defined by Blacks' Law Dictionary 9th Edition pg 176 as follows:

> ***"A person for whose benefit property is held in trust especially one designated to benefit from an appointment, distortion or assignment (as in a will insurance policy etc)."***

In the present case, a beneficiary is an individual or entity to whom a deceased bequeaths real and personal property, cash or other assets. A named beneficiary in the will has ascertainable interest in the estate to the extent of the inheritable assets bequeathed.

On record is the will of the late Moses Ssebitengero. It reveals the following persons as the named beneficiaries of the estate:

(i) Karim Ganya- Heir
(ii) Fatuma Nantongo- Widow
(iii) Abubaker Sebalamu- Executor
(iv) Abdul Waswa- Executor
(v) Rehema Nansubuga- Executor
(vi) Hisma Ddamulira- son
(vii) Yasimi Nalwoga- daughter
(viii) Nsubuga Nsambu- lawyer

The Court of Appeal held that the beneficiaries named were those named by the respondent (Yasimi Nalwoga) during the trial in the High Court.

In my view, the Court of Appeal erred in listing the names of the beneficiaries from the testimony of the respondent and not the deceased's will. A testate's estate should be strictly administered according to the intentions of the deceased stipulated in the will. In ***William on Wills 7th Edn pg 513*** it is stated as follows:

> ***"The first and great rule to which all others must bend is that effect must be given to the intention of the testator, but the intention herein question is not the intense in the mind of the***

testator at the time he made his will but that declared and apparent in his will".

Therefore Grounds 3 and 5 of the appeal would succeed.

Ground 4

The arguments under this ground relate to the alleged mix- up of the estate of the late Moses Ssebitengero and that of his father, the late Alamanzane.

The mix-up stems from the fact that the late Ssebitengero inherited from his father – late Alamanzane land as an heir measuring 1 square mile at Busomba. At the time of Ssebitengero's death, this property had not been transferred into his names. The defacto ownership of the land was still in the names of Alamanzane Ganya.

However, in the will, the late Ssebitengero pointed out the fact that the said land was still in the names of his late father but that he owned it as an heir and bequeathed it as follows:

"I have one square mailo of land at Busomba and at the time of writing this will, I had not yet transferred the same into my names but that is not a big problem since I have appointed the executors they will process it. The middle part of it will be for my heir together with the storeyed house thereat. The remaining part of that land shall be divided into three equal

pieces. One will be for my wife Fatuma Nantongo, one for Hisima Ddamulira Ganya and the other for Yasimi Nalwoga."

A reading of the above extract does not show any mix-up of the two estates. I accordingly uphold the finding of the Court of Appeal that there was no mix-up of the estates.

Ground 4 therefore fails.

Grounds 7 and 8

The submissions made in regard to these grounds raise the following issues:

(i) Whether the statements of account filed by the appellant regarding the estate were true and filed within time.

(ii) Whether in the circumstances of the case the Court of Appeal was justified in revoking the grant of Letters of Administration.

I will address issue 1 first. The filing of an inventory/ account is one of the paramount duties of an administrator/ executor of a deceased's estate. Section 278 (1) of the Succession Act provides that:

An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint exhibit in that court an

inventory containing a full and true estimate of all the property in possession , and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of, *(My emphasis)*

The above provision makes the filing of an account and inventory by an executor mandatory and time specific. Failure by an executor to oblige the provision amounts to an offence under Section 119 of the Penal Code Act.

Furthermore, the inventory filed should contain a 'full and true estimate' of all the property of the deceased's estate and how it was distributed and the remainder (if any).

In the present case, whereas the learned trial Judge made a finding that the administrators of the estate of the late Ssebitengero filed an inventory and an account; he did not make a finding on: (i) whether the inventory was filed within time; and (ii) whether the inventory was complete and accurate. Indeed Grounds 1 and 2 of Appeal at the Court of Appeal arose from the trial Judge's failure to make findings on these two points.

The Court of Appeal on the other hand observed that the appellant and his co-administrators adduced evidence showing that an inventory of assets and liabilities of the late Ssebitengero's estate was filed on 18/03/2002, 07/08/2002 and on 20/06/2004. However, the learned Justices of Appeal took issue with the time of filing and cast serious doubt on the accuracy of the inventory. They observed as follows:

> *"All these inventories were filed more than two (2) years from the date of the grant of letters of administration on 20/08/1999...The respondent [present appellant] did not avail any evidence of the High Court having allowed late filing of the inventory in Administration Cause No. 710 of 1998. There was also no evidence of any rendering to that Court of a true account of the property and credits of the deceased's estate within one year from 20/08/1999...Having very carefully gone through the inventories ourselves as well as the Will of the deceased and having analyzed the evidence adduced at trial, that of the respondent [present appellant] inclusive, we agree with the submissions of the appellant's [present respondent] counsel that the inventories filed in Court by the administrators did not in any way give a true status of the estate of the deceased's estate and could not amount to compliance with the law by the administrators."*

Having reviewed the evidence on record, I agree with the above finding of the learned Justices of Appeal. My review shows that: (i) The inventories

on record were filed way out of time [the letters of administration having been granted on 20/08/1999]. Filing of the inventories in 2002 and 2004 was therefore contrary to section 278(1) of the Succession Act; (ii) The inventories filed did not reflect a full and true account as to how the late Ssebitengero's estate was distributed. This was also contrary to section 278(1) of the Succession Act; (iii) As at the time of filing HCCS No. 550 of 2011 [11 years after the grant], the final distribution and account had not been filed in Court.

I therefore come to the conclusion that the appellant did not file a timely and true inventory in accordance with the law.

I now turn to answer the second issue whether in the circumstances the Court of Appeal was right in revoking the Letters of Administration.

Revocation of Letters of Administration is provided for in **Section 234** of the Succession Act which provides *inter alia* as follows:

(1) The grant of probate or Letters of Administration may be revoked or annulled for just cause.

(2) In this section, "just cause" means-

(a) That the proceedings to obtain the grant were defective in substance;

(b) That the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) *That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;*

(d) *That the grant has become useless and inoperative through circumstances; or*

(e) *That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account ... or has exhibited under an inventory or account which is untrue in a material respect.* (*My Emphasis*)

The grant of Letters of Administration is limited to intestate estates. However, in instances where there is existence of a will which cannot be accessed, or is lost or damaged, then the procedure of applying for letters of Administration can be used. In the instant case, the appellant together with the deceased co-administrators applied for the grant of Letters of Administration well knowing that a will existed. The existence of the will was concealed at the time of applying for the grant yet it was a material fact pertinent to the grant. This contravened **Section 234 (2) (c) (supra)**.

I have earlier above held that the appellant did not file a true statement of account and inventory of the estate which contravened **Section 234 (2) (e) (supra)**. As such, the Court of Appeal for just

cause rightly revoked the grant of the Letters of Administration to the appellant.

Consequently, Grounds 7 and 8 would also fail.

Court's consideration of the Cross-Appeal:

The respondent contended that the learned Justices of Appeal erred in validating the sales made by the appellant and yet the court had revoked the grant of Letters of Administration which gave him the right to deal with estate.

Sections 189 and 192 of the ***Succession Act*** are to the effect that the grant of Letters of Administration or Probate validates all acts of the executor or Administrator in respect to the deceased's estate. The acts not validated are those which cause loss, damage or diminution of the estate as well as intermeddling with the estate.

The appellant in the instant case gained the right to deal with the estate of the late Ssebitengero upon obtaining the grant of the Letters of Administration albeit in concealment of the fact that a will was in existence. The appellant's right to deal with the estate extended up to the time of revocation of the grant. Thus, the sales were not invalid.

Accordingly, this ground of the respondent's cross-appeal would fail.

The other ground raised by the respondent in the cross-appeal was that the Court of Appeal denied him costs of the appeal yet the court had found in his favour.

It is trite law according to Section 27 of the Civil Procedure Act that costs follow the event. But it is also trite law that the awarding of costs is in the discretion of the court. [See: ***Iyamulemye David vs. AG (SCCA No.4 of 2013)***].

Where the court exercises its discretion not to award costs, reasons for doing so must be given. [See: ***Muwanga Kivumbi vs. AG (SCCA No.06 of 2011)*** and ***Besigye Kizza vs. Museveni and Electoral Commission, Presidential Election Petition No.01 of 2001***].

In the present case, the Court of Appeal in exercise of its discretion not to award costs gave the following reason:

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

In my opinion, the Court of Appeal did not injudiciously withhold the awarding of costs to the respondent. The court gave a good reason for doing so and I see no justification to interfere.

Therefore, ground 2 of the cross-appeal would also fail.

Orders

1. Having held that the grounds of the cross-appeal should fail, it is hereby dismissed.

2. The main appeal partly succeeds on grounds 3 and 5 and fails on the rest of the grounds. Consequently, I would uphold the judgment and orders of the Court of Appeal save those affected by the success of grounds 3 and 5.

3. Accordingly, the orders of the Court of Appeal would be modified as follows:

   (a) The beneficiaries of the deceased's estate are those mentioned in the will of the deceased and not those mentioned in the respondent's testimony.

   (b) The appellant is hereby ordered with immediate effect in any case not later than 7days from the date of delivery of this judgment to surrender the revoked Letters of Administration to the court that made the grant.

(c) Upon surrendering the grant, the appellant should file in the High Court a true statement of account and inventory of the estate within 30days from the date of this judgment. As a further directive, the inventory and statement of account should include the period from the time of grant of the Letters of Administration until surrender of the same.

(d) I would order that each party bears their own costs since they were relatives and the suit concerns family property.

Dated at Kampala this 17th day of December 2018.

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A.S. NSHIMYE

AG.JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(Coram: Opio-Aweri, Tibatemwa-Ekirikubinza, Mugamba, JJSC,; Nshimye; Tmwesigye, Ag. JJSC)

CIVIL APPEAL NO. 14 OF 2017

BETWEEN

ABUBAKER SEBALAMU GANYA::APPELLANT

AND

YASMIN NALWOGA::RESPONDENT

(Appeal from the Judgment of the Court of Appeal of Uganda at Kampala by Kasule, Buteera and Cheborion, JJA. Civil Appeal No. 110 of 2011, dated 12th day of October 2017)

JUDGMENT OF OPIO-AWERI, JSC

I have had the benefit of reading in draft, the judgment of my learned brother Hon. Justice A.S. Nshimye, Ag. JSC. I agree with his decision and orders as proposed. Since all other Justices are in agreement, the appeal is dismissed.

Dated at Kampala this.....17th.....day of.....December.....2018.

OPIO-AWERI

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: OPIO-AWERI; TIBATEMWA-EKIRIKUBINZA; MUGAMBA,JJSC;NSHIMYE; TUMWESIGYE,Ag.JJSC.]

CIVIL APPEAL NO. 14 OF 2017

BETWEEN

ABUBAKER SEBALAMU GANYA ::::::::::::::::::::::::::] APPELLANT

AND

YASMIN NALWOGA ::] RESPONDENT

[Appeal from the judgment of the Court of Appeal before (Kasule,Buteera and Cheborion, JJA) at Kampala in Civil Appeal No.110 of 2011 dated 12th October, 2017.]

JUDGMENT OF TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading in draft the Judgment of my learned brother, Justice A.S.Nshimye, Ag.JSC and I agree with his analysis, conclusion as well as the Orders he has proposed.

Dated at Kampala this 17th day of December 2018.

L Tibatemwa.

JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: OPIO-AWERI, TIBATEMWA-EKIRIKUBINZA, MUGAMBA; JSC NSHIMYE, TUMWESIGYE AG. JSC

CIVIL APPEAL NO. 14 OF 2017

ABUBAKER SEBALAMU GANYA :: APPELLANT

VERSUS

YASMIN NALWOGA :: RESPONDENT

JUDGMENT OF MUGAMBA JSC

I have had the benefit of reading in draft the judgment of my brother, Augustine Nshimye, Ag. JSC.

I agree with the decision and the orders made there under.

Dated at Kampala this 17th day of December 2018

.....

Paul K. Mugamba

JUSTICE OF SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: OPIO-AWERI, TIBATEMWA-EKIRIKUBINZA, MUGAMBA, JJSC; NSHIMYE, TUMWESIGYE, AG. JJSC

CIVIL APPEAL NO: 14 OF 2017

BETWEEN

ABUBAKER SEBALAMU GANYA :: APPELLANT

AND

YASMIN NALWOGA ::RESPONDENT

[Appeal from the judgment of the Court of Appeal (Kasule, Buteera and Cheborion, JJ.A) at Kampala, in Civil Appeal No. 110 of 2011 dated 12th October, 2017]

JUDGMENT OF TUMWESIGYE, AG. JSC

I have had the benefit of reading in draft the judgment of my learned brother, Justice A.S. Nshimye, Ag. JSC, and I agree with his judgment and the orders he has proposed.

Dated at Kampala this 17th day of December 2018

Jotham Tumwesigye
AG. JUSTICE OF THE SUPREME COURT