

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
HIGH COURT CIVIL SUIT NO. 133 OF 2012

1. JOHN KAYONDO
2. SSEGAMWENGE CHARLES
3. JEMBA JOSEPH
4. NDAWULA FRANCIS
5. NAKAJUMBA MARY
6. NAKABIRI MARGARET
7. NDAGIRE AGNES
8. ZANSANZE GERTRUDE
9. NASOLO NOELINA:..... PLAINTIFFS

VERSUS

1. DOROTHY NAKIMBUGWE (represented by Kagere Teopista as the administrator).
2. Teopista Kagere
3. Mutebi George William (represented by Kato Charles as the Administrator).
4. John Baptist Muyabala Mayega
5. Kato Charles.
6. Mukasa Noah.
7. Emmanuel Kayondo (represented by Muvuma Richard Kayondo as the administrator). :..... DEFENDANTS

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT


24/04/2025

1]. The plaintiffs claim against the defendants is as follows:

- I. The Plaintiffs are seeking for the revocation of letters of administration obtained by the 1st and 2nd defendants from the High Court vide **Miscellaneous Application No. 81 of 2009**.
- II. A declaration that the plaintiffs are entitled to the suit property.
- III. A grant of letters of administration be issued in favour of the 1st plaintiff.
- IV. An order to surrender to court the grant of the Letters of Administration in possession of the 1st and 2nd defendants and to file a comprehensive true and correct statement of account of dealings with the estate of the late Petero Mundu Wampamba.
- V. An order for the 1st and 2nd defendants to surrender all the certificates of titles for **Kyadondo Block 196, Plots 1534, 1535, 1536, 1537, 1538, 1539, formerly Kyadondo Block 196 plot 50 land at Komamboga**.
- VI. A permanent injunction restraining the defendants from undertaking any further dealings with the estate of the late Petero Mundu Wampamba.
- VII. An order to pay reparations for the loss and damage, neglect occasioned to the estate of the late Emmanuel Suuna.
- VIII. An order cancelling the 1st and the 2nd defendants as proprietors or administrators of the said parcels of land and that Petero Mundu Wampamba be reinstated as the rightful proprietor thereafter.


24/04/2025

IX. An order to pay special, general and punitive damages to the plaintiffs.

X. Costs of the suit and interest thereon.

2]. The facts giving rise to the cause of action are as follows:

- I. That the deceased Petero Mundu Wampamba died intestate having left no will or any other valid testamentary instrument but was survived by three children namely **Beda Jjemba, Yosefu Wapamba Mawanda and Francis Kimbugwe.**
- II. That the late Petero Mundu Wapamba's estate comprised of properties located at Komamboga comprised in **Kyadondo Block 196 Plot 50** now subdivided in **Kyadondo Block 196 plots 1534, 1535, 1536, 1537, 1538, 1539** (hereinafter referred to as the suit property) in Kanyanya and Kyanja.
- III. That Yosefu Wampamba Mawanda now deceased, a grandfather to the plaintiffs and father to the 1st and 2nd defendants also died intestate having left no Will or any other testamentary instrument but was survived by four children namely, Emmanuel Suuna, his heir and father to the plaintiffs, Nankibugwe Dorotia, Kagere Teopista(defendants) and John Mulondo.
- IV. That the late Yosefu Wampamba Mawanda took possession of the suit property which he inherited from his father but did not effect a transfer into his names.
- V. That during his lifetime, the late Yozefu Wampamba Mawanda purchased property at Kyanja which he gave to his son John Mulondo but unfortunately the said John Mulondo passed away in a car accident on the 29th November 1971 at the age of 21 years and the land reverted back to Yosefu Wampamba Mawanda.


24/04/2025

- VI. That on the 23rd day of March 1980, Yosefu Wampamba Mawanda was murdered and his residence on the suit property was ransacked and certificates of title which were still in the names of his father late Petero Mubiru Wampamba were stolen.
- VII. That the said Yosefu Wampamba Mawanda died intestate and his son Emmanuel Suuna now deceased was appointed as his heir and assumed ownership of both the suit property and property at Kyanja under Buganda culture without any protests from his siblings (the 1st and 2nd defendants).
- VIII. That the late Emmanuel Suuna took possession of the suit property and lived thereon with his family undisturbed while the defendants lived happily in Kyanja as their share out of their father's estate.
- IX. That upon the passing on of Emmanuel Suuna, his son John Kayondo was appointed as the heir and inherited the suit property which also comprises the burial grounds for the benefit of his siblings and himself without protest from the 1st and 2nd defendants or any member of the family.
- X. That through fraud, on the 14th July 1999 vide **Administration Cause No. 0117 of 1999**, Letters of Administration were issued by Musimbi Muse in favour of Anna Maria Nakiwala to administer the estate the late Peter Mundu.
- XI. That the 1st and 2nd defendants also fraudulently through **Miscellaneous Application No.81 of 2009** moved the High Court to revoke the Letters of Administration granted to Anna Maria Nakiwala and thereafter issue the fresh grant to them to administer the said estate.
- XII. That a family meeting was never convened to agree on which persons should petition for the grant of Letters of Administration for the estate of the late Petero Mundu Wampamba.


24/04/2025

XIII. That after obtaining the said letters of administration, the defendants forcefully in the company of policemen and their lawyers a one Alzik Namutebi of Nyanzi Kiboneka & Co. Advocates, surveyed the land and later subdivided it into six parcels of land.

XIV. That in order to protect their rights in the suit property, the plaintiffs represented by the 1st plaintiff lodged caveats on all the properties.

3]. The plaintiffs listed the particulars of fraud against the 1st and 2nd defendants as follows:

- I. Procuring court to grant them letters of administration with the sole purpose of defrauding the plaintiffs the rightful owners of the suit property.
- II. Acquiring letters of Administration without the consent of the family members especially the plaintiffs.
- III. Obtaining registration on the suit property by concealing very vital information pertaining to the current ownership of the suit land which has and is still in possession of the plaintiffs from the 23rd day of March 1980.
- IV. Exhibiting an inventory which is false.
- V. Conniving with the 4th defendant to survey the plaintiff's property forcefully in the company of police personnel from Kanyanya police station headed by the officer in charge a one Turyasingura Mathias despite several warnings from the 1st plaintiff.

4]. Particulars of fraud against the 3rd, 4th, 5th, 6th, and 7th defendants

- I. Conniving with the 1st and 2nd defendants to subdivide the suit property well knowing it to be property of the plaintiffs who acquired it through a series of inherited occasions.


24/04/2025

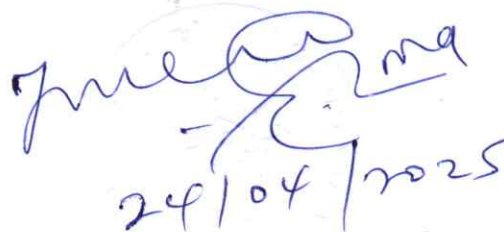
- II. Procuring persons to purchase the plaintiffs property without their consent well knowing that it comprises of the family ancestral burial grounds since the year 1900 and as such cannot be disposed of.
- III. Deploying Police personnel and counsel Alzik Namutebi to intimidate the plaintiffs as the 4th defendant surveyed the land with the consent of the 1st and 2nd defendants to which the plaintiffs could not offer any resistance during the exercise.

5]. Particulars of fraud against the 7th defendant.

- I. Conniving with all the defendants to convene meetings to dispose of the suit property under the disguise of being the clan head yet he was fully aware that the suit property belongs to the plaintiffs.
- II. Vesting himself with the powers of an Administrator of the said estate in the absence of such powers granted to him by any court with competent jurisdiction.
- III. Misusing his office as clan head to distribute the suit property amidst family disputes.
- IV. Abusing his office to execute duties which are not within his mandate as a clan head.

6]. Particulars of special damages

- I. Incurring costs worth **two million shillings (2,000,000/=)** for lodging caveats on all the suit properties which were subdivided into Kyadondo Block 196, Plots 1534, 1535, 1536, 1537, 1538 and 1539 formerly Kyadondo Block 196 Plot 50 land at Komamboga as a result of the actions of the defendants.
- II. That the defendants and their lawyers are in the process of disposing of the suit land to third parties for their own benefit and to the detriment of the beneficiaries.


24/04/2025

7]. The plaintiffs contend that the defendants have willfully and without reasonable cause or at all failed to exhibit an account of the estate showing all their dealings with the properties. That the defendants have unjustly and unfairly defrauded the beneficiaries and have misused the estate.

8]. The plaintiffs contend that the defendants have left the estate in a state of dissipation and have intentions of disposing off the suit property to a third party without consulting them yet they are the only beneficiaries to the suit property. The plaintiffs further contend that John Kayondo being the customary heir of the late Emmanuel Suuna who also inherited the suit property, is the person dressed with the authority to make decisions concerning the suit property.

9]. The Plaintiffs are praying for judgment to be entered against the defendants with the following orders:

- I. **An order for the revocation and confiscation of the grant of Letters of Administration in possession of the defendants allegedly issued under Administration Cause No. 039 of 2009.**
- II. **An order declaring that all the transactions affecting the suit property are null and void.**
- III. **A permanent injunction restraining the defendants from interfering with the suit property and other assets.**
- IV. **An order directing cancellation of the registration of the 1st and 2nd defendants on the suit property comprised in Kyadondo Block 196 Plots 1534, 1535, 1536, 1537, 1538, 1539 and to create Kyadondo Block 196 Plot 50 land at Komamboga.**
- V. **An order for cancellation of titles for Kyadondo Block 196 plots 1534, 1535, 1536, 1537, 1538, 1539 to amalgamate into Kyadondo Block 196 Plot 50 land at Komamboga.**


24/04/2025

- VI. An order for registration of Kyadondo Block 196 Plot 50 into the names of Petero Mundu Wampamba.
- VII. An order directing the defendants to avail a detailed inventory of the estate of the late Petero Mundu Wampamba throughout the period of administration.
- VIII. An order directing the defendants to surrender the certificates of titles for Block 196, plots 1534, 1535, 1536, 1537, 1538, 1539 land at Komamboga.
- IX. A permanent injunction restraining the defendants from undertaking any further dealings with the estate of the late Emmanuel Suuna .
- X. An order appointing the 1st plaintiff as administrator of the estate of the late Petero Mundu Wampamba.
- XI. General damages.
- XII. Special damages.
- XIII. Punitive damages.
- XIV. Costs of the suit.
- XV. Any other relief that the court deems fit.

10]. In their joint written statement of defence the 1st and 2nd defendants state inter alia:

- I. That the estate of the late Petro Mundu was never distributed to anyone until they got letters of administration of his estate.

True
24/04/2025

- II. That the suit property has always remained the property of the estate of the late Petro Mundu.
- III. That Yozefu Wampamba Mawanda died intestate and Emmanuel Suuna was appointed as his heir.
- IV. That at the time of their father's death, the suit property was under the estate of the late Petro Mundu their grandfather and the certificate of title was still in his name.
- V. That the late Emmanuel Suuna never stayed on the suit land as alleged by the plaintiffs but was staying at his home in Singo –Kasejere and only came on the suit land for treatment where he stayed with the 1st defendant and later passed on in 1996.
- VI. That they never stayed on the land at Kyanja as alleged by the plaintiffs but they have at all times been staying in their respective marriages and at some time on the suit land with their father.
- VII. The said defendants contend that the suit land has never been part of the estate of the late Emmanuel Suuna as the plaintiffs allege but the suit land was the property for the estate of the late Petro Mundu who died intestate.

11]. The said defendants further contended that they challenged the grant of letters of administration to Ann Maria Nakiwala as a wife (widow) of Petro Mundu and they filed a suit vide H.C.C.S No. 39 of 2009 for the revocation of letters of administration. That the court decided the case and cancelled the grant of letters of administration to Ann Maria and granted them to the 1st and 2nd defendants.

12]. The said defendants further contended that a family meeting was convened for all the direct beneficiaries of the estate of the late Petro Mundu which included Beda Jemba , Francis Kimbugwe , Mawanda Yozefu and the head of the family lineage Kayondo Micheal which meeting was disrupted by the plaintiffs.

Emmanuel Suuna
24/04/2025

13]. The said defendants further contend that when they obtained letters of administration for the said estate they proceeded to administer the estate in respect of Plot 50 Block 196 and they convened a 2nd meeting from which it was agreed that the property be distributed amongst the beneficiaries and part of the land be left as burial grounds.

14]. The said defendants further contended that on the issue of distribution, the plaintiffs sought the intervention of their lawyer Damiano Lubega who agreed with the distribution scheme and allowed the 1st and 2nd defendants to proceed with the distribution. That they then sub-divided the land into four pieces of plots for all the beneficiaries and also the burial grounds.

15]. The said defendants contended that the plaintiffs were given their share of their late father Emmanuel Suuna for which they occupied. That the caveats lodged by the plaintiffs on the suit land were therefore lodged in bad faith.

16]. The said defendants denied the particulars of fraud alleged against them by the plaintiffs and emphasized that the said allegations were baseless and devoid of merit. They further contended that the letters of administration were granted by court and they were the direct beneficiaries of the late Petro Mundu as opposed to the plaintiffs who are 2nd generation beneficiaries.

17]. The said defendants contend that they acquired the letters of administration lawfully vide **High Court Civil Suit No. 39 of 2009**. That they are the legal representatives of the late Petro Mundu and they had all the authority to administer the estate.

18]. The said defendants further contended that they distributed the said estate as was agreed in the family meeting and later filed an inventory in court. The said defendants deny having surveyed the plaintiffs land and deny the particulars of special damages as alleged by the plaintiffs.

19]. The said defendants further contend that the allegations by the plaintiffs against them are baseless and an abuse of court process since the estate was distributed equally to the beneficiaries. They pray that the suit should be dismissed with costs.

20]. In his written statement of defence Mutebi George William hereinafter referred to as "the third defendant" stated inter alia:


24/04/2025

- I. That he has never colluded or connived with anybody to take the property of the late Petero Mundu.
- II. That he only attended a family meeting as the family head /lineage head to protect the interests of the family and those of all the interested parties.
- III. That he convened a family meeting which was attended by all the beneficiaries over the suit land but it failed when the plaintiffs became violent and caused chaos.
- IV. That the family held another meeting which the plaintiffs refused to attend but their advocate was always informed of the progress of the meeting.
- V. That the unofficial wife of Mawanda, Ann Maria Nakiwala fraudulently obtained letters of administration for the estate of Petero Mundu.

21]. The 3rd defendant further stated that the 1st and 2nd defendants as administrators of the estate of the late Petero Mundu shared out the estate /land among the three beneficiaries of the estate of Mawanda Yozefu and also agreed to leave one acres as a burial site. That the three beneficiaries were the 1st and 2nd defendants and the estate of the late Emmanuel Suuna. The 3rd defendant further contended that the plaintiffs are not entitled to any of the reliefs they are seeking and that the suit should be dismissed with costs.

22]. In his written statement of defence John Baptist Muyabala Mayega hereinafter referred to as "the 4th defendant" stated inter alia that the plaintiffs have no claim against him and are not entitled to any of the orders sought.

23]. Kato Charles hereinafter referred to as "the 5th defendant" stated inter alia:

I. That he denies the allegations of fraud against him and that he has never been involved in the estate save for the attendance of a family meeting of the late Petro Mundu.

II. That he is merely a family member of the family of the late Petero Mundu and is not involved in any of the land disputes.

III. That the plaint does not disclose a cause of action against him and should be dismissed with costs.

24]. Mukasa Noah hereinafter referred to as "the 6th defendant" stated inter alia:

- i. That he denies the allegations of fraud labelled against him by the plaintiffs.
- ii. That as the chairperson of the area he is aware that the 1st and 2nd defendants are the daughters of the late Mawanda Yozefu and they obtained letters of administration for his estate.
- iii. That the 1st and 2nd defendants convened a meeting for all the beneficiaries which was disrupted by the plaintiffs.
- iv. The 6th defendant stated that the plaintiffs are not entitled to any of the reliefs they are seeking for and that the suit should be dismissed with costs.

25]. In his written statement of defence Emmanuel Kayondo hereinafter referred to as "the 7th defendant" stated inter alia:

- i. That the plaintiffs have no claim against him and are not entitled to any of the reliefs they are seeking for.
- ii. That the late Yozefu Mawanda had never bought or owned any land at Kyanja as alleged.
- iii. That he denies ever colluding or conniving with anybody to take the property of the estate of the late Petero Mundu.
- iv. That he only attended a family meeting which was attended by all the beneficiaries over the suit land but it failed when the plaintiffs became violent and caused chaos.
- v. That the family held another meeting which the plaintiffs refused to attend but their advocate was always informed of the progress of the meeting.


24/04/2025

- vi. That the unofficial wife of Mawanda , Ann Maria Nakiwala fraudulently obtained letters of administration for the estate of Petro Mundu.
- vii. That the 1st and 2nd defendants as administrators of the estate of the late Petro Mundu shared out the estate /land among the three beneficiaries of the estate of the late Mawanda Yozefu and also agreed to leave one acre for the burial sit/grounds.
- viii. That a 2nd family meeting was convened by the 1st and 2nd defendants and it was confirmed that the estate of the late Petro Mundu was for the beneficiaries.
- ix. The 7th defendant prayed that the suit should be dismissed with costs.

26]. The following issues were raised for determination:

- I. Whether the Plaintiffs have a cause of action against the defendants.**
- II. Whether the requisite letters of administration were fraudulently obtained.**
- III. Whether the defendants have been involved in fraudulent transactions /dealings in respect of the said estate.**
- IV. Whether the 1st and 2nd defendants exhibited a true accountability in their dealings in respect of the estate.**
- V. Whether the plaintiffs who are children of the late Emmanuel Suuna are entitled to the whole suit property.**
- VI. Remedies available to the parties.**

I will first deal with a matter of law that was raised as the 1st issue.


24/04/2025

Whether the Plaintiffs have a cause of action against the defendants

Submissions by the Defendant.

27]. The defendants submitted that the plaintiffs have no cause of action against them. The defendants contended that in order to prove that there is a cause of action, the plaint must show that the plaintiff enjoyed a right, that the right has been violated and that the defendant is liable. The defendants cited the case of ***Tororo Cement and Co. Ltd versus Frokina International Limited-S.C.C.A No. 02 of 2001*** to buttress their submissions.

28]. The defendants also cited the case of ***Kebirungi versus Road Trainers Limited and 2 others [2008] H.C.B 72*** where it was held that the question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. The defendants contend that the plaintiffs instituted this suit as children of the late Emmanuel Ssuna and also indicated that they are 2nd generation grandchildren of the late Petero Mundu who died intestate.

29]. That the plaintiffs under paragraph 5(b) of the amended plaint state that the late Petero Mundu had property at Komamboga comprised in Kyadondo Block 196 Plot 50 registered in his name. Under paragraph 5(b) of the amended plaint the plaintiffs state that the estate of Petero Mundu was distributed and the suit land was given to Yozefu Mawanda Wampamba who was the father to the 1st and 2nd defendant.

30]. The defendants further contend that all the evidence was confirmed by PW1 when she testified that the late Yozefu Mawanda Wampamba was bequeathed the suit land by his father the late Petero Mundu and that when PW1 was cross examined she confirmed that the suit land was bequeathed to the late Yozefu Mawanda Wampamba. That PW3 also stated that the suit land was bequeathed to the late Yozefu Mawanda Wampamba.

31]. The defendants contended that the late Yozefu Mawanda Wampamba died intestate and had not changed the certificate of title in his name. The defendants further contended that the plaintiffs are neither children nor beneficiaries of the estate of the late Yozefu Mawanda Wampamba and hence have no locus standi to


24/04/2025

institute a case with regard to the property belonging to the late Yozefu Mawanda Wampamba.

32]. That as regards the plaintiffs claim of fraudulent acquisition of the letters of administration against the 1st and 2nd defendants, the plaintiffs claim that the 1st and 2nd defendants fraudulently through **Miscellaneous Application No. 81 of 2009** moved the High Court to revoke the letters of administration granted to Anna Maria Nakiwala and thereafter issue a fresh grant to them to administer the estate.

33]. The defendants contended that the grant was issued **vide FD-039 of 2009** to administer the estate of the late Petero Mundu. That in essence the plaintiffs were alleging that the said letters of administration were fraudulently issued by the court to the 1st and 2nd defendants. That in that case the plaintiffs should have then sued the Attorney General and not the defendants.

34]. That the 1st and 2nd defendants who legally possessed the letters of administration of the estate of the late Petero Mundu cannot be accused of dealing with the late's estate fraudulently.

35]. The said defendants cited **Section 180 of the Succession Act** (as amended) which provides that the administrator of the deceased person are his or her legal representative for all purposes and all the property of the deceased person rests in him or her as such. That the said defendants did not therefore violate any rights of the plaintiffs and hence the plaint does not disclose a cause of action and should be struck out with costs.

Submissions by the plaintiffs

36]. The plaintiffs cited the cases of ***Tororo Cement and Co. Limited versus Frokina International (supra)*** and ***Auto Garage versus Motokov- 1971 E.A 514*** to elaborate on what a cause of action was. The plaintiffs contended that in order to prove that there was a cause of action it was necessary for the plaintiffs to establish three elements namely:

- i. The Plaint must show that the plaintiff enjoyed a right.
- ii. That the right was violated.
- iii. the defendant is liable.


24/04/2025

37]. The plaintiffs contend that the present suit discloses a cause of action. That the amended plaint makes specific allegations of fraud against all the defendants. That court precedents have held that a beneficiary can sue without letters of administration in case the estate is being put to waste. The plaintiffs cited the case of **Israel Kabwa versus Martin Banoba Musiga S.C.C.A No. 52 of 1995** to buttress their submissions.

38]. The Plaintiffs contend that the 1st and 2nd defendants are sisters to the plaintiffs' father while defendant 3 is a cousin to their father. That defendant 5 is the son to the 3rd defendant and that defendant 6 is the local council one chairperson where the suit property is situate. That defendant 7 was the head of the plaintiffs' lineage of Prince and princess Kajumba Namulaza.

39]. The Plaintiffs contend that a fraudulent scheme was perpetuated by the defendants and effected by taking advantage of the advanced age and illiteracy of their aunties who are defendant 1 and defendant 2 to deprive them of their beneficial interest in the suit property.

40]. That defendant 2 confirmed that she did not know her age and had problems with her eyes and could not read and write English and had pursued her education studies up to primary five. That she informed court that while acting in concert with defendant 1 and defendant 3 her cousin brother, they moved this court vide **H.C.C.S No. 39 of 2009** to revoke the grant that was issued to Anna Maria Nakiwala and apply for a fresh grant in favour of the 1st and 2nd defendants as administrators

41]. That the 2nd defendant told lies under oath that a lawyer whose details she could not remember was appointed and instructed by this court to represent her and the 1st defendant in the said matter. That the evidence presented by the plaintiffs showed that the defendants were acting in concert and were witnesses in the **H.C.C.S No. 39 of 2009-Dorotia Nakimbugwe and another versus Anna Maria Nakiwala** which set the deprivation of the plaintiffs' property by the defendants in motion.

42]. That it was in that suit that the 1st and 2nd defendants were granted letters of administration which they used fraudulently and illegally to transact on the suit property with the rest of the defendants. That during the cross-examination of DW1, DW4 and DW6 they all confirmed that they were fully aware that the 1st


24/04/2025

and 2nd defendants moved court in the said suit for the grant of letters of administration which were subsequently issued to them to administer the suit property.

43]. The plaintiffs further contended that while testifying in this court in the said case, DW1, DW2, DW3 and DW4 concealed a material fact that after the death of Petro Mundu in 1975, the suit property was distributed in accordance with the customs and clan of the lineage of the Prince and Princess of Kajumba Namulaza. That they also concealed a material fact at the time of applying for letters of administration that the suit property was no longer part of the estate of the late Yosefu Mawanda. That they fully misrepresented to court that they were the only beneficiaries for the suit property.

44]. The plaintiffs contend that since Petero Mundu was their paternal grandfather and since all the children of the late Petro Mundu are since deceased, they are the only surviving descendants to the late Petero Mundu and thus entitled to the share in the estate of their grandfather.

45]. The Plaintiffs further contended that on the 30th day of December 2012, a contradicting and false inventory was filed on behalf of the 1st and 2nd defendants by a law firm operating under the name of Nyanzi, Kiboneka and Mbabazi Advocates and the inventory confirmed that the plaintiffs were on the suit property whose acreage is 4. 30 acres. That the inventory falsely stated that the suit land was distributed as follows:

- a) One acre for the 1st defendant;
- b) One acre for the 2nd defendant;
- c) One acre for the plaintiffs;
- d) One acre for the burial grounds.

46]. The plaintiffs contended that the said inventory was all done without a family meeting. That the allegation by the plaintiffs that the 1st and 2nd defendants were used due to their illiteracy and advanced age to perpetuate a fraudulent scheme. The plaintiffs further contended that the uncontroverted evidence presented by PW1 in a letter dated 22nd September 1997 written by DW7 in his capacity as a clan leader in the lineage of Kajumba Namulaza addressed to the Administrator General confirmed that according to the clan book, the suit property was last


29/04/2025

inherited by the plaintiffs' father Emmanuel Ssuuna who passed on without transferring the same into his names.

47]. The plaintiffs further contended that the factual and legal basis for the plaintiff's cause of action can be found in paragraph 5 of the amended plaint and the annexures attached thereto. That the same issue was already resolved by the Court of Appeal vide ***Civil Appeal No. 26 of 2014 John Kayondo and 7 others versus Dorothy Nakimbugwe and 6 others*** where it was held that the trial Judge violated the parties' rights to be heard and to have a fair hearing by neglecting to hear them, more so as the pleadings alluded to fraud.

48]. The plaintiffs contended that the actions of the defendants were a fragrant violation of the plaintiffs non derogable and constitutionally guaranteed right to own property as provided for under **Article 26(1) of the Constitution of the Republic of Uganda.**

Decision of Court on whether the plaintiffs have a cause of action against the defendants

49. It was held in the case of ***Tororo Cement Co. Ltd versus Frokina International Ltd-S.C.C.A No. 02 of 2001*** citing the case of ***Auto Garage versus Motokov(No.3) 1971 EA 514*** that to establish whether the plaintiffs have a cause of action it must be shown that :

- a) The plaintiff enjoyed a right;
- b) That right has been violated;
- c) The defendant is liable.

50]. That if all the said three elements are present then a cause of action is disclosed and any defect or omission can be put right by amendment. That it was further held that Order 7, rule 7(a) of the Civil Procedure Rules provides that the plaint shall be rejected –

"(a) where it does not disclose a cause of action."

51]. A cause of action means every fact which is material to be proved to enable the plaintiff to succeed or every fact which if denied the plaintiff must prove in order to obtain judgment. See ***Cooke versus Gull LR 8 E.P page 116 and Read versus Brown ,22 QBD page 31.***

John Kayondo
24/04/2025

52]. In this case, the plaintiffs cause of action against the defendants as stated in their amended plaint is that the 1st and 2nd defendants fraudulently obtained letters of administration for the estate of the late Petero Mundu Wampamba and subsequently deprived the plaintiffs of their interest in the said estate.

53]. The Plaintiffs instituted this suit as children of the late Emmanuel Ssuuna and claim that the estate of the late Petero Mundu was distributed. The Plaintiffs contend that their interest flows from their father the late Emmanuel Ssuuna who also acquired it as a beneficial interest from his father the late Yozefu Mawanda who had also inherited the same from his father the late Petro Mundu Wampamba.

54]. The late Yozefu Mawanda is the father to the plaintiffs father the late Emmanuel Suuna and the 1st and 2nd defendants. Evidence was led to show that by decree of this court vide ***H.C.C.S No. 39 of 2009 (Family Divison) –Dorotia Nakimbugwe and another versus Anna Maria Nakiwala*** it was decreed that the letters of administration for the estate of the late Petro Mundu be granted to the Plaintiffs (who are the 1st and 2nd defendants in this case).

55]. The above notwithstanding, the father of the 1st and 2nd defendants who happens to be the grandfather of the plaintiff is claimed to have inherited the suit land from his father. The plaintiffs alleged that the estate of the late Petero Mundu had already been distributed and that the 1st and 2nd defendants got their share in Kyanja which they sold off and came to claim the suit land which had been given to the father of the plaintiffs the late Emmanuel Ssuuna from whom the plaintiffs now claim.

56]. Section 191 of the Succession Act Cap 162 (as it applied then) provided 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."***

57]. There was no evidence adduced to show that the estate of the late Petero Mundu had devolved legally to the father of the plaintiffs as there was no evidence that he applied for letters of administration for the said estate. Indeed,


24/04/2025

the evidence adduced reveals that the late Yosefu Mawanda had not changed proprietorship of the suit land because he could not do so without letters of administration.

58]. The contention that the late Petero Mundu had distributed his estate is equally untenable because no evidence was adduced to show how the late Petero Mundu had distributed his estate. The Plaintiffs contend that after the passing of the late Yozefu Mawanda , a family meeting was held in the presence of the surviving issues namely Emmanuel Ssuna, Dorothy Nakimbugwe and Teopista Kagere and that it was agreed that the estate of the late Yozefu Mawanda be distributed amongst the three surviving issues in accordance with the customs and clan of the lineage of the Prince and Princess of Kajumba Namulaza.

59]. There is no way the said customs could apply to the estate of the said deceased who died intestate to override the statutory provisions in place that should have applied when a deceased died intestate. **The Succession Act Cap 162** (as it applied then) took precedence to whatever customs were in place at the time.

60]. Section 15(1) of the Judicature Act Cap 13(as it applied then) provided that *"Nothing in this Act shall deprive the High Court of the right to observe or enforce the observance of, or shall deprive any person of the benefit of, any existing custom, which is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law."*

61]. Therefore, customary law could not apply that was incompatible with the written law at the time on how the estate should be distributed. The applicable law then was the Succession Act Cap 13. By consanguinity, the 1st and 2nd defendants were the most suitable to apply for letters of administration for the estate of the late Petero Mundu Wampamba who was their grandfather and at the time had no surviving children than the plaintiffs who were great grandchildren of the late Petero Mundu Wampamba

62]. In their inventory and final distribution of the estate of the late Petro Mundu, the 1st and 2nd defendants indicated that the estate was comprised in **Kyadondo Block 196 Plot 50** with a residential house thereon and had an acreage of 4 acres which was distributed as follows:


24/04/2025

- a) Dorotia Nakimbugwe ,(1st defendant) one acre.
- b) Teopista Kagere (2nd defendant) one acre.
- c) The children /beneficiaries of the late Emmanuel Ssuna (the plaintiffs) one acre.
- d) The burial ground was also one acre.

64]. I find that the said distribution was done in accordance with the law.

Section 28(1) of the Succession Act Cap 162 (as it applied then) provided that *"All lineal descendants, wives and dependent relatives shall be entitled to share their proportion of the deceased interstates property in equal shares.*

(2) Any child of a deceased's lineal descendant, whose descent is not traced through any living lineal descendant and who survives the intestate, shall take the share which the deceased lineal descendant would have taken under subsection (1) had he or she survived the intestate."

65]. Therefore, the surviving grandchildren of the late Petro Mundu who were the 1st, 2nd defendants and the father of the plaintiffs were entitled to an equal share of his estate and the plaintiffs could only claim the share of their father the late Emmanuel Ssuna who was a brother to the 1st and 2nd defendants. The Plaintiffs are not entitled to the whole estate of the late Petro Mundu as they seem to intimate. The plaintiffs' contention that the suit land was distributed according to the norms and culture which disregarded the 1st and 2nd defendants from sharing the suit property was unconstitutional and contrary to written law as I have already stated.

66]. It is abasing on the above reasons that I find that the plaintiffs have no cause of action against the defendants and their case will be dismissed with costs. There is no need to resolve the other issues that were raised as that would be superfluous.


24/04/2025



Hon. Justice John Eudes Keitirima

24/04/2025