

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**

**CIVIL SUIT NO.171 OF 2014**

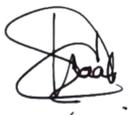
**MUGABI H. JIM KELVIN :::PLAINTIFF**  
**VERSUS**

- 1. NYANJURA RWEBEMBERA PENINAH**
  - 2. TUHAISE SARAH**
  - 3. JEAN FLORENCE RWEBEMBERA**
  - 4. NAKABAZI STELLA ::: DEFENDANTS**
  - 5. KAWES R. CONSTANTINE**
- (ADMINISTRATORS OF THE ESTATE  
OF THE LATE KOSEA RWEBEMBERA)**

**JUDGMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA**

**1.0 Introduction.**

- 1.1 The Plaintiff filed Civil Suit No.171 of 2014 against the defendants seeking orders that;
- a) The defendants pay UGX 10,000,000/- (Uganda Shillings Ten Million only) each as a fine on the execution bond for abuse of the Letters of Administration.
  - b) An order for the defendants to refund UGX 25,041,500/- (Uganda Shillings Twenty-Five Million Forty-One Thousand Five Hundred only) as money spent by the Plaintiff in handling the entire process of appointing the administrators and processing the Special Certificate of Title of the estate, the original copy having got lost.
  - c) An order to the defendant to retrieve the title of the estate which they illegally deposited to Centenary Bank.



- d) An order to the defendants to recover and account for the rent collected from the estate from the time they were appointed which rent has been collected by Tumwesige Sam and Kerespo Kikukule, the brothers of the 1<sup>st</sup> defendant so that all the children of the deceased benefit from it.
- e) The Honorable Court revokes the Letters of Administration and strips the defendants of the powers of Administration.
- f) An order to the defendants to pay general and exemplary damages to the Plaintiff with interest.
- g) Court enters Judgment in favor of the Plaintiff.
- h) Costs of the suit be borne by the defendants.
- i) Any other remedy court deems fit and appropriate.

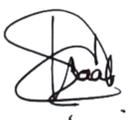
## **2.0 Representation.**

**2.1** The Plaintiff and the 5<sup>th</sup> Defendant were self-represented while the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were represented by Senior Counsel Dr. Harriet Diana Musoke of Musoke & Co. Advocates, Kampala.

**2.2** A Judgment on admission was entered against the 5<sup>th</sup> Defendant on 28<sup>th</sup> April, 2022 by Hon. Justice David Matovu.

## **3.0 Brief Background to the Suit**

3.1 The Plaintiff contends that he received a go ahead/instructions from Kikomeko Blasio, who was the heir of the Late Kosea Rwebembera (hereinafter referred to as **‘the deceased’**) to among others; process the Letters of Administration for the Estate of the deceased and to process the Special Certificate of Title for property comprised in LRV 880 Folio 6 Plot 13 Bugahya Block 17 land at



Bunyoro, Kiryatete in Hoima City (hereinafter referred to as “**Plot 13**”).

- 3.2 It was agreed that the Plaintiff was to use his own money and keep a clear inventory upon which he would be refunded after the sale of Plot 13.
- 3.3 The Plaintiff contends that the valuation of the estate of the deceased was frustrated by the beneficiaries of the estate. The Plaintiff thus seeks to recover **UGX 25,041,500/- (Uganda Shillings Twenty-Five Million Forty-One Thousand Five Hundred Shillings only)** as his reimbursement for the work done.
- 3.4 The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the other hand contend that whereas the Plaintiff is a grandson of the late Kosea Rwebembera, he posed as an advocate/lawyer working with Kampala Associated Advocates who would assist the family and it is on that premise that he was given a go ahead to assist the family.
- 3.5 The gist of this suit is therefore whether the Plaintiff is entitled to a reimbursement to tune of UGX.25,041,500/- as claimed.

#### **4.0 Issues for Resolution Before this court.**

- 4.1 The parties framed the following issues for court’s determination.
  1. Whether the Plaintiff acted as an Advocate in processing the Letters of Administration and Special Certificate of Title?
  2. Whether the Plaintiff should be remunerated as an Advocate or lay person/son of the family?
  3. Whether the Special Certificate of Title and the Letters of Administration were obtained by the Plaintiff?



4. Whether the Plaintiff was refunded his money spent on the process as instructed by the family meeting?
5. Whether the Written Statement of Defence was properly filed in accordance with the law?
6. What remedies are available to the parties?

## **5.0 Evidence**

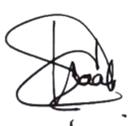
### **5.1 Plaintiff's Evidence.**

1. A copy of the minutes of the general meeting of the family of the deceased held on 7<sup>th</sup> March 2014 marked "PEX 1"
2. Resolutions of the general meeting of the family of the deceased held on 7<sup>th</sup> March 2014 marked "PEX 2"
3. Attendance list of the general meeting of the family of the deceased held on 7<sup>th</sup> March 2014 marked "PEX 3"
4. A copy of the Power of Authorization dated 20<sup>th</sup> August 2012 marked as "PEX 4"
5. Application for a Special Certificate of title for Plot 13 dated 10<sup>th</sup> August 2013 marked as "PEX 5"
6. A copy of the Letters of Administration marked as "PEX 6"
7. The Uganda Gazette dated 29<sup>th</sup> November 2013 marked as "PEX 7".
8. An Apology Letter dated 3<sup>rd</sup> September, 2010 addressed to the Chief Administration Officer Hoima, by Jena Florence Rwebembera marked as "PEX 8".

### **5.2 Defendants Evidence**



1. Certified true copy of the family meeting held on 3<sup>rd</sup> September, 2010 marked as **“DEX 1”**.
2. A copy of the Public Notice/Warning in respect of Mugabi H. Jim Kelvin and other imposters dated 11<sup>th</sup> January, 2012 marked as **“DEX 2”**.
3. A copy of the Bill of costs in respect of the estate of the Late Rwebembera Kosea marked as **“DEX 3”**
4. A copy of the Written Statement of Defence of the 5<sup>th</sup> Defendant marked as **“DEX 4”**.
5. A copy of the Letters dated 3<sup>rd</sup> March, 2016 and 1<sup>st</sup> February 2015 from the 5<sup>th</sup> Defendant marked as **“DEX 5”**.
6. A copy of the Letter dated 28<sup>th</sup> January, 2015 from the office of the Chief Registrar, Courts of Judicature marked as **“DEX 6”**
7. A copy of the Report of Mediator marked as **“DEX 7”**.
8. A copy of the email dated 28<sup>th</sup> February 2015 from Jimmy Mugabi to Joseph Muhumuza marked as **“DEX 8”**.
9. A copy of the Special Powers of Attorney dated 8<sup>th</sup> September 2017 marked as **“DEX 9”**.
10. A copy of the Letter dated 26<sup>th</sup> August, 2019 from Uganda Registration Services Bureau marked as **“DEX 10”**.
11. A copy of the Application for Letters of Administration by the defendants marked as **“DEX 11”**.
12. A copy of the Special Certificate of Title for property comprised in LRV 880 Folio 6 Plot 13 Bugahya Block 17 land at Bunyoro marked as **“DEX 12”**.
13. A copy of the Joint Written Statement of Defence vide Civil Suit No. 171 of 2014 marked as **“DEX 13”**.



14. A copy of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents Written Submission vide Misc. Application No. 718 of 2022 (Arising from Administration Cuase No. 425 of 2011); Musononwa Clement vs. Nyanjura Rwebembera Peninah & 4 ors marked as **“DEX 14”**
15. A copy of the minutes of the meeting of the Administrators of the Late Kosea Rwebembera held on 19/05/2012 marked as **“DEX 15”**.
16. A copy of the Inspection and valuation report dated 25<sup>th</sup> March 2015 by Certified Property Surveyors, Valuers and Estate Agents marked as **“DEX 16.”**
17. A copy of the letter dated 21<sup>st</sup> January 2015 from Jean Rwebembera to Certified Property Surveyors, Valuers and Estate Agents marked **as “DEX 17”**
18. A copy of the emails from Jean Rwebembera in respect of valuation of Hoima Property marked **“DEX 18”**.

## **6.0 Hearing of the suit**

- 6.1 On 13<sup>th</sup> March 2018, this suit came up for hearing on formal proof. The Plaintiff adduced his evidence and he was cross-examined. While the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants adduced evidence vide a witness statement filed in this honorable court on 24<sup>th</sup> March 2021.

## **7.0 Burden of Proof.**

- 7.1 In all civil matters, he who alleges bears the burden to prove his/her case on a balance of probabilities. The Plaintiff in this case by virtue of **Sections 101, 102 and 103 of the Evidence Act,**



**Cap.6** has the burden to prove the facts alleged by him in the Plaintiff.

**7.2 Section 101 of the Evidence Act, Cap.6** provides that; *“Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of the facts which he or she asserts must prove that those facts exist”*.

## **8.0 Written Submissions**

8.1. The Plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed in their written submissions in resolution of this case. I perused and analyzed the written submissions submitted by all the parties and I have considered them in determination of this suit.

## **9.0 Issue One & Two**

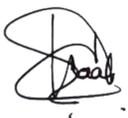
**9.1 Whether the Plaintiff acted as an Advocate in processing the Letters of Administration and Special Certificate of Title?**

**9.2 Whether the Plaintiff should be remunerated as an Advocate/Lawyer or as lay person/son of the family?**

Issues 1 and 2 shall be resolved concurrently herein below, however the two instructions stated to have been accorded to the Plaintiff shall be handled separately.

### **Processing Letters of Administration**

9.1.1 Under Minute 5 of the minutes of the family meeting held on 3<sup>rd</sup> September, 2010 (DEX 1) certified as a true copy by the Chief Administrative Officer (CAO) on 6<sup>th</sup> June, 2022; the minute reflects as follows:-



“The members wanted to know why Mugabi Jim Kelvin (the lawyer) was party to the family meeting yet he was a grandson. He (Mugabi) informed the meeting that, he was instructed by the heir to take up the matter after it had stalled for several years and yet he was a lawyer in the family with capacity to guide them.”

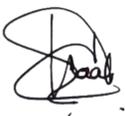
The members further agreed that the lawyer should go ahead helping and guiding them until the matter is reasonably concluded. They finally thanked him for the good heart for the entire family.”

9.1.2 In the same minutes (DEX 1), the Plaintiff was registered to be in attendance as an Advocate. He was also registered as the Secretary of the meeting but he did not sign the minutes of meeting.

9.1.3 The Plaintiff in his affidavit in rejoinder filed in this Honorable Court on 13<sup>th</sup> October, 2023 denied the authenticity of “DEX 1” on grounds that he did not append his signature. However, under paragraphs 4 (f), (g) and (h) of his Plea, the Plaintiff acknowledges that a meeting was held at Hoima District Headquarters under the chairmanship of Buwule Robert for the CAO at which he was the Secretary, prepared the minutes, had them signed and certified by the CAO and presented them to the Administrator General.

9.1.4 The Plaintiff did not provide this Honorable Court with any other set of minutes for the meeting that was held on 3<sup>rd</sup> September, 2010 in place of the minutes that were certified by the CAO.

9.1.5 Under **Section 64 (1) (e) and (f) of the Evidence Act, Cap.6**, Secondary evidence may be given of the existence, condition or



contents of a document when the original is a public document within the meaning of Section 73 or when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Uganda, to be given in evidence.

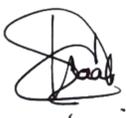
9.1.6 Under **Section 73 (a) (iii) of the Evidence Act (Supra)**, documents forming the acts or records of the acts of public officers are public documents.

9.1.7 A certified copy of a public document is admissible as evidence as per **Section 64 (4) of the Evidence Act (Supra)**.

9.1.8 In paragraph 10 of the 3<sup>rd</sup> defendant's Witness Statement, the 3<sup>rd</sup> defendant informed this Honorable Court that the Plaintiff informed the 5<sup>th</sup> defendant and Blasio Kikomeko (heir) that he was a lawyer and on hearing this they were happy and the heir verbally allowed the Plaintiff to go ahead and assist the family with the issue of the property at Kiryatete.

9.1.9 The 3<sup>rd</sup> Defendant went ahead and provided this Honorable Court with a Public Notice/warning issued by Kampala Associated Advocates on 12<sup>th</sup> January, 2012 informing the general public that the Plaintiff is as an imposter who has been practicing law under the name of the said law firm. Indeed, by a letter dated 28<sup>th</sup> January, 2015 from the Office of the Chief Registrar, Courts of Judicature it was confirmed that the Plaintiff is not on the roll of Advocates.

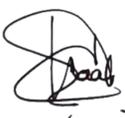
9.1.10 From the above, it is clear that, at the time the Plaintiff obtained a go ahead from the heir to assist the family in the year 2010 he held out as a lawyer to the heir, beneficiaries of the estate of the



deceased, CAO, administrators of the estate of the deceased and it is on that basis that he was accorded a go ahead to assist the family.

9.1.11 However, I have noted that the Letters of Administration in respect of the estate of the deceased were issued by the High Court of Uganda at Kampala on 20<sup>th</sup> February, 2012 after the Public Notice/Warning of Kampala Associated Advocates in respect of the Plaintiff had already been issued on 12<sup>th</sup> January 2012.

9.1.12 In fact, the 3<sup>rd</sup> defendant pointed out in her witness statement under paragraphs 13 to 19 that she knew that the Plaintiff was not a lawyer, she called Mr. Oscar Kambona with whom the Plaintiff said he was working at Kampala Associated Advocates and the reception of the said law firm and was informed that they did not have a staff by the Plaintiff's name. The 3<sup>rd</sup> Defendant also called the Plaintiff's elder brother, Rwabwire Robinson who informed her that the Plaintiff was studying Procurement at Uganda Christian University. The 3<sup>rd</sup> Defendant also went ahead and notified the Plaintiff about her inquiries and the findings she had made and warned the Plaintiff to stop holding out as a lawyer/advocate. The 3<sup>rd</sup> Defendant acknowledges that she saw the public notice issued by Kampala Associated Advocates on 12<sup>th</sup> January, 2012 which stated that the Plaintiff was an imposter and went ahead to advise her co-administrators to go slow with the Plaintiff because he was not a straight person.



9.1.13 From the above, it is clear that whereas the Plaintiff was given a go ahead to assist the family on the pretext that he was a lawyer/advocate, it ultimately became known to the administrators that he was holding out as an advocate. The administrators, however, went ahead and accepted the Plaintiff who they had discovered was not an advocate but a lay person at the time to go ahead and present them before the High Court Registrar for issuance of letters of administration and the letters of administration were indeed issued to them on 20<sup>th</sup> February 2012.

#### **Issuance of Special Certificate of title**

9.1.14 The 1<sup>st</sup> Defendant stated in paragraph 16 of her witness statement that on 19<sup>th</sup> May, 2012, the Plaintiff convened a meeting for the administrators at Steers Restaurant on Entebbe Road at which he requested for money that he had used to obtain the Letters of Administration and to pursue the special certificate of title for the land at Kiryatete. The same is reiterated by the 4<sup>th</sup> Defendant in paragraph 15 of her witness statement and by the 3<sup>rd</sup> defendant in paragraph 22 of her witness statement.

9.1.15 The 3<sup>rd</sup> defendant also stated in paragraph 24 of her witness statement that in a meeting held on 7<sup>th</sup> March 2014, the Plaintiff presented the Special Certificate of Title of land at Kiryatete to the children of the Late Kosea Rwebembera who agreed to reimburse the Plaintiff the money that he spent helping to obtain Letters of Administration and the special certificate of title upon him providing proof of expenditure and that payment would be effected



after the estate buildings situate on Block 17 Plot 13 at Hoima had been disposed of.

9.1.16 The 3<sup>rd</sup> defendant also admitted in paragraph 31 of her witness statement that her and the co-administrators authorized the Plaintiff in writing to pursue and obtain the Special Certificate of Title of land at Kiryatete.

9.1.17 I perused the Power of Authorization and I observed that it was executed on 20<sup>th</sup> August, 2012 by all the administrators of the estate of the Late Kosea Rwebembera authorizing the Plaintiff to do the following;

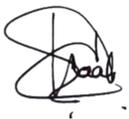
*“1) To present, receive, deliver document or documents to the Land Registration Office in the process of getting a special certificate of title in respect of Plot 13, Folio 6, Block 17, LHRV 880, Ref: LWB:5156 which got lost.*

*2) To present for advertisement the necessary information in the gazette regarding the estate of the deceased.*

*3) To follow up the process of issue of the said Special Certificate of Title to the end...”*

9.1.18 I have also perused the Application for a Special Certificate of Title for Plot 13 dated 10<sup>th</sup> August, 2013 submitted to the Registrar of Titles and observed that it is signed by the Plaintiff and not the defendants.

9.1.19 From the foregoing, it is clear that when the above instructions were accorded to the Plaintiff, the defendants were already in the know that the Plaintiff was not an advocate as they had been



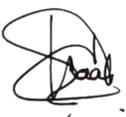
notified by the 3<sup>rd</sup> defendant about the imposter notice issued by Kampala Associated Advocates on 12<sup>th</sup> January, 2012.

9.1.20 In the premises, I find that whereas at the start in 2010, the Plaintiff had obtained a go ahead to assist the family on the pretext that he was an advocate/lawyer, it later came to the knowledge of the defendants that he was not an advocate/lawyer. That notwithstanding, the defendants on their own evolution proceeded to pursue him to obtain the Letters of Administration in respect of the estate of the deceased and the Special Certificate of Title for Plot 13 in his capacity as a lay person.

### **10.0 Issue 3**

#### **10.1 Whether the Special Certificate of Title and the Letters of Administration were obtained by the Plaintiff?**

10.2 The 4<sup>th</sup> Defendant stated in paragraphs 15, 21 and 22 of her witness statement that in a meeting held at Steers Restaurant on Entebbe Road on 19<sup>th</sup> May 2012, the Plaintiff asked for money that he had used to obtain Letters of Administration and to pursue the Special Certificate of Title. The Administrators of the estate first refused to give the Plaintiff any monies since he had, at the beginning, offered to freely assist the family. They, however, later agreed to reimburse the Plaintiff the money he had spent to obtain Letters of Administration and the Special Certificate of Title for land at Kiryatete after the estate buildings situate on Block 17 Plot 13 at Hoima have been disposed of upon the Plaintiff presenting to the Administrators' proof of expenditure in form of receipts.



10.1.2 The 3<sup>rd</sup> defendant under paragraph 19 of her Witness Statement also stated that it was the Plaintiff that presented her and her co-administrators before the High Court Registrar to be granted Letters of Administration. She also stated in paragraph 23 and 24 of her witness statement that when the Plaintiff asked for some money he spent while obtaining the Letters of Administration and to pursue the special certificate of title, the administrators informed him that they would not give him the money since he had agreed to offer the services free of charge except for the fees payable at the different offices.

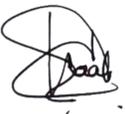
10.1.3 The 3<sup>rd</sup> defendant also stated under paragraph 24 of her witness statement that in a meeting held on 7<sup>th</sup> March, 2014, the plaintiff presented the Special Certificate of Title of the land at Kiryatete to the children of the late Kosea Rwebembera who agreed to reimburse the Plaintiff the money that he spent to obtain letters of administration and the special certificate of title upon him providing proof of expenditure.

10.1.4 From the foregoing, I find that the Plaintiff obtained the Letters of Administration for the estate of the deceased and the Special Certificate of Title for Plot 13.

#### **11.0 Issue 4**

##### **11.1 Whether the Plaintiff was refunded his money spent on the process as instructed by the family meeting?**

11.2 The gist of the matter before this Honorable Court is whether the Plaintiff was refunded the money he spent on the process of enabling the administrators obtain Letters of Administration for



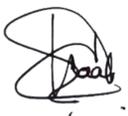
the estate of the deceased and processing the Special Certificate of Title for Plot 13 and if not, how much should the Plaintiff be refunded.

11.3 The Plaintiff provided a bill of costs totaling to UGX 25,041,500/- (Uganda Shillings Twenty-Five Million Forty-One Thousand Five Hundred Shillings only) which the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants believe is exaggerated and should be backed with receipts.

11.4 That notwithstanding, the 4<sup>th</sup> defendant contends that the 2<sup>nd</sup> defendant gave the Plaintiff money while he was pursuing the Special Certificate of Title (per paragraph 13 of her witness statement). The 4<sup>th</sup> defendant also stated that her and her co-administrators first refused to give the Plaintiff any monies since he had, at the beginning, offered to freely assist the family, however they later on agreed to reimburse the Plaintiff the money he spent to obtain the Letters of Administration and the Special Certificate of Title but after the estate buildings situate on Plot 13 had been disposed of and upon him presenting proof of expenditure in form of receipts.

11.5 This same position is reiterated by the 3<sup>rd</sup> defendant in paragraphs 23 and 24 of her witness statement who however added that the Plaintiff had agreed to offer the services free of charge except for the fees payable at the different offices and upon providing proof of expenditure.

11.6 The Plaintiff did not provide this Honorable Court with any receipts in support of his request for a reimbursement. None the



less, the fees for obtaining Letters of Administration and a Special Certificate of Title are public knowledge as hereinbelow stated;

**Special Certificate of Title**

- 1. Registration fees - 15,000/-
- 2. Stamp duty - 10,000/-
- 3. Gazette fees - 230,000/-
- 4. Bank charges - 2,300/-
- 5. Commissioning fees - approx. 20,000/-

**Sub-total: 277,300/-**

**Letters of Administration**

- 1. Petition for Letters of Administration - 6,000/-
- 2. Commissioning Letters of Administration - approx. 20,000/-
- 3. Advertising Notice of Letters of Administration - approx. 250,000/-
- 4. Bank charges - 2,300/-

**Sub-total: 278,300/-**

**Grand total: 555,600/-**

11.7 During cross examination, the 2<sup>nd</sup> defendant stated that she had paid the Plaintiff at least 100,000/- in cash. However, neither did the 2<sup>nd</sup> Defendant nor any of the other defendants provide receipts to prove that they paid the Plaintiff this money. It is equally their word against that of the Plaintiff.

11.8 I have established that the approximate fees the Plaintiff could have spent on processing Letters of Administration and a Special

Certificate of Title at the different offices is approximately **UGX 555,600/-**.

11.9 The 1<sup>st</sup> Defendant stated in paragraph 24 of her witness statement that during mediation, the administrators in consultation with the other beneficiaries agreed to give the Plaintiff **UGX 3,000,000/-** as appreciation for the service done which they later raised to **UGX 5,000,000/-** but the Plaintiff rejected the offer.

11.10 I have taken cognizance of the fact that during cross examination, the Plaintiff stated that he did not pay any money to Nashero M. R. Ekirita who helped him get file No.923/1993 at the Administrator General's office. He did not pay any money for the death certificate. He did not pay Mr. Ekirita any money for the letter he wrote to the CAO Hoima District for a family meeting. He spent 15,000/- to travel from Hoima to Kampala and UGX 15,000/- to travel from Kampala to Hoima and that he slept and ate in a lodge. He did not pay any money to the CAO's office. He incurred expenses obtaining certified copies of the minutes of the CAO. He incurred travel expenses delivering the application of Letters of Administration to the 1<sup>st</sup> defendant in Mubende, 4<sup>th</sup> and 5<sup>th</sup> defendant in Kakumiro, 3<sup>rd</sup> defendant in Kampala and 2<sup>nd</sup> defendant in Kigumba. He also paid UGX 6,500/- to file the application for letters of administration and UGX 91,000/- for the gazette.

11.11 Regarding my review of the above, I find that the figure proposed by the administrators during mediation of **UGX 5,000,000/- (Uganda Shillings Five Million only)** is more than enough to

reimburse the Plaintiff for all the costs he incurred including any other miscellaneous.

I therefore find that the Plaintiff was not refunded the money he spent on the process of obtaining the letters of administration for the estate of the deceased and the Special Certificate of title for Plot 13 and the sum of **UGX 5,000,000/- (Uganda Shillings Five Million only)** having been proposed by the administrators in consultation with the beneficiaries is sufficient to reimburse the Plaintiff for all the costs he incurred.

## 12.0 Issue 5

### **12.1 Whether the Written Statement of Defence was properly filed in accordance with the law?**

12.2 The Plaintiff filed Civil Suit No.171 of 2014 in this Honorable Court on 13<sup>th</sup> November, 2014. Summons to file a defence were issued by this Honorable Court on 14<sup>th</sup> November, 2014. According to the Plaintiff, the summons were served upon the 3<sup>rd</sup> Defendant on 26<sup>th</sup> November, 2014 who received the same on behalf of the rest of the defendants.

12.3 The summons required the defendants to file a Written Statement of Defence within fifteen (15) days from the date of service of the summons upon the defendants in accordance with **Order 9 rule 1 of the Civil Procedure Rules SI 71-1.**

12.4 It is the Plaintiff's contention that the defendants filed their Written Statement of Defence on 16<sup>th</sup> April 2015, which was five months late without any justification.



12.5 I have perused the file and confirmed that the defendants filed a Joint Written Statement of Defence on 16<sup>th</sup> April 2015. Later, on 29<sup>th</sup> September, 2015, the 5<sup>th</sup> Defendant filed his own written statement of defence in which he denied being party to the earlier filed Joint Written Statement of Defence.

12.6 **Order 5 Rule 9 of the Civil Procedure Rules (supra)** provides that;

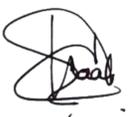
*“Except as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.”*

12.7 **Order 5 Rule 11 of the Civil Procedure Rules (supra)** provides that;

*“Wherever it is practicable, service shall be made on the defendant in person, unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient.”*

12.8 In light of the above, proper service was only effected on the 3<sup>rd</sup> defendant and not on the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants as no proof has been provided to this Honorable Court to prove that the 3<sup>rd</sup> defendant was an agent for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants duly empowered to accept service on their behalf.

12.9 The Plaintiff ought to have served all the defendants personally but this does not in any way exonerate the 3<sup>rd</sup> defendant who was duly served on 26<sup>th</sup> November, 2014 but jointly filed in her defence together with the rest of the defendants on 16<sup>th</sup> April, 2015.



12.10 None the less, this issue could best be handled before hearing the evidence of the parties (pre- trial). The parties have already been cross examined and re-examined and it would be illogical to strike out their defence at this point in time. Besides, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly filed a Written Statement of Defence and not separate defences.

12.11 I have also reviewed the record of proceedings and noted that the Plaintiff had orally raised this same issue before Hon. Justice David Matovu during the hearing on 13<sup>th</sup> March, 2018 seeking to strike out the defendant's defence on grounds that it was filed out of time. My learned brother, Hon. Justice David Matovu ruled as follows:

*“Service upon the 3<sup>rd</sup> Defendant is not binding upon other defendants and I cannot strike out their defence since they exercised due diligence and filed a Written Statement of Defence.”*

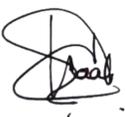
12.12 I therefore find that a ruling was already made on this issue and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants Written Statement of defendant maintained.

### 13.0 **Issue 6**

#### 13.1 **What remedies are available to the parties?**

13.2 The Plaintiff sought nine (9) orders which I shall deal with hereunder.

- a) The defendants pay UGX 10,000,000/- (Uganda Shillings Ten Million only) each as a fine on the execution bond for abuse of the Letters of Administration.**



As earlier stated, in all civil matters, he who alleges bears the burden to prove his/her case on a balance of probabilities. The Plaintiff has not discharged this burden by proving that the defendants have abused the Letters of Administration.

Also, it has been brought to the attention of this Honorable Court that the Plaintiff is still holding onto the Letters of Administration in respect of the estate of the deceased. (Para. 28 of the witness statement of the 1<sup>st</sup> defendant, para. 19 and 20 of the 4<sup>th</sup> defendants witness statement, and para. 38 of the 3<sup>rd</sup> defendants' written statement of defence.)

In the premises, this order is denied.

**b) An order to the defendants to refund UGX 25,041,500/- (Uganda Shillings Twenty-Five Million Forty-One Thousand Five Hundred only) as money spent by the Plaintiff in handling the entire process of appointing the administrators and processing the Special Certificate of Title of the estate, the original copy having gotten lost.**

I have already determined hereinabove that the Plaintiff be accorded a sum of UGX 5,000,000/- (Uganda Shillings Five Million only) as money spent on the process of obtaining the letters of administration for the estate of the deceased and the special certificate of title for Plot 13. The reimbursement should be paid out of the proceeds of the estate of the Late Kosea Rwebembera.



**c) An order to the defendant to retrieve the title of the estate which they illegally deposited to Centenary Bank.**

**d) An order to the defendants to recover and account for the rent collected from the estate from the time they were appointed which rent has been collected by Tumwesige Sam and Kerespo Kikukule, the brothers of the 1<sup>st</sup> Defendant so that all the children of the deceased benefit from it.**

**e) The Honorable court revokes the letters of administration and strips the Defendants off the powers of administration.**

The Plaintiff did not lead any evidence to warrant issuance of the orders in (c), (d) and (e) above. In the premises, the above orders are denied.

**f) An order to the defendants to pay general and exemplary damages to the Plaintiff with interest.**

**g) Court enters Judgment in favor of the Plaintiff.**

**h) Costs of the suit be borne by the defendants.**

**i) Any other remedy court deems fit and appropriate.**

This Honorable Court is clothed with the inherent power to make such orders as may be necessary for the ends of justice. As such the orders sought in (f) and (h) above are denied. This Honorable Court grants the following other orders;

i) The Plaintiff immediately hands over the original Letters of Administration issued by the High Court of Uganda at Kampala on 20<sup>th</sup> February 2012 vide HCT-00-FD-AC-425 OF 2011 in



respect of the estate of the Late Kosea Rwebembera to the Administrators of the said estate.

- ii) The Administrators of the estate of the Late Kosea Rwebembera nominate one person among themselves to whom the original letters of administration for the estate of the Late Kosea Rwebembera should be handed over by the Plaintiff.
- iii) The defendants shall pay the Plaintiff a sum of UGX. 5,000,000/= towards the expenses of obtaining Letters of Administration and a special certificate of title for Plot 13.
- iv) The Plaintiff should immediately withdraw the caveat registered on property comprised in Block 17 Plot 13 land at Kiryatete West, Hoima District.
- v) A Permanent injunction issues against the Plaintiff stopping him from handling any other matter regarding the estate of the Late Kosea Rwebembera.

**Dated, signed and delivered by email this 6<sup>th</sup> day of November 2023.**



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**CELIA NAGAWA  
JUDGE**