

THE REPUBLIC OF UGANDA

**THE SUPREME COURT OF UGANDA
AT KAMPALA**

(Coram: Tuhaise, Chibita, Madrama, Bamugemereire & Mugenyi, JJSC)

CIVIL APPEAL NO. 1 OF 2024

BETWEEN

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| <ul style="list-style-type: none">1. THE ADMINISTRATORS OF
THE ESTATE OF SIR EDWARD MUTESA2. NALINYA DOROTHY NASSOLO3. NALINNYA SARAH KAGERE4. PRINCE DAVID WASAJJA | } | APPELLANTS |
|--|---|------------------|

AND

- | | | |
|---|---|-------------------|
| <ul style="list-style-type: none">1. DR. MUHAMMED BUWULE KASASA2. ATTORNEY GENERAL | } | RESPONDENTS |
|---|---|-------------------|

(Appeal from the decision of the Court of Appeal (Musoke, Gashirabake & Luswata, JJA) in Civil Appeal No. 152 of 2020)

RULING OF THE COURT

1. This Appeal was lodged in this Court by the Administrators of the Estate of Sir Edward Mutesa; Nalinnya(s) Dorothy Nasolo and Sarah Kagere, and Prince David Wasajja ('the Appellants') contesting the decision of the Court of Appeal in Civil Appeal No. 152 of 2020. Dr. Muhammad Buwule Kasasa ('the First Respondent') has since passed on and, for purposes of this Appeal, was substituted with Mses. Sophia Nambaliwa Kasasa, Sarah Nabuwule Kasasa, and Janet Nakawunde Kasasa (executrices); and Messrs. Issa Kasasa, Moses Kanyike Kasasa and Anwar Sempira Kasasa (executors), all joint executrices and executors of the deceased's estate.

2. At the hearing of the Appeal, it was brought to the Court's attention that there were two sets of advocates in respect of the First Respondent, with conflicting instructions on the conduct of the Appeal. Whereas Messrs. Robert Kirunda and Akram Kijambu had been instructed by the executrixes to explore the possibility of appellate mediation in the matter, Mr. Simon Kiiza had received contrary instructions from the executors to proceed with the Appeal without recourse to mediation.
3. Mr. Kirunda, who addressed the Court on behalf of the executrixes, cited clause 4.4 of the Will and sections 58 and 71 of the Succession Act, Cap. 268 to argue that the deceased's wish that decisions in respect of the estate should include his heiress and any two other executors or executrixes should be strictly complied with. This was contested by Mr. Kiiza who cited this Court's decision in **Silver Byaruhanga v Emmanuel Ruvugwaho & Another, Civil Appeal No. 9 of 2014** for the proposition that executors/executrixes of an estate must act jointly at all times, therefore since there was no consensus on mediation, the Appeal should be heard forthwith. For ease of reference, clause 4.4 of the Will, as well as the invoked provisions of the Succession Act are reproduced below.

Clause 4.4, Will

Any decision to be made shall at all times be made by my heir and two others of the aforementioned executors and executrices after obtaining legal advice from Ms. Nakato Juliet and Hon. Dr. Sam Mayanja.

Section 58, Succession Act *Wording of will*

It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator or testatrix can be known from the wording.

Section 71, Succession Act *Intention of testator or testatrix to be effected as far as possible*

The intention of the testator or testatrix is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

4. Section 71 of the Succession Act is emphatic on giving as much effect to the intention or wishes of a testator as is possible. In this case, the testator's intention on decision-making with regard to his estate is clearly spelt out in clause 4.4 of his will, which requires that any decision be taken by his heiress together with any two other executors or executrixes. The testator did in clause 3 of his will appoint a one Sophia Nambalirwa as his heiress. It follows, therefore, that any decision in respect of his estate

would be taken by Ms. Sophia Nambalirwa together with any of the other executors or executrixes of the will. Such a decision would inevitably include the executors and executrixes handling of the present Appeal.

5. We do abide this Court's decision in Silver Byaruhanga v Emmanuel Ruvugwaho & Another (supra) where the then section 272 of the Succession Act was interpreted to mean that **'where several executors are appointed by a deceased person in his will, any one of them who has proved the will and obtained a grant of Probate, may exercise the power of all of them, provided there is no direction in the will to the contrary or objection from his or her co-executors.'** Indeed, the deference to the express contents of a will are re-echoed in section 268(1) of the Succession Act as follows:

When there are several executors or executrixes or administrators or administratrices, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration. (*our emphasis*)

6. In the matter before us, the testator expressly states in his will the manner in which decisions that relate to his estate shall be undertaken, which wishes ought to be respected. Thus, to the extent that the heiress and two additional executrixes prefer to explore appellate mediation in this matter, their decision does bind their co-executors. The proposition in Silver Byaruhanga v Emmanuel Ruvugwaho & Another (supra) that was relied upon by Mr. Kiiza to the contrary, to the effect that executors who have jointly obtained the grant of Probate must act jointly at all times, should be construed within the confines of land conveyancing under section 134(3) of the then Registration of Titles Act (now section 118(3) of the Registration of Titles Act, Cap. 240), which was the issue in contention in that case. Section 118(3) stipulates as follows:

If in any case probate or administration is granted to more persons than one, all of them for the time being shall join and concur in every instrument, surrender or discharge relating to the land, lease or mortgage.

7. We do therefore find no reason to disallow the First Respondent's wish to explore appellate mediation in this Appeal, and do hereby refer the Appeal to mediation.

It is so ordered.

Dated and delivered at Kampala this 27th day of March, 2025.



Percy Night Tuhaise

Justice of the Supreme Court



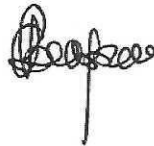
Mike Chibita

Justice of the Supreme Court



Christopher Izama Madrama

Justice of the Supreme Court



Dr. Catherine Bamugemereire

Justice of the Supreme Court



Monica K. Mugenyi

Justice of the Supreme Court

27/3/2025

Mr. Robert Kimunda for the 1st Respondent

Mr. Kijambu

Mr. Simon Kiiza

Mr. Esau Isingoma for Appellant
w/f for Usama Shawa.

Ms. Adong Imelda - PSA for AG.
Wb Mr. George Kalemera - Civil
litigation.

The Appellants represented by twice
David Wasajja

4 of the 6 Legal Repres of the 1st
Appellant in Court.

Sarah, Janet, Superior Kasasa &
Issa Kasasa.

The AG's not represented in his
personal Capacity.
David Semujiru: clc

Kimunda: We are ready
to receive the Ruling.

Court: Ruling of Court delivered
in open court. The parties
awaited copies of the same.
Matter referred to Appellate
Mediation as directed.

~~Officer~~
Registrar, SC
27/3/2025