

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

**CIVIL SUIT NO. 462 OF 2016**

**1. SAMWIRI KASOLO KASIWUKIRA**

**2. GODFREY LUBWAMA ::::::::::PLAINTIFFS/COUNTER DEFENDANTS**

**VERSUS**

**1. NABAGGALA MARY ::::::::::: COUNTER CLAIMANT**

**(Administrator of the Estate of the late Tito Kiwanuka Musoke)**

**2. SSEMWOGERERE FRED**

**3. LUBEGA ANN NAKABIITO ::::::::::: DEFENDANTS**

**4. LUBEGA EDWARD**

**5. KYAGULANYI JACKSON**

**6. SSENINDE YUSUF**

**JUDGEMENT BEFORE HON. LADY JUSTICE CELIA NAGAWA**

**1.0 Introduction.**

1.1 Samwiri Kasolo Kasiwukira and Godfrey Lubwama (hereinafter referred to as the (Plaintiffs/Counter Defendants) instituted this suit against the Defendants Nabaggala Mary, Ssemwogerere Fred, Lubega Ann Nakabito, Lubega Edward, Kyagulanyi Jackson and Ssseninde Yusuf in respect of the Estate of the Late Tito Kiwanuka Musoke seeking the following;

**1.An Order revoking the grant of Letters of Administration granted to the 1<sup>st</sup> Defendant in respect of the Estate of the Late Tito Kiwanuka Musoke.**



**2.A declaration that the 1<sup>st</sup> defendant obtained the said letters fraudulently.**

**3.A declaration that the property comprised in Block 331 Plot 144 land at Namagoma “B” Kisozi Parish Nsangi Sub County Wakiso District does not form part of the estate of the late Tito Kiwanuka Musoke purportedly administered by the 1<sup>st</sup> defendant.**

**4.An order for cancellation of the land sale transaction agreements between the 1<sup>st</sup> defendant with the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants.**

**5.An order of eviction giving vacant possession by the 6<sup>th</sup> defendant to the registered proprietors of the trust property.**

**6.A demolition order doth issue against all illegal structures erected on the suit land by the defendants, their agents or employees.**

**7.A permanent injunction be issued against the defendants, their employees, agents and all those deriving interest under them from interfering with the suit land or in any way dealing with it without the plaintiff's approval.**

**8.General or Punitive damages**

**9.Mesne profits for non-use of the suit land.**

**10. Costs of the suit.**

1.2 The 1<sup>st</sup> defendant raised a counter claim against the plaintiffs jointly and severally seeking orders for;

**1. A declaration that the land comprised in Busiro Block 331 Plot 144 forms part of the estate of the late Tito Kiwanuka Musoke.**



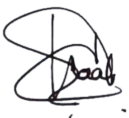
- 2. A declaration that the Counter-defendant fraudulently, illegally and irregularly got registered as proprietors.**
- 3. An order directing the Commissioner Land Registration to cancel the Counter-Defendant's names from the certificate of title and substitute therein the names of the Counter-Claimant.**
- 4. An order for permanent injunction jointly and severally restraining the Counter-Defendants/Plaintiffs, their agents or anybody claiming under them from interfering with the counter-claimant's ownership of the suit property.**
- 5. That the counter-defendants pay General damages.**
- 6. Costs of the suit.**
- 7. Any other relief this Honourable Court may deem fit.**

## **2.0 Representation**

- 2.1 The Plaintiffs were represented by Counsel Najjemba Agnes from Kodili & Co. Advocates, Kampala.
- 2.2 The Defendants were represented by Counsel Lubega Vincent from Odeke & Co. Advocates, Kampala.

## **3.0 Background of the Suit.**

- 3.1 The Plaintiffs are the Registered Trustees and Proprietors of land comprised in Block 331 Plot 144 Land at Namagoma B Kisozi Parish Nsangi Sub-county, Wakiso District. The suit land formerly belonged to the late Tito Kiwanuka Musoke who distributed most of his properties before his death and reserved 4.29 acres as family land to be used as burial grounds and for other common projects of the family.



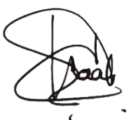
- 3.2 The said 4.29 acres were transferred by the deceased in his lifetime to Mukasa Stanley (now deceased). The land was surveyed and Certificates of Title were duly transferred in the names of the trustees by his son Mukasa Stanley.
- 3.3 The family resolved that Trustees be appointed to administer the land for and on behalf of the family members to avoid the said property being mistaken as forming part of the Estate of the Late Stanley Mukasa. Samuel Musoke Monedde, Samuel Kasolo Kasiwukira, Kasalina Nakirabira and Godfrey Lubwama were chosen as the Trustees of the suit land.
- 3.4 At the time of his death, the deceased left 7 children namely Stanley Mukasa, Erisafu Nsobya, Charles Basomba, Manjeri Nalubwama, Nola Ndagire, Mary Nabaggala and Catherine Nakirabira. The 1<sup>st</sup> defendant applied for Letters of Administration to administer the estate of the deceased but never disclosed all the children of the deceased, neither did she include the suit land as part of the property of the late Tito Kiwanuka. The 1<sup>st</sup> defendant used the Letters of Administration to claim full authority and ownership of the suit land which she had not listed as part of the Estate of the Late Tito Musoke. The plaintiffs aver that the 1<sup>st</sup> defendant has never administered the estate nor filed any inventory in this court. They state that the 1<sup>st</sup> defendant sold part of the suit land to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> defendants without the consent of the trustees and family members. The 2<sup>nd</sup> defendant purchased a piece of land from the 1<sup>st</sup> defendant amidst protests from the registered proprietors and after failure/refusal by the area LC1 to make a sale agreement for him, he went and drafted (drew it from) it at Kitemu the



neighboring LC 1 village under the chairmanship of the 5<sup>th</sup> defendant while the suit land is located in Namagoma “B” headed by Mr. Ismail Mutesasira as the chairman.

3.5 The defendants disputed the claim against them and the 1<sup>st</sup> defendant filed a counter-claim. The 1<sup>st</sup> defendant contended that she had never inter-meddled with the Estate of the Late Tito Kiwanuka who was her late Father. She averred that upon his death, she legally obtained Letters of Administration to the Estate of her Late father. She stated that after the death of Tito Kiwanuka, the Plaintiffs fraudulently got registered as Trustees and subsequently proprietors of the suit land without the consent of the beneficiaries using forged documents. She further contended that the deceased never distributed his property to anybody as alleged by the plaintiffs and that the deceased did not have a Will. She stated that she obtained Family consent at a meeting held at the Administrator General’s office that allowed her obtain the Letters of Administration. The 1<sup>st</sup> defendant also claims that the transaction between her and the 2<sup>nd</sup> defendant was lawful and not fraudulent and the she further denies the particulars of fraud. The 1<sup>st</sup> defendant further states that upon obtaining Letters of Administration, she conducted a search and discovered that the plaintiffs had connived to defraud the estate of the deceased. She stated that the Plaintiffs forged a Will in order to fraudulently transfer the suit property into their names.

3.6 The 2<sup>nd</sup> defendant avers that on the 20<sup>th</sup> June, 2015, he lawfully purchased a plot of land measuring 100ft by 170ft from the 1<sup>st</sup> defendant at a consideration of UGX 26,000,000/= (Uganda Shillings



Twenty Six Million). He further stated that he conducted inquiries from the LC1 chairperson of the area, the 5<sup>th</sup> defendant herein who advised him that the 1<sup>st</sup> Defendant was the lawful owner of the suit property.

3.7 The 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants never appeared in court and a default judgment was entered against them.

#### **4.0 The Issues to Be Determined by the Court are;**

1. Whether the property comprised in Block 331 Plot 144 land at Namagoma “B” Kisozi Parish Nsangi Sub County Wakiso District forms part of the Estate of the Late Tito Kiwanuka Musoke?
2. Whether the 1<sup>st</sup> defendant lawfully acquired Letters of Administration to the Estate of the late Tito Kiwanuka Musoke?
3. Whether the Trust created by the Plaintiffs is valid?
4. Whether the transaction between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant was lawful?
5. What Remedies are available to the parties?

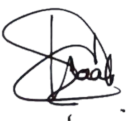
#### **5.0 Locus in Quo Proceedings.**

5.1 This Court is guided by **Practice Direction No.1 of 2007** issued to provide guidelines to litigants, counsel and the judicial officers on how locus in quo proceedings should be handled. ***See; Bongole Geoffrey & Others Versus Agnes Nakiwala CACA No. 0076/2015.***

5.2 Order 18 of the Civil Procedure Rules, prescribes the procedure for conducting and hearing of Civil Suits and examination of witnesses. ***See Nagidde Rebecca v Mwasa Charles Steven (Civil Appeal No. 160 of 2018) [2020]*** as decided by Hon. Justice Egonda Ntende;



- 5.3 This Court conducted Locus in Quo proceedings on 21<sup>st</sup> February, 2023 at Kisozi Parish, Nsangi Sub-County, Wakiso District starting at 12:30pm as provided for under **Order 18 Rule 14 of The Civil Procedure Rules SI 71-1** which states that the Court may at any stage of a suit inspect any property or thing concerning which any question may arise. The Court deemed it necessary to visit the locus-in-quo and both parties, their witnesses were informed to be in attendance on the said date. The parties in this suit were present at the locus visit and they were duly represented by their Advocates. **(David Acar & 3 others v Alfred Acar Aliro (1982) HCB 60).**
- 5.4 Locus in quo proceedings formed part of the trial and all rules observed in court were also observed at the locus proceedings. The purpose of locus proceedings was to enable Court check on the evidence given by the witnesses in court, and not to fill gaps in their evidence for them **(see Fernandes V Noroniha [1969] EA 506\ De Souza v. Uganda [1967] EA 784\ Yeseri Waibi Versus Edisa Byandala [1982] I1CB 28 and Nsibambi Versus. Nankya [1980] HCB 81).**
- 5.5 During the locus in quo it afforded court an opportunity to check on the evidence already adduced in court by the witnesses particularly on the physical state of the subject matter. This also harnessed the court with the physical aspects of the evidence so as to enhance the oral testimonies. It helped this court to better understand the evidence adduced by the witnesses.



5.6 The rationale for a locus in quo visit was summarized by **Sir Udo Udoma in William Mukasa Versus Uganda (1964) EA 698 at page 700** that:


*“A view of a locus in quo ought to be, to check on the evidence already given and where necessary and possible to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken of in the proceedings”.*

5.7 While at the said locus visit on 21<sup>st</sup> February, 2023, Counsel Najjemba Agnes represented the Plaintiffs, Counsel Lubega Matovu Vincent represented the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants were present. Court was put on notice about the death of the 1<sup>st</sup> defendant. The 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants did not participate in the proceedings. The LC1 Chairperson of the area Mukasa Abudullah was present with two witnesses, Nanyenyo William Ntego and Kiryowa Allan among others though mostly beneficiaries.

## **6.0 Written Submissions**

6.1 Learned Counsel filed written submissions and basing their arguments on the respective supporting affidavits, evidence and authorities that have assisted me in determining this Suit. I have carefully perused the record and considered the submissions of learned counsel. I have also read a number of authorities from this Court on this matter and what runs through all the authorities is the fact that the law and the principles in this area are well settled and will guide this court in the determination of this issue.

## **7.0 Resolution of Issues.**

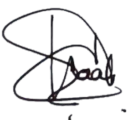




7.1 Before Court resolves the issues, Court is cognizant of the fact that the 1<sup>st</sup> defendant/counter claimant has since been deceased. The determination in such matters is laid out under **Order 24 rule 1 of the Civil Procedure Rules S1 71-1** which provides that the death of the plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues. In this case the deceased is both the 1<sup>st</sup> defendant and a counter claimant and therefore this court must determine whether the cause of action against the defendants survives in her death, whether the cause of action against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants survive, and whether the cause of action against the plaintiffs/counter defendants survives in the counter- claim upon the death of the 1<sup>st</sup> defendant.

7.2 In order to prove a surviving cause of action, there must have been a cause of action to continue in the first place. To prove 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. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. See **Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.**

7.3 In the current case, the plaintiffs aver the deceased Tito Musoke Kiwanuka distributed his estate before his death and reserved the land comprised in Block 331 Plot 144 Land at Namagoma B Kisozi Parish. The plaintiffs are the registered Trustees of the suit property which the deceased left to be used for common family projects and as family burial grounds. The plaintiffs aver that the 1<sup>st</sup> defendant fraudulently applied for Letters of Administration and distributed part of the suit land to 3<sup>rd</sup> parties. While the 1<sup>st</sup> Defendant passed on, the interests



and rights of the beneficiaries to the late Tito Kiwanuka's estate are still the subject of determination in this suit. Therefore, the Court finds that the main suit and the counter claim will not abate, however the orders sought therein may vary due to the death of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant shall be represented by her Personal Representative as provided for under **Order 24 of the Civil Procedure Rules SI 71-1**.

**Issue 1: Whether the property comprised in Block 331 Plot 144 land at Namagoma "B" Kisozi Parish Nsangi Sub County Wakiso District forms part of the estate of the late Tito Kiwanuka Musoke?**

7.4 This issue is a moot issue before this court, already resolved and stated clearly in the pleadings of the parties. The contention herein is not whether the suit property forms part of the estate of the deceased Tito Kiwanuka Musoke. The plaintiffs aver that they are trustees to the suit property to the benefit of the family of the deceased Tito Kiwanuka Musoke. The 1<sup>st</sup> defendant obtained Letters of Administration over the estate of Tito Kiwanuka Musoke and with these letters, she executed a sale of a portion of the suit property to the 2<sup>nd</sup> defendant.

7.4.1. It is not in contention that this property belonged to the deceased. All rights of the parties in this suit derive from his ownership of the suit property. On the plaintiff's part, as Trustees appointed to hold the property in trust for the entire family to be used for their benefit and on the 1<sup>st</sup> Defendant's part as the administrator of the estate of deceased.

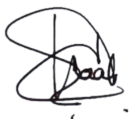


7.4.2. At the time of his demise on 17<sup>th</sup> March, 1976 the late Tito Kiwanuka Musoke was the registered proprietor/owner of the land comprised in Block 331 Plot 144 at Namagoma, to wit he was registered on 19<sup>th</sup> August, 1938 under Instrument No. 41322 measuring approximately 4.29 Acres. There was no transfer effected from 1938 until 23<sup>rd</sup> May, 1977 after his death. Meaning that this was part of his estate and forms part of the estate of the late Tito Kiwanuka Musoke.

**Issue 2: Whether the 1<sup>st</sup> defendant lawfully acquired Letters of Administration to the estate of the late Tito Kiwanuka Musoke?**

7.5. The plaintiffs submitted to this court stating that the 1<sup>st</sup> defendant applied for Letters of Administration to administer the estate of the late Tito Kiwanuka Musoke, and mentioned only one property that is land at Mabindo measuring 59.1 hectares with the knowledge that the suit land was not part of Tito Musoke's estate. They further averred that she never disclosed the list of her late father's children and only mentioned that there were three surviving children whereas not. They further stated that the 1<sup>st</sup> defendant included a one Daudi Ssempala as a child of the deceased whereas not. The plaintiffs also aver that prior to filing the petition for Letters of Administration, there was no meeting convened by all the beneficiaries.

7.5.1. On her part and through her Attorney, the 1<sup>st</sup> defendant testified that she is the biological daughter of the deceased and that upon his death, she informed the Administrator General and that several family meetings were held after which she was issued with a Certificate of No Objection and subsequently obtained Letters of Administration on the 5<sup>th</sup> day of September, 2011.

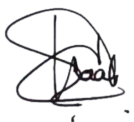


7.5.2. According to the Petition filed in this court on 29<sup>th</sup> March, 2011 under paragraph 3 thereof, the deceased died on 18<sup>th</sup> June, 1967 of natural causes at the age of 90 years, he was buried in Namagoma on their ancestral grounds, he left a widow who died in 1986 at the age of 90 years, he was survived by three (3) children namely Mary Nabbagala (a daughter aged 76 years then), Norah Kilwana N. (a daughter aged 94 years then) and Daudi Ssempala (a son aged 80 years then). The late Tito Kiwanuka left behind 59.1 hectares of land at Mabindo Estate, Block 463 Singo No. 6 in Mityana District.

7.5.3. There was non-disclosure of suit property as part of the estate of the late Tito Kiwanuka Musoke by the 1<sup>st</sup> Defendant while obtaining Letters of Administration yet this particular land did not belong to the 1<sup>st</sup> Defendant as her personal property because she never purchased it. There is enough proof that the suit land in this matter belonged to the Late Tito Kiwanuka, he was the Registered Proprietor (***See Section 59 of the Registration of Titles Act, Cap. 230 on Certificate to be conclusive evidence of title***).

7.5.4. While Petitioning for Letters of Administration, the 1<sup>st</sup> Defendant did not disclose a full list of beneficiaries than her sister named Norah Kilwana N. The 1<sup>st</sup> Defendant left out her siblings and in case they had passed on, then she had the duty to disclose their children (grandchildren) of the deceased. Meaning there was foul play on the part of the 1<sup>st</sup> Defendant in the process of obtaining Letters of Administration.

7.5.5. On the issue of not filing an inventory, the Petitioner who happened to be the 1<sup>st</sup> Defendant Petitioned this court and stated that she undertook to well and faithfully administer the property and credits of




the estate of the deceased and make a full and true inventory of the same in this Honorable court within six months from the date of the grant of the Letters of Administration or within such further time as the Court may from time to time appoint. The 1<sup>st</sup> Defendant further made a declaration before this Court on 29<sup>th</sup> March, 2011 that, “...*the late Tito Kiwanuka died intestate in the 1967 and I shall faithfully administer the estate of the aforesaid deceased by paying just debts and distributing the residue of his estate and effects according to the law and that I shall exhibit a true and a perfect inventory of all singular effects to the deceased’s estate and render just and true account thereof whenever required by the law.*”

7.5.6. Upon obtaining Letters of Administration, the 1<sup>st</sup> Defendant failed to file an inventory within the prescribed statutory period. Under Section 278 (4) and (5) of the Succession Act, Cap. 162 it is an offence to fail to comply with filing an inventory and account.

7.5.7. Only land situated at Mabindo Estate comprised in Block 463, Singo Plot No.6 in Mityana District was declared as the only property left behind by the deceased and this suit property is in Namagoma which is the issue as being property of the 1<sup>st</sup> Defendant’s late father’s land which also holds the burial grounds for the family. This implies that there was a deliberate motive of misleading the court/ omission by the 1<sup>st</sup> defendant as she could not have claimed to have no knowledge of its existence.

7.5.8. The 1<sup>st</sup> defendant not only made a false suggestion that the deceased had only had one piece of property but also concealed the suit property from the court. She also failed to file a true and proper inventory in this court within the stipulated period. The 1<sup>st</sup> defendant upon



obtaining the grant of Letters of Administration sold off the suit property that was not included in her petition to third parties. It is this court's considered finding that the 1<sup>st</sup> defendant did not lawfully obtain the Letters of Administration.

**Issue No. 3: Whether the Trust created by the Plaintiffs is valid?**

8.0. A Trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons who are called beneficiaries or cest que trust), of whom he himself may be one, and any one of whom may enforce the obligation. **(See; Trusts and Trustees. Cases and Materials. R.H. Maudsley and E.H. Burn).** A Trust can be seen to exist whenever equity imposes on a person (the trustee) an obligation to deal with property of which he is the owner, either for the benefit of other persons (the beneficiaries), any one of whom may enforce the obligation. **(Equity and the Law of Trusts. 12<sup>th</sup> Edition Phillip H. Pettit).**

8.1. The plaintiffs presented a copy of the Trust Deed dated 23<sup>rd</sup> November, 1991. They further presented a copy of the Title to the suit land wherein the Trustees are the registered proprietors of the suit land on 6<sup>th</sup> September, 1995. This court also takes note of the fact that two of the trustees were children of the deceased and siblings of the 1<sup>st</sup> defendant, all of whom held this property together in trust for the beneficiaries of the estate of the deceased. The property was not sold or tampered with to the knowledge of this Court until the 1<sup>st</sup> defendant obtained Letters of Administration after all her other siblings including the two other trustees to the suit property had passed on.



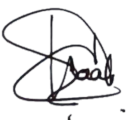
- 8.1.1. The 1<sup>st</sup> defendant avers that the plaintiffs fraudulently registered themselves on the suit land. However, she failed to discharge her burden of proof as required by the law. Fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters. **(Shaban Mukasa & Another Versus Lamba Enterprises & Another Civil Suit No. 287 of 2021)**. The 1<sup>st</sup> defendant alleged that the plaintiffs fraudulently registered themselves as trustees to the suit property but did not present any evidence to this effect.
- 8.1.2. The Letters of Administration were petitioned for after 44 years following the death of Tito Kiwanuka. By the time the Letters of Administration were obtained a Trust deed had been created on 23<sup>rd</sup> December, 1991 wherein it was created over the property Comprised in Busiro Block 331 Plot 144 measuring 4.29 acres at Kakungube Busiro. The property was transferred to the trustees Samwiri Musoke Monedde, Samwiri Kasolo Kasiwukira, Kasalina Nakirabira and Godfrey Lubwama and on 16<sup>th</sup> September, 1995, vide Instrument Number, KLA 175466, the said trustees were registered on the Suit property as the Registered Proprietors.
- 8.1.3. In this instance, the plaintiffs (grandchildren of the deceased) together with Kasalina Nakabira and Godfrey Lubwama, (children of the deceased who have since passed) were the trustees of the suit property holding it in Trust for the beneficiaries of the Estate of the Late Tito Kiwanuka. The Court can deduce that this property has been held in trust by the plaintiffs who have not sold any part of it since their registration on it as Trustees. The suit land holds family burial land



where the 1<sup>st</sup> defendant herself was buried. It is this Court's considered finding that the Trust was validly created.

**Issue 4: Whether the transaction between the 1st defendant and the 2nd defendant was lawful?**

- 8.2. Under Issue 1, this Court resolved that the suit property formed part of the estate of the deceased Tito Kiwanuka. Furthermore, under Issue 2, it was resolved that the 1<sup>st</sup> defendant acquired the Letters of Administration by means of an untrue allegation and omission. In her Petition for Letters of Administration, the 1<sup>st</sup> defendant/Counter claimant deliberately omitted the suit property from the list of properties owned by the deceased. The suit property was registered in the names of the trustees, and though the 1<sup>st</sup> Defendant was a beneficiary to the suit land, her interests were not the sole interests existing in the suit land. The 1<sup>st</sup> defendant might have been the only remaining child of the deceased at the time, however, the deceased had other children whose interests in the suit land passed to their children. The trustees were appointed to hold the property in trust for the benefit of the beneficiaries of the estate of the deceased.
- 8.3. It is trite law that when one purchases land, they must conduct all due diligence including a physical search on the Land and a search of the Registry. **The Black's Law Dictionary (1968), 4<sup>th</sup> Edition, at page 544** defines Due Diligence as a measure of prudence or activity to be expected from, and ordinarily exercised by a reasonable or prudent man under the particular circumstances, not measured by an absolute standard but dependent on the relevant facts of a particular case. In the case of **John Bageire vs. Ausi Matovu, CACA No.07 of 1996, at**





**page 26, Kikonyogo, DCJ, quoting Okello JA.** *(As he then was)* emphasized the value of land property and the need for thorough investigations before purchase, and held inter alia that; “Land are not vegetables that are bought from unknown sellers. Land are valuable properties and buyers are expected to make thorough investigations; not only of the land but of the sellers before purchase.

- 8.4. The 2<sup>nd</sup> defendant averred that he asked the 5<sup>th</sup> defendant who was the LC1 chairman of the area at the time and he confirmed to him that the suit property belonged to the 1<sup>st</sup> defendant. A simple search of the Registry would have revealed that the 1<sup>st</sup> defendant was not the registered proprietor of the suit land. The investigations of the 2<sup>nd</sup> defendant were not thorough enough to discharge his duty of due diligence.
- 8.5. It is known that due diligence commences with a search at the Lands Registry for registered land. The search should uncover if the purported seller is indeed the rightful owner, and whether there are any incumbrances forbidding or affecting the right to sell the land. A buyer should insist on dealing directly with the person indicated as the legal owner on the Certificate of Title and should also insist that any encumbrances are addressed first before purchase. Due diligence is critical in order to avail oneself of the protection accorded by the law to “bonafide” purchasers. A bonafide purchaser must be shown to have undertaken all reasonable steps to ascertain that the land was available for purchase without any defects to title.
- 8.6. It is therefore the finding of this court that the 1<sup>st</sup> defendant did not have the requisite authority to transact in the suit land. The 2<sup>nd</sup> defendant did not carry out adequate due diligence to avail him the

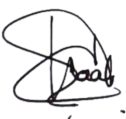


defense of a Bonafide Purchaser. Therefore, the transaction between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant was unlawful.

## **9.0. Conclusion**

9.1. The 1<sup>st</sup> defendant has since passed and therefore some of the remedies sought by the Parties are rendered nugatory. Therefore, the court orders as follows in the final result.

1. The Letters of Administration issued to the 1<sup>st</sup> defendant on 5<sup>th</sup> December, 2011 are declared to have been obtained fraudulently.
2. Land Comprised in Block 331 Plot 144 situate at Namagoma forms part of the estate of the Late Tito Kiwanuka Musoke.
3. The Land Sale Transactions of the suit property between the 1<sup>st</sup> defendant and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> defendants are hereby declared illegal, null and void.
4. The 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants are hereby ordered to compensate the Plaintiffs at the current value of the land that they occupy following a valuation assessment by the Chief Government Valuer.
5. The 2<sup>nd</sup> defendant is hereby ordered to hand over vacant possession to the registered proprietors of the trust property.
6. A Permanent Injunction is hereby issued against the defendants, their employees, agents and all those deriving interest under them from interfering with the suit land or in any way dealing with it without the plaintiff's approval.



7. Each party to bear its own costs.

***Dated, Signed and Delivered by email this 5<sup>th</sup> day of June, 2023.***

A handwritten signature in black ink, appearing to read 'Celia Nagawa', is positioned above a horizontal line.

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**CELIA NAGAWA  
AG. JUDGE**