

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

**CIVIL APPEAL NO.0060 OF 2022**

**(ARISING FROM WAKISO CIVIL SUIT NO.09 OF 2018)**

**KASULE ROBERT ::::::::::::::: 1<sup>ST</sup> APPELLANT**

**KIMBUGWE SHAFIK ::::::::::::::: 2<sup>ND</sup> APPELLANT**

**SEMPIJJA ABASKASULE ::::::::::::::: 3<sup>RD</sup> APPELLANT**

**VERSUS**

**KAKANDE PAUL ::::::::::::::: 1<sup>ST</sup> RESPONDENT**

**NAMUGGA REGINA ::::::::::::::: 2<sup>ND</sup> RESPONDENT**

**MPOZA JOHN ::::::::::::::: 3<sup>RD</sup> RESPONDENT**

**BEFORE HON LADY JUSTICE ELIZABETH JANE ALIVIDZA**

**JUDGMENT**

**15 Representations**

The Appellants were represented by Counsel Lutalo Derrick of M/S Mwebesa Richard Advocates & Solicitors.

The Respondents were represented by M/S Sebanja & Co. Advocates and M/S Ssekyeewa Matovu & Co. Advocates.

**20 Introduction and Background**

This is an Appeal arising from the judgment of Her Worship Nakadama Esther Lydia Mubiru Chief Magistrate delivered on the 28<sup>th</sup> June 2022 at the Chief Magistrates Court of Wakiso at Wakiso.

The Respondents are children and administrators of the estate of the late Yona Kityo and the 1<sup>st</sup> Defendant is a grandson. The estate comprised of about 13 acres of land, which forms part of the suit land. The late Yona Kityo was survived by 12 children including the 1<sup>st</sup> Defendant's father the late Kabuyo Lawrence.

The late Kabuyo Lawrence was the heir to the late Kityo Yona though he did not get letters of administration or distribute the estate to the beneficiaries. The  
30 Plaintiffs obtained letters of administration of their father's estate and thereafter made distribution of the estate amongst the beneficiaries leaving approximately one and a half acres of the land as family land which forms part of the suit property.

On 13<sup>th</sup> December 2017, the Appellants began fencing off the suit land with  
35 barbed wire, laying building materials and embarked on immediate construction of permanent structures on the suit land claiming that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants acquired the same from the 1<sup>st</sup> Appellant.

After failing to get relief from the LCs and Police authorities, the Respondents filed Civil Suit No.009 of 2018 against the Appellants seeking permanent  
40 injunction, general damages and costs of the suit.

The following issues were raised at trial

1. Whether this honorable Court has jurisdiction to entertain the suit?
2. Whether the suit land (Kibanja) forms part of the estate of the late Kityo Yowana?
- 45 3. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are bonafide purchasers for value without notice?
4. What are the remedies available?

During trial, The Plaintiffs'/Respondents also adduced the evidence of four witnesses PW1 Kakande Paul PW2 Joel Kakande PW3 Namugga Regina PW4 John  
50 Mpoza. The Defendants/Appellants adduced the evidence of four witnesses DW1 Kimbugwe Shafik, DW2 Sempijja Abas, DW3 Kasule Robert and DW4 Kirabira Ivan.

The trial Court carried out locus visit on the 19/5/2022 wherein the 1<sup>st</sup> Respondent testifying as PW1 stated that he did not have any documentary  
55 evidence of the ownership of the house owned by the 3<sup>rd</sup> Appellant. That the 3<sup>rd</sup>



Appellant's house was constructed during Covid-19 after filing of the case and injunctive remedy sought. Court observed that there are two constructed houses on the suit land; one newly constructed and occupied, and the other still under construction not yet roofed. Court also noted a grave yard near the suit land.  
60 Court interviewed a woman found in the house allegedly belonging to the 3<sup>rd</sup> Appellant, who stated that they were part of the family of Nasser Mohammed and they did not know whether he was a tenant or not.

The trial Magistrate found in favor of the Respondents. The Appellant being dissatisfied with the decision appealed to this Court

### 65 **Grounds of Appeal**

The Appellants raised the following grounds;

1. The learned trial Magistrate erred in law and fact when she failed to evaluate the evidence on record and at locus thereby erroneously finding that she had jurisdiction to entertain Civil Suit No.9 of 2018
- 70 2. The learned trial Magistrate erred in law and in fact when she ordered for demolition of all houses on the suit land.
3. The learned trial Magistrate erred in law and fact when she failed to consider the contradictions and inconsistencies in the Plaintiff's evidence thereby arriving at a wrong decision.
- 75 4. The learned trial magistrate erred in law and fact when she declined to consider most of the Defendants'/Appellants' evidence while writing her judgement thus arriving at a wrong conclusion that the suit land formed part of the estate of the late Kityo Yowana.
- 80 5. The learned trial Magistrate erred in law and fact when she held that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Appellants were not bonafide purchasers for value without notice.
6. The learned trial Magistrate erred in law and fact when she failed to consider the submissions of the Defendants while arriving at her decision despite the fact that they were filed on record as directed.

85 7. The learned trial Magistrate erred in law and fact when she awarded the  
Respondents general damages to a tune of UGX 9,000,000 which was not  
based on evidence.

### **Role of the first Appellate Court**

This being a first Appeal, this Court is under an obligation to re-hear the case by  
90 subjecting the evidence presented to the trial Court to a fresh and exhaustive  
scrutiny and re-appraisal before coming to its own conclusion. This duty is well  
explained in Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of  
2000; [2004] KALR 236 as thus; *"It is a well-settled principle that on a first appeal,*  
*the parties are entitled to obtain from the appeal court its own decision on issues of*  
95 *fact as well as of law. Although in a case of conflicting evidence the appeal court*  
*has to make due allowance for the fact that it has neither seen nor heard the*  
*witnesses, it must weigh the conflicting evidence and draw its own inference and*  
*conclusions."*

The parties are entitled to obtain from the Appeal Court its own decision on issues  
100 of fact as well as of law. See [Pandya v. R [1957] EA. 336]. It is incumbent on this  
Court therefore to weigh the conflicting evidence and draw its own inferences and  
conclusions in order to come to its own decision on issues of fact as well as of law  
and remembering to make due allowance for the fact that it has neither seen nor  
heard the witnesses.

105 The Appellate Court is confined to the evidence on record. Accordingly, the view of  
the trial Court as to where credibility lies is entitled to great weight. However, the  
Appellate Court may interfere with a finding of fact if the trial Court is shown to  
have overlooked any material feature in the evidence of a witness or if the balance  
of probabilities as to the credibility of the witness is inclined against the opinion of  
110 the trial Court.



## Resolution

Both parties filed written submissions that this Court has taken into consideration  
115 in arriving to its decision.

*Grounds 1 The learned trial Magistrate erred in law and fact when she failed to evaluate the evidence on record and at locus thereby erroneously finding that she had jurisdiction to entertain Civil Suit No.9 of 2018.*

*Law Applicable.*

120 In the case of Centre for Health, Human Rights and Development & 3 Others Vs Attorney General & Another Constitutional Petition No 22 of 2015 the Court observed that the jurisdiction of a Court or Tribunal is defined by three elements: *ratione personae* (parties' locus standi to institute proceedings before it), *ratione materiae* (subject-matter jurisdiction) and *ratione temporis* (time frame within which  
125 proceedings may institute the matter).

The issue here is subject jurisdiction (*Ratione materiae*). It is trite law that the jurisdiction of Courts is a creature of statute and if a Court has no jurisdiction its decision is a nullity. A Court cannot give itself jurisdiction in a case otherwise outside its jurisdiction on the ground that it would be for the convenience of the  
130 parties and witnesses.

In the case of Baku Raphael Obudra & Anor v AG (S.C.C.A No. 1 of 2005), the Supreme Court held that; *"Courts are established directly or indirectly by the constitution and that their respective jurisdictions are accordingly derived from the constitution or other laws made under the authority of the constitution."*

135 The jurisdiction of the Magistrates Courts is governed by provisions of the Act No. 7 of 2007 which amended Section 207 (1) of the Magistrates Courts Act and it provides as follows; - *"Subject to this Act and other written law, the jurisdiction of magistrates presiding over magistrates' courts for the trial and determination of causes and matters of a civil nature shall be as follows;*

- 140 a) A Chief Magistrate shall have jurisdiction where the value of the subject  
matter in dispute does not exceed fifty million shillings and shall have  
unlimited jurisdiction in disputes relating to conversion, damage to property  
or trespass;
- 145 b) A Magistrate grade 1 shall have jurisdiction where the value of the subject  
matter does not exceed twenty million shillings"

Under Section 207 (3) of the MCA as amended, it is incumbent on a Plaintiff to state the value of the subject matter of a suit in the pleadings for purposes of legal action. Section 11 of the Civil Procedure Act also requires Plaintiffs to always estimate the value of subject matter in litigation.

150 In the case of Tarema Justus v Kiteteyi Robina & 2 Others H.C. Rev. Application No. 001 of 2017 Justice Dr. Flavian Zeija in referring to Owners of Motor Vessel Lillian vs Caltex Oil Kenya Limited (1989) (1) KALR observed that: "Jurisdiction is a very crucial aspect in litigation. Without it a Court has no power to make any step. A court of law downs its tools in respect of the matter before it the moment it  
155 holds the opinion that it is without jurisdiction".

Counsel for the Appellants in referring to Section 5 of the Civil Procedure Act and the case of Mukasa vs. Muwanga HCMA No.31 of 1994 submitted that the jurisdiction of Court is not a matter of implication but must be prescribed by law as it gives the Court power to hear and entertain any proceeding before it. That  
160 the Plaint must clearly state the facts on which the Court is asked to assume jurisdiction.

In referring to DEX3 sale agreement dated 12/12/2017, Counsel submitted that the sale agreement shows that the suit land was purchased by the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants from the 1<sup>st</sup> Appellant at UGX 70,000,000 and for this reason the  
165 subject matter was above the pecuniary jurisdiction of a Chief Magistrate.

Counsel for the Appellants also submitted that whereas the Respondents guised this suit as one of trespass and thus made no mention of the subject matter, in



actual sense it was a suit for recovery of land, cancellation of sales agreements, challenge of ownership and not merely trespass to enforce possessory rights.

170 It was further submitted for the Appellants that the trial Magistrate erred in taking judicial notice that in most cases after filing the case the other party hurriedly constructs buildings or develops the land to push the subject matter above the pecuniary jurisdiction. That thus is not one of the situations provided for under Sections 55 and 56 of the Evidence Act where Court is allowed to take judicial  
175 notice.

Counsel for the Respondents on the other hand submitted that the trial Magistrate had both pecuniary and geographical jurisdictions to hear Civil Suit No. 9 of 2018. That the pleadings in the suit never alluded to any monetary value attached to the subject matter being a claim premised on trespass to land.

180 Counsel further submitted that in paragraph 3 of the Plaint, the Respondent's claim was trespass to land and in response thereto the Appellants in their written statement of Defence merely denied the contents of the Plaint without contesting that the suit hinged on a claim of trespass to land or alluding to that value of the suit land. That all the attachments to the pleadings never pointed out a value  
185 beyond that of the trial Chief Magistrate.

I note that during the hearing, PW3 testified that her father left behind land comprised in Busiro Block 314 Plot 92 measuring about 9 acres and that she is one of the Administrators of the estate. She also stated that the 9 acres were sold to Kawooya, Namugga, Kakande and Nalukenge and one of half acres was sold at  
190 UGX 56 million to carter for the family obligations.

DW1 testified that he bought the land at 35 million. That his friend; the 3<sup>rd</sup> Appellant also bought at 35 million. That the total of UGX 70,000,000. DW4 testified that he was a broker in the sale transaction. That the purchase price was UGX 70,000,000 which was paid in cash. That the 1<sup>st</sup> Appellant was a resident  
195 on the land. A sale agreement DEX3 dated 12-12-2017 was adduced into evidence.

The trial Magistrate on page 3 of her judgment on the issue of jurisdiction noted that the judicial lens should be to ascertain what was on the suit land at the time of filing the suit, and not what is on the land currently since a temporary  
200 injunction was issued to the Appellants restraining them from further construction of any building on the suit land until the disposal of the suit. She referred to the photos attached on the pleadings of the Plaintiffs' at the time the temporary injunction was granted and the photos attached on the Application for contempt of Court in addition to what was at locus.

205 On page 4 of her judgment, she further stated that in Misc. Application No. 119 of 2021 Kakande Paul and 2 others vs. Kasule Robert and two others, the photos attached and marked as annexures F1, F2, F3 and F4 taken on the 13/9/2021 show that the temporary injunction order which was issued on 16/8/2018 was not complied with and that during locus one house though not plastered or  
210 painted had been partially occupied. The trial Magistrate inferred that with the continued construction of such buildings, the subject matter changes, so does the pecuniary jurisdiction. However this appears to be irrelevant since the subject value that should be consider is the one at the time of filing the suit.

In this case in determining whether the lower Court had jurisdiction, I shall revisit  
215 the Plaint and the Written Statement of Defence. The Respondents' under paragraph 3 of the Plaint sought the following prayers

- a) *A permanent injunction restraining the defendant, his agents, servants and/or other successors from trespassing, intermeddling, constructing, threatening, intimidating or in any other way interrupting the Respondents or any other beneficiaries enjoyment of the use of the suit land.*  
220
- b) *General damages*
- c) *Costs of the suit*

From the pleadings, there was no mention of the value of the suit land in both the Plaint and the Written Statement of Defence that the Court could rely on to



225 determine its pecuniary jurisdiction. The claim the Respondent sought was in regards to trespass.

During trial, Counsel for the Appellants raised a preliminary objection on locus standi and jurisdiction of court. The record shows that on the 4<sup>th</sup> February 2019, the trial Magistrate delivered a ruling on the preliminary objection stating that  
230 the Court had no benefit of seeing the sale agreement that Counsel was seeking to rely on to oust the jurisdiction of Court. The trial Magistrate further noted that whether the land has a certificate of title or not or is a mere Kibanja, the same must have a value not exceeding UGX 50,000,000 which is the pecuniary jurisdiction of the Chief Magistrates court

235 Having perused through the record, the trial Magistrate rightly noted that whether the land has a certificate of title or not or is a mere kibanja, the same must have a value not exceeding UGX 50,000,000 which is the pecuniary jurisdiction of the Chief Magistrates court.

However it should also be noted that the Chief Magistrate has unlimited  
240 jurisdiction where trespass is pleaded. In this case, the Respondent specifically stated that the cause of action was trespass.

This is enough to give the trial Magistrate jurisdiction.

In this instant case, however much the Respondents (Plaintiffs) did not state the value of the suit land in their plaint and neither did the Appellants, during trial,  
245 the Appellants in testifying as DW1 and DW3 stated that they bought the suit land at UGX 70,000,000, a sale agreement DEX3 was adduced into evidence, DEX3 during cross-examination, the Respondents did not challenge the sales agreement or dispute the fact that the land was sold at UGX 70,000,000.

I note that the Respondents were not party to the sale agreement between the  
250 Appellants. PW1 stated the estate of his late father was divided and each child got about one acre. However in 2017 a group of people came and fenced off about 3 acres claiming that they had bought the said land from the 1<sup>st</sup> Appellant who

happened to be a son of their late brother Kabuye Lawrence. That the family of the late Kabuye Lawrence had been given their share of the estate and that they were trespassing. Therefore the issue here clearly is trespass on the land belonging to other beneficiaries and has nothing to do with the sale agreement of 70 million purchase price between the Appellants which had nothing to do with the claim of trespass.

Therefore I find that ground one fails and the Chief Magistrate had jurisdiction to hear the case.

Grounds 3 and 4: *The learned trial Magistrate erred in law and fact when she failed to consider the contradictions and inconsistencies in the Plaintiff's evidence thereby arriving at a wrong decision.*

*The learned trial Magistrate erred in law and fact when she declined to consider most of the Defendants'/Appellant evidence while writing her judgement thus arriving at a wrong conclusion that the suit land formed part of the estate of the late Kityo Yowana.*

Counsel for the Appellants in referring to the case of Kintu Ssewanyana Musoke Mutima High Court (civil division) civil appeal No.26 of 2019 submitted that it is trite law that as a trial Magistrate must weigh the evidence of both parties and test the coherence and consistency of the evidence adduced by each party against the other and where major inconsistencies are found, they must be satisfactory explained.

Counsel for the Appellants further submitted that the trial Magistrate deliberately failed to consider major contradictions in the Respondent's evidence at trial and arrived at a wrong decision. Further that the suit land still formed part of the estate of the late Yowona Kityo yet PW1 and PW3 admitted during cross examination that the 1<sup>st</sup> Appellant was given the suit land as his share and the failed attempt by the Respondent to take it away from him was on the allegation that he was not their blood relative.



The trial magistrate in her judgment found that the 1<sup>st</sup> Appellant's evidence as DW3's incredible, untruthful due to the grave inconsistencies. That the entire land that was not distributed or the residue forms part of the family land and burial ground and not for a single beneficiary to claim ownership. That it remains  
285 the responsibility of the administrators of the estate to make decisions on how the same would be put to proper use.

The 1<sup>st</sup> Respondent in testifying as PW1 stated that the 1<sup>st</sup> Appellant is his nephew, that at the time of getting letters for administration for the estate of the late Yowana Kityo, his brother Kabuye Lawrence had passed on. That the 1<sup>st</sup>  
290 Appellant as son of Kabuye Lawrenec had a share in the estate of the late Yowana Kityo however there was a time they doubted the 1<sup>st</sup> Appellant being son of the late Kabuye Lawrence after the elder daughter of the late Kabuye told them that the 1<sup>st</sup> Appellant was not their brother or son of the late Kabuye.

PW1 further testified that Kabuye Lawrence was survived by seven children and  
295 they gave them the share of their father which they later sold. PW2 testified that the children of the late Kabuye were given one acre as their potion and they agreed to sale and share the proceedings, that they sold one acre to one Nansereko at 33 million and each got 4.7million. That their mother's account was used to deposit the 33 million but the 1<sup>st</sup> Appellant refused to pick his share.

300 PW3 testified that her father left behind land comprised in Busiro Block 314 Plot 92 measuring about 9 acres and that she is one of the administrators of the estate. She also stated that the 9 acres were sold to Kawooya, Namugga, kakande and Nalukenge and one of half acres was sold at UGX 56 million to carter for the family obligations.

305 The 1<sup>st</sup> Appellant testified that he was given one acre of the kibanja which is part of the estate of the late Yowana Kityo. That his father the late Lawrence Kabuye was a brother to the Respondents. That he was on the suit kibanja but at the time of distribution of the estate of Yowana Kityo, he was not present. That he knew he had been given one acre because his father denoted it to him before his

310 death. That he was given a Kibanja but the Respondents have a certificate of  
title. That he sold the Kibanja without informing the landlord since he had  
started selling part of it and had misunderstandings. The 1<sup>st</sup> Appellant further  
testified that the 1<sup>st</sup> Respondent appointed him heir to his paternal uncle since  
he had been heir to his late father. That the meeting was comprised of relatives  
315 and villagers but most of them are dead.

During re-examination, the 1<sup>st</sup> Appellant testified that the people who witnessed  
the donation by his father died and so there were no witnesses. That he did not  
consult the landlords because the Kibanja had been given to him by his late  
father.

320 The following key facts emerge from the evidence as a whole.

- The estate belonged as distributed and each of the beneficiaries got a  
share. P. E 2 a form of inventory indicates that each beneficiary got one  
acre. Only undistributed land was one and a half acres that was left for  
the home and burial ground. This is not a disputed fact.
- 325 • The 1<sup>st</sup> Appellant's father Kabuye Lawrence was given one acre. Since he  
was deceased, his children got his share.
- The one acre where the 1<sup>st</sup> Appellant was a beneficiary was sold. That each  
one got UGX 4.7 million. That the 1<sup>st</sup> Appellant refused to collect his share
- 330 • That the 1<sup>st</sup> Appellant was offered a plot of 40ft by 40 ft since his siblings  
had sold their land and gone back to Lira to live with their mother. This  
was corroborated by both the Appellant and Respondent's witnesses.  
There is even an agreement to that effect dated 12/12/2017

The 1<sup>st</sup> Appellant stated that he sold off his one acre. He claimed that his share  
was one acre that was given to him by his father. However I note that the suit  
335 land was distributed after the death of the Kabuye the 1<sup>st</sup> Appellant's father.

There is also contradiction among the evidence of the Appellants. The 1<sup>st</sup>  
Appellant stated that he sold to the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants his one acre. However



the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants stated that the 1<sup>st</sup> Appellant sold them his Kibanja as he had no certificate of title.

340 From the evidence adduced, it is not in contention that the 1<sup>st</sup> Appellant is a son to the late Kabuye Lawrence a brother to the Respondents and was entitled to a share in the estate of the late Kityo Yowana. The Respondents in their testimonies confirmed that the children of the late Kabuye Lawrence were given their father the late Kabuye Lawrence's share in the estate of the late Yowana Kityo and that they had sold their one acre share and divided the proceeds of the sale. There was no evidence adduced to prove that the 1<sup>st</sup> Appellant received a share of these proceeds, PW2 confirmed that the 1<sup>st</sup> Appellant did not receive his share.

350 The Appellants adduced into evidence DEX6 a copy of agreement wherein the 1<sup>st</sup> and 2<sup>nd</sup> respondents and two others as the family of the late Kityo Yowana gave the 1<sup>st</sup> Appellant a plot of land measuring 40ft by 40ft as his would be share of the estate of the late Kabuye Lawrence. This evidence was corroborated by the testimony of PW1 who during re-examination, stated that the 1<sup>st</sup> Appellant was entitled to the share of the estate of Yowana Kityo since their father had passed on. That after survey and sub divisions, the 1<sup>st</sup> Appellant and his siblings were given one acre, and the 1<sup>st</sup> Appellant was offered plot 40 x 40ft since he claimed his siblings had sold and not given him anything.

360 From the evidence at hand, the 1<sup>st</sup> Appellant was given the kibanja as his would be share in the estate of his father the late Kabuye Lawrence. There is no evidence on a balance of probability that the 1<sup>st</sup> Appellant was given an acre of the suit land. The evidence that I find proven is that he was given a share of 40ft by 40ft only.

The 1<sup>st</sup> Appellant sold the same to the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants who in my view acquired an equitable interest in the plot of land 40ft by 40ft.

365 I find that there are no inconsistencies and contradictions in the Respondent's evidence and the trial Magistrate arrived at the correct decision. I noted that the

Appellant's evidence was also considered and any omissions have been rectified by my re-evaluation of the evidence.

370 I also find that since the Respondents had given the 1<sup>st</sup> Appellant 40ft by 40ft of the suit estate land, this is the only land that he is entitled to and not a full acre. Therefore the trial Magistrate should have noted this in her ruling.

Therefore Grounds 3 fails but ground 4 succeeds partly.

375 *Ground 5; The learned trial Magistrate erred in law and fact when she held that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Appellants were not bonafide purchasers for value without notice.*

380 Counsel for the Appellant submitted that PW1 and PW3 confirmed that the 1<sup>st</sup> Appellant was given the suit land and that is why they later came up with reasons to justify why they wanted to take it away from him reason being that he was allegedly not a son of Kabuye Lawrence and consequently not a grandson of Kityo Yowana all of which were unfounded as no evidence in form of DNA results or otherwise was adduced to prove that allegation.

385 Counsel for the Respondents submitted that the Appellants did not adduce any evidence alluding to the fact that they were bonafide purchasers for value without notice. In referring to the case of Hannington Njuki vs. George Wiliam Musisi 1999 KALR cited in Erick Kimbowa vs. Bernard Kasitro HCCS No.2197/2009, Counsel also submitted that the defence of bonafide purchaser of a registered interest applies to purchaser of a registered interest.

390 In her judgment, the trial Magistrate found that there was no Kibanja on the suit land that DW1 and Dw2 bought from the 1<sup>st</sup> Appellant. That to qualify as bonafide purchasers, DW1 and DW2 must have done due diligence before the purchase. That in knowing that the 1<sup>st</sup> Appellant was selling a kibanja they did not bother to find out who the landlord was. That they further did not ask for letters of administration from the first Appellant or consent from other



395 beneficiaries authorizing him to sale the suit land after the 1<sup>st</sup> Appellant had told them that he had inherited the land from his late father.

The trial Magistrate further found that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants had both actual and constructive notice about the purchase of the Kibanja. That everything was not right and pointed to fraud but they decided to ignore. That the Appellants did not satisfy the parameters needed to be classified as bonafide purchasers of value without notice. That they therefore failed to prove that they are bonafide purchasers.

I agree with the reasoning of the trial Magistrate.

405 A "bonafide purchaser" was defined in Hajji Abdu Nasser Katende vs. Vathalidas Haridas & Co. Ltd, CACA No.84 of 2003, as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. Citing with approval the case of Hannington Njuki vs. William Nyanzi HCCS No.434 of 1996, the Court of Appeal held that for a purchaser to successfully rely on the bonafide doctrine, he must prove that;

- a) He holds a certificate of title; he purchases the property in good faith;
- 410 b) He has no knowledge of the fraud; he purchases for valuable consideration; the vendor has apparent title;
- c) He purchases without notice of any fraud; and
- d) He was not party to the fraud.

415 The Court also held as follows: "*A bonafide purchaser for value without notice has absolute, unqualified and answerable defence against the claims of any prior equitable owner. The burden to establish or prove the plea lies on a person who sets it up. It is a single plea and is not sufficiently made out by proving purchase for value and leaving it to be opposite party to prove notice if he can*".

420 The Respondents adduced into evidence PEX4 a copy of certificate of title where they are the registered owners. The respondents as the administrators of the estate of the late Kityio Yoana are the registered proprietors having been

registered on the 15<sup>th</sup> August 2016. The Appellants do not hold any certificate of title to the suit land.

425 The position of the law was also clearly stated in the case of Ndimwibo Sande and 3 others Vs Allen Peace Ampaire CA 65 of 2011 which stated that *"It appears clearly to us that the doctrine of bonafide purchaser for value without notice is a statutory defence available only to a person registered as proprietor under the RTA. It is not an equitable remedy although its history stems from the common law. It would not even qualify as a remedy for it is only a defence, by a person*  
430 *registered as proprietor under the RTA"*

The Appellants adduced into evidence DEX6 a copy of agreement wherein the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as the family of the late Kityo Yoana gave the 1<sup>st</sup> Appellant a plot of land measuring 40ft by 40ft on the 12-12-2017. The Appellants also adduced a copy of sale agreement DEX3 which shows that the 1<sup>st</sup> Appellant sold  
435 his plot that he got as a share of his father Lawrence Kabuye to the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants on 12/12/2017.

This notwithstanding, ownership of the plot of 40ft by 40ft by the 1<sup>st</sup> Appellant does not make the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants bonafide purchasers for value without notice of the one acre.

440 From the facts at hand, it is evident that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants bought the kibanja from the 1<sup>st</sup> Appellant who was not a registered proprietor at the time. I also note that the 1<sup>st</sup> Appellant claimed an interest in the suit land through his father the late Lawrence Kabuye's share. However the inventory and witnesses evidence indicate that that share was sold and the money divided amongst all  
445 the children of Kabuye.

This ground 5 also fails.



GROUND 6; *The learned trial Magistrate erred in law and fact when she failed to consider the submissions of the defendants while arriving at her decision despite the fact that they were filed on record as directed.*

Counsel for the Appellants submitted that it is the duty of court to consider each party's submissions on every issue while arriving to its decision and that it was not enough for the trial magistrate to mention that she has considered the submissions of both parties while making her decision, and in this case the Appellant's submissions were not considered.

Counsel for the Respondents submitted that this ground was bound to fail for reasons that the learned trial Magistrate properly stated in her judgment that submissions were filed by both parties and so she considered in her judgment.

On page 2 of her judgment, the trial Magistrate acknowledge that Counsel had filed written submissions. I also note that the trial Magistrate in arriving to her decision on pages 4 and 6 of her judgment, made reference to Counsel for the Appellant's submissions in regards to the purchase of the suit land.

It is also important to clarify the role of written submissions. They are arguments made by Counsel to persuade the Court to make the decision in their favour. Submissions are not part of facts that form evidence that the Court is required to evaluate. However strong the submissions maybe if the evidence is weak and not favourable, then the submissions will be in vain.

Furthermore the Court is bond to make decisions based on law and fact and there is no procedure that requires the Court to comment on each and every submissions made. The practice is to highlight the most important ones and consider the rest when making a decision.

It is therefore my conclusion that the trial Magistrate took into consideration submissions of Counsel, this ground of Appeal fails.

Ground 7; The learned trial Magistrate erred in law and fact when she awarded  
475 the respondents general damages to a tune of UGX 9,000,000 which was not  
based on evidence.

The trial magistrate entered judgment in favor of the Respondents general  
damages of UGX 9,000,000. I see no reason to interfere with this award.

It is trite that general damages are direct and probable consequence of the act  
480 complained of. (Kampala District land board and George Mitala vs. Venansio  
Bamweyana CA No.2 of 2007).

General damages are also awarded at the discretion of court, and is always as  
the law will presume to be the natural consequence of the defendant's act or  
omission.

485 The Appellants trespassed in the Respondents land without any regard to their  
interest and even the interests on the rest of the family. The record indicates that  
the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants continued to develop the suit land even with  
injunctive orders in place.

This ground of Appeal also fails.

#### 490 **Conclusion**

This Appeal fails and the decision of the lower Court is upheld with the following  
modified orders.

1. The 1<sup>st</sup> Appellant is entitled to part of the suit land measuring 40ft by 40ft.  
this was the only piece of land he was entitled to sell to the 2<sup>nd</sup> and 3<sup>rd</sup>  
495 Appellant. The agreement indicates that he already received it.
2. The 2<sup>nd</sup> and 3<sup>rd</sup> Appellant be evicted from the rest of the suit property that  
falls outside the 40ft by 40ft belonging to the 1<sup>st</sup> Appellant.
3. The suit property had been preserved as the home and burial ground. As  
observed by the trial Magistrate, there are graves near the suit land. The  
500 Appellants should be evicted from the said area.



4. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellant equally pay the Respondents UGX 3 million to make up the general damages of UGX 9 million. The amount shall incur interest at the rate of 27% per annum from date of delivery of judgment until payment in full.

505 5. Given that this is a family dispute, no order as to costs should be awarded both in the lower Court and this Court.

So ordered.

510

**Elizabeth Jane Alividza**

**Judge**

**9<sup>th</sup> January 2024**

515

10<sup>th</sup> January 2024

Judgment delivered on ECCMIS

520

**Elizabeth Jane Alividza**

**Judge**