

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**HCCS. NO.404 OF 2018**

**NYANZI EDWARD ..... PLAINTIFF**

**VERSUS**

- 1. NAMULINDWA MARGARET**
- 2. KYEYUNE HENRY**
- 3. GALIWANGO HASSAN**
- 4. KIWANUKA EMMANUEL**
- 5. NAJINGO MARGARET ..... DEFENDANTS.**

**BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU**

**JUDGEMENT.**

**INTRODUCTION AND BACKGROUND.**

1. This suit is in respect of a kibanja located at Kabuuma which formerly belonged to late Benedicto Wasswa. Late Benedicto Wasswa had only one daughter called Nabbanja Margaret who is mother to 1<sup>st</sup> defendant. The plaintiff on the other hand is son to late Bugembe Godfrey who was customary heir to late Benedicto Wasswa. It is alleged that late Benedicto Wasswa bequeathed the suit Kibanja to his customary heir, Bugembe Godfrey who occupied and utilised the same since 1982. However in 2018, the 1<sup>st</sup> defendant purportedly entered into a sharing agreement



with one Sebadduka John and Tayira Godfrey and distributed the suit kibanja. After the said distribution, the 1<sup>st</sup> defendant sold the suit kibanja to the 2<sup>nd</sup> defendant, who in turn sold to the 3<sup>rd</sup> defendant who also sold to the 4<sup>th</sup> and 5<sup>th</sup> defendants.

The plaintiff claimed that the alleged distribution, purchase and or sale transactions on the said kibanja were unlawful. He thus filed the instant suit seeking for;

- a) a declaration that the different agreements of sale and or purchase of kibanja and plots of land situate on the plaintiff's land at Kabuuma are null and void,
- b) declaration that the defendants have no interest in the said land and are therefore trespassers,
- c) eviction of the defendants from the said land plus of demolition of the illegal structures on the said land,
- d) declaration that plaintiff is the rightful owner of the suit land,
- e) permanent injunction against the defendants,
- f) general damages and costs of the case.

11. All defendants filed written statements of defence by which they called upon court to dismiss the suit with costs. The 1<sup>st</sup> and 2<sup>nd</sup> defendants maintained that the late Benedicto Wasswa died intestate in around 1980 and the suit Kibanja was one of the properties that he left behind. That the late Benedicto Wasswa had only one daughter Margaret Nabbanja who was mother to 1<sup>st</sup> defendant. Upon the death of Benedicto Wasswa the clan members appointed Bugembe

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Godfrey to be his customary heir and he consequently started staying on the suit kibanja as a caretaker. That at all material times the late Bugembe Godfrey was a caretaker of the suit kibanja and the same was neither bequeathed nor given to him as a gift. That the suit kibanja remained a beneficial property of Nabbanja Margaret. Nabbanja Margaret eventually developed a mental illness and the 1<sup>st</sup> defendant acquired letters of administration to estate of late Benedicto Wasswa. She thereafter sold off portions of the suit kibanja to 3<sup>rd</sup> parties in order to raise money to cater for her sick mother.

The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants maintained that the 3<sup>rd</sup> defendant lawfully purchased the suit kibanja from the 2<sup>nd</sup> defendant who had also purchased the same from the 1<sup>st</sup> defendant. The 3<sup>rd</sup> defendant thereafter sold to other people including the 4<sup>th</sup> and 5<sup>th</sup> defendants. That they lawfully purchased the suit kibanja without notice of any defect in title. After purchase they took possession and have since started developing the suit kibanja.

## **1. ISSUES**

- a) Whether the suit land formed part of the estate of the late Benedicto Wasswa or the same forms part of the estate of late Bugembe Godfrey.
- b) Whether the sale of the suit kibanja by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant and later to other defendants was unlawful or fraudulent.
- c) Whether the defendants are trespassers on the suit land.

  
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d) What the plaintiff is entitled to the remedies sought.

## **2. LEGAL REPRESENTATION**

The plaintiffs were represented by M/s Abdallah Kiwanuka Associated Advocates while the 1<sup>st</sup> defendant was represented by M/s CCAKS Advocates. The other defendants were represented by M/s Ruhindi & Co. Advocates.

## **3. LAW APPLICABLE**

- The Constitution of the Republic of Uganda, 1995.
- The Succession Act
- The Civil Procedure Act
- The Civil Procedure Rules
- Common law and caselaw.

## **4. PLAINTIFF'S EVIDENCE**

Plaintiff called 4 witnesses who all gave sworn evidence and closed his case.

PW1 was Nyanzi Edward, the plaintiff. He made a witness statement which was admitted as his evidence in chief. Briefly he testified that; He was one of the beneficiaries and administrator to estate of the late Bugembe Godfrey formerly of Kabuuma who died in 2005. That the late Bugembe Godfrey received the suit kibanja as a gift from the late Benedicto Wasswa. That late Bugembe built a house on the said kibanja and that PW1 had lived on the said kibanja with his father since childhood. When Bugembe passed he left them on the suit



kibanja. That during the life time of Bugembe, PW1 peacefully lived on the suit kibanja without any third party claims and during that time Bugembe sold a portion of the kibanja to one Tayira Godfrey.

On 24<sup>th</sup> April 2018, the 1<sup>st</sup> defendant purportedly entered into a sharing agreement of the suit kibanja with one Sebadduka John and Tayira Godfrey and they illegally distributed the same. Consequently their crops on the suit kibanja were destroyed.

PW1 and one Namagembe Rose Melvis eventually got letters of administration to estate of late Bugembe Godfrey . In support of his evidence he tendered to court several documents which included, the sharing agreement dated 24/4/2018 as PEX 1, Letters of administration to estate of Bugembe Godfrey dated 6/11/2018 as PEX 2 , consent to transfer letter dated 11/2/2020 as PEX 3, Introductory letter dated 2/8/2018 as PEX4 , Gift document dated 16/9/81 as PEX 5 and Receipts from Buganda Kingdom in the names of Tayira Godfrey Sebadduka as PEX 6.

In cross examination PW1 confirmed that the gift document PEX 5 was not signed and not witnessed by anybody. However Benedicto Wasswa died in 1981 and he made the document before he died. That it was the 2<sup>nd</sup> defendant who came on the suit land and graded it. He also sold to the other defendants when the matter was still in court.

PW2 was Tayira Godfrey. He also made a witness statement that was admitted as his evidence in chief. He testified that PW1 was his brother and they were both sons of late Sebadduka John.





Late Sebadduka John was brother to late Benedicto Wasswa. That late Benedicto Wasswa brought late Bugembe Godfrey to the suit kibanja while he was still young and during his life time he gave him the suit kibanja as a gift. When Benedicto Wasswa died, Bugembe was elected heir and he continued in occupation of the suit kibanja . He remained in occupation of the same and in 2002 he sold part of the same to him (PW2) and in 2006 he (PW2) built a house on the portion that had been sold to him.

In 2018, 1<sup>st</sup> defendant brought a letter to him and informed him that the estate of late Ben Wasswa had never been distributed and that if they contested their decisions their homes would be destroyed. She then told him to sign an agreement which he did because he did not want his home to be destroyed. That after some time tractors came and destroyed properties on the suit kibanja that belonged to the plaintiff and other children of late signed the document Bugembe. That his house (PW2) was not destroyed because he had signed the document.

In cross examination he stated that Nabbanja was a child of Benedicto Wasswa while Bugembe Godfrey was appointed by the clan as heir to Benedicto Wasswa. PEX 5 was made on 16/9/81 but he could not recall who witnessed the document. Benedicto Wasswa also died in 1981.

That 2<sup>nd</sup> defendant came to the suit land with graders and sold off the same.

PW3 was Namagembe Rose Melvis. She also made a witness statement that was admitted as her evidence in chief. Briefly she stated that; That the suit kibanja belonged to her late father



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Bugembe Godfrey the same having been given to him as a gift by Benedicto Wasswa during his life time. That she had lived on the suit kibanja since her child hood and her late father had lived on the same without any third party claims. Even after their father's death, they continued utilising the same without any problem. That on 24/4/2018, the 1<sup>st</sup> defendant purportedly entered into a sharing agreement with Sebadduka John and Tayira Godfrey and illegally distributed the suit kibanja.

Later on tractors came and destroyed all their crops on the suit kibanja. That they acquired letters of administration to estate of late Bugembe Godfrey and were therefore the rightful owners of the suit kibanja.

In cross examination she stated that Benedicto Wasswa had only one child Nabbanja Margaret. Benedicto Wasswa had no son and he chose Bugembe Godfrey to his heir. Sebadduka John is the heir to Bugembe Godfrey. PEX 5 was written on 16/9/1981 but was not witnessed. She was not sure when Benedicto Wasswa died. That 1<sup>st</sup> and 2<sup>nd</sup> defendant went and destroyed everything on the suit land . They also sold a portion of the same when the matter was still in court.

PW4 was Mukwaya Moses Lutakome. He also made a witness statement that was admitted in court as his evidence in chief. He testified that the late Benedicto Wasswa died in 1981 and the last funeral ceremony was in 1982. That he had only one daughter Nabbanja Margaret. His heir was Bugembe Godfrey who also died in 2005 and his last funeral rites were in December 2005. The heir to Bugembe Godfrey was Sebadduka





John but he also had other children namely Nyanzi and Namagembe.

That estate of late Benedicto Wasswa comprised of three bibanja 2 of which were given to Nabbanja and the third one to his heir Bugembe Godfrey. This was in accordance with the wish of the deceased since he had also given it to him during his life time.

After death of Benedicto Wasswa, the late Bugembe continued to occupy the suit kibanja up to the time of his death and after his death his children continued in occupation of the same.

Nabbanja sold off the Bibanjas that were given to her.

In cross examination PW4 confirmed that Benedicto Wasswa had only one child called Nabbanja Margaret. Since he had no son Bugembe who was his nephew was appointed heir. Benedicto Wasswa died intestate but during his life time he used to say that Bugembe would be his heir. The suit kibanja was given to Bugembe as heir. The heir of late Bugembe was Sebadduka. This was the close of the plaintiff's case.

## **5. DEFENDANT'S EVIDENCE**

The defendants also called 4 witnesses who all gave sworn evidence.

DW1 was Namulindwa Margaret who was the 1<sup>st</sup> defendant. She made a witness statement that was admitted as her evidence in chief. Briefly she testified that she was born on 3/11/1986 and she was the biological daughter of Nabbanja

Margaret who was the only child of late Benedicto Wasswa and she was also the holder of letters of administration to estate of late Benedicto Wasswa. The suit kibanja formerly belonged to late Benedicto Wasswa who died in 1980 and Bugembe Godfrey was appointed his heir. That the suit kibanja was not given to him but he was told to caretake the same on behalf of Nabbanja Margaret who was still young. That the clan elders often told her that she was the one in charge of the suit kibanja since Nabbanja had a mental illness and she was the one looking after her. That Nabbanja had a mental illness and was on treatment at Butabika hospital. That several meetings were held in relation to the suit kibanja and it was agreed that the same should be divided among two families i.e plaintiff's family and PW1's family and the plaintiff attended all those meetings. Eventually they came up with a sharing agreement in which she signed on behalf of her family and Sebadduka John who was son and heir to Bugembe Godfrey signed on behalf of the plaintiff's family. By the said agreement plaintiff's family was given part of the land because their father was the heir to Benedicto Wasswa and DW1's family was given the biggest part because her mother was the only daughter of late Benedicto Wasswa. That she sold part of the suit land to the 2<sup>nd</sup> defendant who also resold to other people.

In support of her evidence she tendered to court letters of administration to estate of late Benedicto Wasswa dated 7/11/2018, as DEXH 1, Benedicto Wasswa's Death Certificate as DEXH 2 , Photograph of his tomb as DEXH 3





Receipt from UMEME as DEXH 4, Mental Status report of Nabbanja Margaret as DEXH 5 and also confirmed the land sharing agreement that had been tendered by the plaintiff as PEXH 1.

In cross examination DW1 stated that at the time of the meeting it was Bugembe's family that was on the suit kibanja and at that time she was staying with her mother at Gangu. Further that at that time she did not have letters of administration to estate of late Benedicto Wasswa and she didn't have any documents certifying that her mother was mentally ill. Whereas she had five siblings none of them was around during the land sharing agreement. That the five siblings had authorised her to act on their behalf but she did not have this authority in writing. Late Bugembe died in 2005 and between 2005 and 2018 DW1 was not staying on the suit kibanja and the people staying there were Edward Nyanzi, Namagembe Rose and Godfrey Tayira. Namagembe and Nyanzi did not sign on the land sharing agreement and it was Sebadduka John who was heir to Bugembe who signed on their behalf. The estate of Wasswa Benedicto was represented by DW1.

DW2 was Matilda Nantume. She also made a witness statement that was admitted as her evidence in chief. Briefly she stated that late Benedicto Wasswa was her cousin and she stayed with him at his home for some time. That to the best of her knowledge Wasswa only had one piece of land which was the suit land. He also had only one child Margaret Nabbanja the mother of the 1<sup>st</sup> defendant. Wasswa died in





1980 and his heir was Bugembe Godfrey. However the suit land was never given to Bugembe as he was only appointed a caretaker of the same on behalf of Nabbanja who was then young. After being appointed heir Bugembe stayed on the suit land . He first stayed with Nabbanja who later on left upon getting married. When her marriage failed Nabbanja went and started staying with Nabagulanyi Teopista and she eventually developed mental sickness.

In cross examination she stated that Nabbanja used to stay on the suit land in her childhood days and by the time Wasswa died she was already married. Nabbanja never challenged Bugembe's occupation of the suit land and when Bugembe 's children came to stay on the land after his death, Nabbanja never sent them away. In re examination she confirmed that when Wasswa came on the land as heir Nabbanja had no problem with the arrangement. Wasswa died in the 1980's funeral rites were done after about one year and it is then that Bugembe started staying on the suit land.

DW3 was Sentamu Aloysius who also made a witness statement that was admitted as his evidence in chief. Briefly he stated that the suit kibanja originally belonged to late Benedicto Wasswa who had only one child Nabbanja Margaret. After his death Godfrey Bugembe was appointed heir but the suit kibanja was never given to him. He was expected to caretake the same on behalf of Nabbanja who was about 14/15 years old. After death of Wasswa Nabbanja stayed on the land but eventually left when she got married.

  
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After Bugembe was appointed heir he started staying on the suit land. Later when her marriage failed Nabbanja went to stay at Gangu with Nabagulanyi. Eventually she developed mental sickness and currently 1<sup>st</sup> defendant was the one looking after her.

In cross examination she confirmed that Bugembe started staying on the suit land in 1982 after the funeral rites of Wasswa. When Bugembe came to stay on the suit land he had disagreement with Nabbanja and Nabbanja went to stay with Nabagulanyi.

DW4 was Kyeyune Henry the 2<sup>nd</sup> defendant. He also made a witness statement that was admitted as his evidence in chief. Briefly he testified that in 2018 he bought a plot of land from the 1<sup>st</sup> defendant which is part of the suit land. Before purchase 1<sup>st</sup> defendant showed him a sharing agreement which she had made with the plaintiff's family. After purchasing the plot he sold the same to 5 other people who included 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant sold also resold to 4<sup>th</sup> and 5<sup>th</sup> defendants and to other people who are not part of the case before court. Before purchase Tayira Godfrey and Sebadduka John confirmed to him that 1<sup>st</sup> defendant owned the suit land because it belonged to her grandfather Benedicto Wasswa who had only one daughter Nabbanja Margaret and that Nabbanja was mentally sick and 1<sup>st</sup> defendant was the one looking after her. That he never destroyed any property of the plaintiff in the case. In cross examination DW4 stated that at the time he bought from Namulindwa , she had no letters of administration to the





estate of Benedicto Wasswa. In re-examination he clarified that he bought after ascertaining that the plot was her share given to her during the family meeting and he attended the meeting.

This was the close of the defence case. PW3, PW4 and PW5 did not testify.

## **6. LOCUS PROCEEDINGS**

The court visited locus in this matter. At the locus PW1 showed court the suit property and the court observed that the land was partially developed with a few structures some of which were still at foundation level and it also had a brick house which was complete. He clarified that the structure that was still at foundation belonged to Joseph Musoke to whom 1<sup>st</sup> defendant had sold, while the brick house was constructed by someone to whom 2<sup>nd</sup> defendant sold in 2018. That 2<sup>nd</sup> defendant sold to Bbale in 2019 and also sold to 3<sup>rd</sup> and 4<sup>th</sup> defendant.

1<sup>st</sup> defendant showed court houses on the suit land which she claimed were being occupied by her mother. The court observed that they were relatively newly constructed. She also clarified that the mother had started staying there in 2019.

## **7. PLAINTIFF'S SUBMISSIONS**

Counsel for the plaintiff filed written submissions which I carefully studied and need not reproduce them here. Briefly he submitted that the plaintiff had successfully discharged





the burden of proof required in civil cases to the expected standard. That he successfully led evidence to show that the suit kibanja was given by late Benedicto Wasswa to plaintiff's father Bugembe Godfrey during his life time and that Bugembe stayed on the suit land before and after the death of Wasswa unchallenged by Nabbanja Margaret or any family member until around 2018 when the 1<sup>st</sup> defendant and the other defendants started laying false claims of ownership on the said Kibanja. He submitted that Bugembe lived on the suit kibanja unchallenged for 36 years and that the defendants' entry onto the suit land was unlawful and tantamount to trespass.

## **8. DEFENDANT'S SUBMISSIONS**

Counsel for the 1<sup>st</sup> defendant also filed written submissions which I carefully studied and need not reproduce them here. Briefly he submitted that the suit kibanja belonged to late Benedicto Wasswa who died intestate in 1980. That the suit kibanja was never given to Godfrey Bugembe as alleged by the plaintiff and the alleged gift deed that plaintiff relied on did not meet the legal requirements of a gift deed since it was not signed by Wasswa Benedicto and it was not witnessed. That the evidence of the plaintiff was full of contradictions which the court should not ignore. That Godfrey Bugembe was only a customary heir and this did not give him any legal right or authority over the suit property. That since late Benedicto Wasswa died intestate the suit property which belonged to him devolved to his legal representative the 1<sup>st</sup> defendant who

acquired letter of administration to his estate. In accordance with the Succession Act Bugembe's family was entitled to only 1% of the estate while the family of Nabbanja who was the surviving lineal descendant was entitled to 99 %

## **9. SUBMISSIONS IN REJOINDER.**

The plaintiff filed submissions in rejoinder which I also carefully studied and he basically reiterated his previous submissions.

## **10. DECISION OF COURT**

### **Issue 1**

**Whether the suit land formed part of the estate of the late Benedicto Wasswa or the same forms part of the estate of late Bugembe Godfrey.**

This issue is an issue of fact and I will determine it on the basis of the weight of evidence adduced by both parties.

The plaintiff maintained that the suit property did not form part of the estate of the late Benedicto Wasswa. That by the time Wasswa died he had already given it to the plaintiff's father (Bugembe Godfrey) as a gift *inter vivos*. That for that reason the suit property was part of the estate of Bugembe Godfrey. In support of this fact, he tendered to court a document dated 16/9/1981 which was admitted in evidence as PEXH 5. However a critical analysis of the said document shows that it was neither signed by late Benedicto Wasswa nor witnessed by anybody. It is therefore not clear to court who the author of the said document was, let alone the circumstances under which it was made. Therefore, the basis on which the plaintiff claimed





that the suit land was given to his father as a gift and therefore not part of estate of late Wasswa Benedicto is not tenable. Besides PW4 clarified in cross examination that the suit kibanja was given to Bugembe Godfrey as heir to Benedicto Wasswa.

The 1<sup>st</sup> defendant on the other hand maintained that the suit kibanja formerly belonged to Benedicto Wasswa and after his death Bugembe was appointed heir by the clan elders and it is then that he started occupying the suit kibanja. The defence witnesses were very consistent in regard to the circumstances and period under which the late Bugembe came to occupy the suit land. I had no reason to doubt them in relation to this particular fact.

In addition, in his pleadings paragraph 4 (b) of the plaint, the plaintiff alleged that his father the late Bugembe Godfrey received the suit kibanja as a gift from the late Benedicto Wasswa. However, in Paragraph 4 (d) of the same plaint he alleged that the suit kibanja was bequeathed to the plaintiff's late father Bugembe Godfrey. However there was no will seen by court. At the same time in paragraph 4(e ) of the same plaint he alleged that the late Bugembe Godfrey had been in adverse possession of the suit Kibanja since 1982. I must note that principles of adverse possession are totally different from those of gift intervivos and bequest. A party cannot claim to have acquired property as a gift, as a bequest and as an adverse possessor all at the same time.

  
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Therefore, even from the plaint there were glaring contradictions about the manner in which the late Bugembe Godfrey came to occupy the suit Kibanja as indicated above.

The plaintiff therefore failed to prove on a balance of probabilities that the suit kibanja was given to his father by late Benedicto Wasswa as a gift *intervivos*. Even in his pleadings the, the plaintiff himself was not certain as to how his father came to occupy the suit land. The evidence on record clearly shows that the kibanja formed part of the estate of late Benedicto Wasswa and Bugembe came to occupy the same as a customary heir after the last funeral rites which were celebrated in 1982. I therefore find the suit kibanja was part of the estate of late Benedicto Wasswa.

## **Issue 2**

**Whether the sale of the suit kibanja by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant and later to other defendants was unlawful or fraudulent.**

As already found above the suit kibanja formed part of the estate of late Benedicto Wasswa and all witnesses for both the plaintiff and the defence admitted that late Benedicto Wasswa died intestate. The law that governs properties of deceased persons is the Succession Act.

S.180 thereof provides;

“the executor or administrator, as the case may be of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such”.



I must note that the estate of late Benedicto Wasswa had no administrator from 1980 when he died, to 7<sup>th</sup> November 2018, when letters of administration to the said estate were issued to the 1<sup>st</sup> defendant. In light of the provisions of S.180 of the Succession Act, all transactions that were executed by the 1<sup>st</sup> defendant and other defendants were not only unlawful but also irregular since they happened during the time when the estate had no administrator.

I therefore find that the sale of the suit kibanja by the 1<sup>st</sup> defendants was unlawful.

### **Issue 3**

#### **Whether the defendants are trespassers on the suit land.**

PW1 and PW2 testified that after the sharing agreement in 2018, the 2<sup>nd</sup> defendant came on the suit land, graded it and also sold to other defendants. PW3 on the other hand testified that it was the 1<sup>st</sup> and 2<sup>nd</sup> defendant who destroyed everything on the suit land. I therefore proceed to see whether the aforementioned acts were tantamount to trespass.

Trespass to land occurs when a person makes an unauthorized entry upon another's land and thereby interfering with another person's **lawful possession** of the land<sup>1</sup>.

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<sup>1</sup> Justine E.M. Lutaaya vs. Sterling Civil Eng. Civil Appeal No. 11 of 2002.

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In the case of Tayebwa Godfrey & Anor Vs. Kagimu Ngudde Mustafa <sup>2</sup>, court guided that one's physical presence on the land or use or de facto control of it does not amount to possession sufficient to bring an action of **trespass as one is required to have an interest in the subject land as well**. In John Katarikawe vs William Katwiremu<sup>3</sup> it was stated that interests in land include registered and unregistered interests.

Therefore going by the above mentioned decisions of court, in the instant case, for the plaintiff to sustain an action in trespass against the defendants he had a duty to prove on a balance of probabilities that he was in **lawful possession** of the suit land and also had an **interest** in the same whether legal or equitable and that the defendants unlawfully entered on to the same.

As already stated above, PW1, PW2 and PW3 all testified that in 2018 the 1<sup>st</sup> and 2<sup>nd</sup> defendants brought graders on the land and destroyed crops thereon. At that time the plaintiff was in possession of the suit land as a son to the customary heir of Benedicto Wasswa whose estate comprised of the suit property. The estate of late Benedicto Wasswa had never been legally distributed for beneficiaries to get their respective shares and at all material times Bugembe remained a customary heir. The customary heir had never been given any share in the said estate. Being a customary heir as rightly submitted by counsel for the defendant is a cultural function which does not bestow legal authority on the person to deal with the property of the deceased.

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<sup>2</sup> HCCS. No. 118 of 2012

<sup>3</sup> 1977 HCB 210 at 214





For that reason the alleged sale of part of the kibanja to PW2 (Tayira Godfrey) by the customary heir was also not proper. A customary heir does not automatically acquire proprietary interests in land of deceased simply because he or she has been appointed as such. The same must be accorded to him by a legal administrator. Indeed, Bugembe Godfrey could not have passed on any interest in this property to his children because the property had never been given to him. In my view being a son to a customary heir to whom estate property was never distributed is too remote and not sufficient to sustain an action in trespass to land. Therefore, the plaintiff cannot sustain an action in trespass as against the defendants and I hereby resolve the 3<sup>rd</sup> issue in the negative.

#### **Issue 4**

#### **Whether the plaintiff is entitled to the remedies sought.**

The plaintiff prayed for several remedies as follows:

- a) a declaration that the different agreements of sale and or purchase of bibanja and plots of land situate of the **plaintiff's land at Kabuuma** are null and void:

It is true that the court has found that the different agreements of sale executed on the suit land were unlawful. However, the court has not found that the plots are situate on the plaintiff's land. Instead court found that the suit kibanja formed part of the estate of the late Benedicto Wasswa and the plaintiff occupied the same as son to customary heir of Benedicto Wasswa. The estate of late Benedicto Wasswa is currently being administered by the 1<sup>st</sup>



defendant and in my view she is the right person to deal with any illegal occupants on the same. For that reason the declaration sought by the plaintiff cannot be given.

- b) A declaration that the defendants have no interest in the said land and are therefore trespassers.

The court has already found that the plaintiff a son to a customary heir who has not even been given a share in the deceased's estate cannot sustain an action in trespass against the defendants.

- c) eviction of the defendants from the said land plus of demolition of the illegal structures on the said land.

This order cannot be given because as a matter of fact when court visited locus it was established that the defendants who illegally bought the plots on the suit land were no longer in possession of the same as they had already sold off the different plots to other persons who were no parties to the case.

- d) declaration that plaintiff is the rightful owner of the suit land

The court has already found that the suit land forms part of estate of late Benedicto Wasswa and does not belong to the plaintiff.

## **11. FINAL ORDERS.**

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The plaintiff's suit against the defendants is therefore hereby dismissed with costs to the defendants.

**DATED** at Kampala this 28<sup>th</sup> day of March 2024

  
**FLAVIA NASSUNA MATOVU**

**JUDGE.**