THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Obura & Muhanguzi, JJA)

CIVIL APPEAL NO. 154 OF 2017

(Arising from the judgement and decree in High Court Civil Suit No.385 of 2008 (Namundi, J.) dated 10th April 2017)

1. **LAWRENCE NABAMBA**
2. **JOSEPH MULIIKA.....APPELLANTS**
3. **IMEIDA NANYUME KIBUUKA (as administrators of the estate of the late John Kibuuka)**

VERUS

1. **HERBERT SEMAKULA MUSOKE(as administrator of the estate of the late E. Ngadya)**
2. **NANTANDWE JUSTINE KIZITO**
3. **FLORENCE MIREMBE NAGADYA**
4. **ROBERT SERUWAGI**
5. **HELLEN NASSUNA SERUWAGI**
6. **ANKWASA BRIAN.....RESPONDENT**

JUDGMENT OF EZEKIEL MUHANGUZI, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Fredrick Egonda-Ntende, JA. I agree with his decision and for the reasons he has advanced that this appeal ought to be dismissed with costs here and below.

Dated at Kampala this.....6th.....day of.....June.....2019.

.....

Ezekiel Muhanguzi
Justice of Appeal

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(Coram: Egonda-Ntende, Obura & Muhanguzi, JJA)

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1. **LAWRENCE NABAMBA** }
2. **JOSEPH MULIIKA** } ::**APPELLANTS**
3. **IMELDA NANYUME KIBUUKA** } (As administrators of the Estate of the Late John Kibuuka)

VERSUS

1. **HERBERT SEMAKULA MUSOKE MAKANGA** (As administrator of the Estate of the Late E. Nagadya) }
2. **NANTANDWE JUSTINE KIZITO** }
3. **FLORENCE MIREMBER NAGADYA** }
4. **ROBERT SERUWAGI** }::::::::::::::::::::**RESPONDENTS**
5. **HELLEN NASSUNA SERUWAGI** }
6. **ANKWASA BRIAN** }
7. **THE COMMISSIONER LAND REGISTRATION** }

(An appeal from the judgment and decree of the High Court of Uganda (Namundi, J.), dated 10th April 2017)

JUDGMENT OF HELLEN OBURA, JA

I have had the benefit of reading in draft the judgment of my brother Egonda-Ntende, JA and I agree with his findings and conclusion that this appeal be dismissed with costs here and below for lack of merit.

Dated at Kampala this.....6th.....day of.....June.....2019.

.....

Hellen Obura

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Obura & Muhanguzi, JJA)

Civil Appeal No. 154 of 2017

(Arising from High Court Civil Suit No. 385 of 2008)

BETWEEN

1. LAWRENCE NABAMBA
2. JOSEPH MULIIKA :::APPELLANTS
3. IMELDA NANYUME KIBUUKA (As administrators of the estate of the Late John Kibuuka)

AND

1. HERBERT SEMAKULA MUSOKE (as administrator of the Estate of the late E. Nagadya)
2. NANTANDWE JUSTINE KIZITO
3. FLORENCE MIREMBE NAGADYA
4. ROBERT SERUWAGI :::RESPONDENTS
5. HELLEN NASSUNA SERUWAGI
6. ANKWASA BRIAN

(An Appeal from the Judgment and Decree of the High Court of Uganda, (Namundi, J.), dated 10th April 2017)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

Introduction

1. John Kibuuka (now deceased) instituted H.C. C. S. No. 385 of 2008 for recovery of land against the 1st, 3rd, 4th, 5th and 6th respondents and David Ssenyonjo now deceased. Upon the death of John Kibuuka, the plaintiffs (being administrators of

the estate of the late John Kibuuka) filed an amended plaint to include themselves as parties and add the 2nd and 6th respondents.

2. The plaintiffs sought for a declaration against the respondents jointly and severally, that the estate of the late John Kibuuka is the rightful owner of 3 acres of land that is part of land formerly known as Kyadondo Block 192 Plot 57, that the plaintiffs are entitled to possession and occupation of the suit land, that the alienation of the suit land by the 1st, 2nd, 3rd, 4th, 5th and 6th respondents was illegal and therefore null and void, orders for the cancellation of the titles comprised in the suit property and general damages.

3. The learned trial judge dismissed the suit with costs and made an order that the plaintiffs receive the certificate of title that belonged to John Kibuuka as a result of the subdivision that took place with his full knowledge. The appellants being dissatisfied with the decision of the trial court have appealed to this court. At the beginning of the hearing of this appeal, counsel for the appellant applied to this court to amend grounds 1, 5 and 6 by deleting some words that made the grounds argumentative. This court granted the application and I shall therefore set forth the grounds of appeal as amended as follows:

> '(1) The Learned trial judge erred in law and fact when he held that there was no evidence on record to confirm the size of the suit land.
>
> (2) The Learned trial judge erred in law and fact when he held that the suit was *res judicata* having been the subject of an earlier decision of Kira Urban Executive Committee LC 111 Court at Kira and yet went ahead to make orders contrary to the findings of the said court.
>
> (3) The learned trial judge erred in law and fact when he disregarded the appellant's alternative prayer that in the event that the court finds that the late John Kibuuka had not legally acquired the suit land from the 1st respondent, he still remained a customary tenant/kibanja holder on the suit land.
> (4) The Learned trial judge erred in law and fact when he totally disregarded the contents of a sketch map of the locus visit prepared and agreed upon by all the parties and which the court agreed to rely on, in lieu of a locus visit.

(5) The Learned trial judge erred in law and fact when he held that the Appellants had agreed to the subdivision of the suit land and to receiving the plots registered in the names of the late John Kibuuka.

(6) The Learned trial judge erred in law and fact when he disregarded the evidence on record indicating that at all material times the Appellants had been in physical possession of the suit land and that the purchase of part of it by the 4th, 5th and 6th respondents *bona fide*.

(7) The Learned trial judge misdirected himself by failing to properly evaluate and analyse the evidence on record and considering the Appellants' evidence and therefore came to a wrong conclusion.

(8)The Learned trial judge erred in law and fact when he held that the Appellants are not entitled to the remedies sought.'

4. The respondents oppose the appeal and cross appealed on the following grounds:

'(1) That the decision of the not fully constituted LC III court, received as Exhibit P.E5 is no decision at all.

(2) A decision of the Lower court not endorsed by all members is no decision at all and no execution can issue on its strength.'

5. At the hearing of the appeal the appellants abandoned ground 2 and dropped respondent no.7 as a party to the appeal.

Submissions of Counsel

6. At the hearing of this appeal, the appellants were represented by Mr. Lumonya Andrew and Ms. Bushara Joanita. Mr. Baingana John Paul represented the 1st and 2nd respondents, Mr. Alex Kabayo represented the 3rd respondent, Mr. Agaba Asaph represented the 4th and 5th respondents and Ms. Atukunda Faith represented the 6th respondent. The parties agreed to adopt their conferencing notes on record in

addition to their submissions before court. In their conferencing notes, the appellants opted to argue grounds 1, 3, 4 and 6 together and grounds 5, 7 and 8 together. It is the appellants contention that PW1 (appellant no.1) in his testimony stated that the suit land measured approximately 3 acres. DW1 (respondent no.1) admitted this to be the case in his evidence. The size of the land comprised in the titles upon sub-division adds up to 3 acres. That the specific size of the suit land is therefore proved to be 3 acres of land.

7. In support of ground 4, the appellants' counsel contend that had the court visited the *locus in quo*, it would have ascertained that the kibanja covered the whole area of the registered land. Practice Direction No. 1 of 2007 enjoins court to take interest in visiting the *locus in quo* and among others matters, draw a sketch plan, if necessary, during the hearing. They relied on the authority of Dissan Ssempala vs Ndagire & Anor. (H.C. Civil Appeal No.45 of 2011) [2014] UGHCLD 64, where the High Court held that it was irregular for the trial magistrate to delegate her judicial function of determining the boundaries which would have been determined by assessing evidence at the locus in quo. It was further contended that the omission was fatal to the whole trial and filling in the gap by appointing court emissaries is incurably irregular vitiating the whole proceedings. They also relied on the decision of Yowasi Kabiguruka v Samuel Byarufu (C.A Civil Appeal No. 10 of 2008) [2010] UGCA 7, where court dismissed the appeal and ordered a retrial because the case at hand merited a visit to the *locus in quo* by court yet it neglected to do so.

8. In relation to grounds 3 and 6, the appellants' counsel contend that the learned trial judge disregarded the evidence on record that John Kibuuka was a customary tenant/kibanja holder on the suit land which occasioned a miscarriage of justice. Under section 29 (1) (a) (i) of the Land Act, the appellants are lawful occupants of the suit land as they are occupying the same under the repealed Busuulu and Envujjo law of 1928. It was PW1's testimony that John Kibuuka was a kibanja owner on the suit land who used to pay busuulu. The evidence to that effect was admitted in court as Exhibit P1. When Eroni Nagadya passed away, respondent no. 1 started receiving busuulu from the late John Kibuuka which fact was never disputed. They referred to section 1(1) of the Land Act to define a customary tenant and the authority of Ndimwibo Sande & 3 others v Allen Peace Ampaire, (C. A. Civil Appeal No.65 of 2011), [2014] UGCA 46.

9. The appellants' counsel further submitted that the appellants were in physical possession of the suit land at the time of the purchase of the land by the respondents no.3, no.4, no.5 and no. 6. Hence the respondents are not *bona fide* purchasers of value without notice because they had prior notice of possession. This was not disputed by DW2 (respondent no.1) in his testimony before court.

10. The appellants' counsel submit with regard to grounds 5, 7 and 8 that the findings of the trial court are not supported by the evidence adduced in court. The learned trial judge disregarded the evidence on record. They cited the authority of Uganda Railways Corporations vs Bushenyi Commercial Agencies & 2 Ors, (C.A Civil Appeal No.10 of 2010), [2012] UGCA 31.

11. In reply to the ground 1, counsel for respondent no. 1 and no. 2 submits that respondent no. 1 did not admit that the late Kibuuka John occupied 3 acres. He rather stated that he was occupying and still occupied his entire kibanja. There is no way the late John Kibuuka could have occupied the entire suit property if all the parties agree that part of the land containing burial grounds was returned to the estate of the late Aron Nagadya. PW1 could not tell the size of the suit land because he had never had it measured. In addition, respondent no. 4 and respondent no. 5 submit that the Busuulu tickets did not indicate the size of the kibanja interest. The submission of counsel for the plaintiff that the certificates of title to the suit property when added up amount to 3 acres is not tenable and was never raised at the hearing. Counsel for respondent no. 6 reiterated the same.

12. In reply to ground 3 counsel for all the respondents submitted that this issue was never raised during trial. The respondents agreed that the late John Kibuuka had a Kibanja on the suit land, and this was never contested. What was in issue was the size of land his kibanja occupied and whether the deceased had purchased a reversionary *mailo* interest. The parties also agreed that Plots 1157, 1159 and 1163 were registered in the names of the late John Kibuuka. However, counsel for respondent no. 4 and respondent no. 5 submits that the appellants are not customary tenants on the one acre of land as they did not lead evidence to prove that the land was held or controlled under any custom. They relied on the case of Isaaya Kalya

and 2 others v Moses Macekenyu Ikagobya (Civil Appeal No. 82 of 2012), [2014] UGCA 25.

13. In relation to ground 4, counsel for respondent no. 1 and no. 2 submits that the visiting of the *locus in quo* and coming up with a sketch map was an initiative of counsel for the appellants in an attempt to come up with an *ex-cura* settlement of the matter. The sketch map was never sanctioned by court nor adduced in evidence. They further contend that not every dispute requires a visit to the *locus in qou* by court and this case did not require one. They relied on the judgment of Galabuzi Paddy v Nsegiyunva Karoli, CA. Civil Appeal No. 84 of 2012 (unreported).

14. Counsel for respondent no.4 and no.5 submitted that court never directed the parties to conduct a visit of the *locus in quo*. That it was counsel for the appellants who prayed that the report prepared by Mr. Cornelius Mukiibi be relied upon instead of the court going to visit the *locus*. This report was prepared when all parties and their Counsel were at the *locus in quo* and was consented to by the all parties. Further, a visit to the *locus in quo* should not be intended to fill in the gaps in the evidence of the parties. They relied on the authority of Dixo Ejakant Ekojot vs David Okiru, H.C.C.A No. 301 of 2016 (unreported) where court held that the conduct of a *locus in quo* is not mandatory and it is done in only deserving cases which is majorly to ascertain, clarify, confirm or seek explanations. It is never intended that the visit is used to fill gaps in the evidence for either party. Counsel for respondent no. 6 submitted that the trial court considered the sketch map in its judgement.

15. In reply to ground no.5, counsel for respondent no. 1 and no. 2 submitted that PW1 in cross examination stated that he was present when the late John Kibuuka handed over 1 acre of land to the 5th defendant but admitted that he never attended other meetings relating to the kibanja. That the subdivision was agreed to by the deceased and was only objected to by appellant no.1. They referred to the evidence of DW3 (respondent) who testified that appellant no. 2 was consulted during the due diligence and supplied to him bricks during construction. Respondent no. 5 testified that appellant no.1 helped him clear the bush on his land before he was served with court process. That this conduct is consistent with an agreement for the sub-division and sale of the land. Counsel for respondents no.4, no.5 and no.6 reiterated the above submission.

16. In reply to ground 6, counsel for respondent no. 1 and no. 2 contended that the appellants are still in occupation of the land that used to be the kibanja of their late father. This portion of land did not cover the entire land and the appellants were given their reversionary interest in the suit land as agreed. Appellant no.1 was aware that respondent no.4 and respondent no.5 had bought the 1 acre of land his father had returned to the Ndiga clan. At that time their father had no interest in the land purchased. He had a *mailo* interest in land comprised in Block 192 Plots 1157, 1159 and 1163. Respondents no.5 and no.6 adduced evidence of due diligence in their testimonies and that the evidence of the appellant no. 1 and no. 2's participation in the clearance of the bush for the respondent no. 5 and providing bricks to the respondent no.6 for construction indicated that they were aware and in agreement to the sub-division and sale.

17. Counsel for respondent no.6 submitted that the appellants failed to prove their allegation of fraud against respondent no.4, respondent no.5 and respondent no.6. He relied on the authority of David Sajjaaka Nalima vs Rebecca Musoke, (C.A No. 12 of 1985), [1986] UGSC 12. He submitted that the respondent no.6 carried out all the necessary due diligence before purchasing the land. He talked to appellant no.2 who informed him that the land he was intending to buy was not part of the suit property. That appellant no.2 also supplied to him building material while he was constructing his house on the land. Counsel further submitted that PW1 testified before court that respondent no.6's house is situated on part of the land that was returned to respondent no. 1 by John Kibuuka and it was not part of the encroached land. Counsel for the respondent no. 6 further contended that PW1 told court that the appellants only added respondent no.6 as a party to the suit because court told them to do so.

18. Counsel for respondent no. 3 adopted the submissions of respondent no. 1 and respondent no. 2 in regard to grounds 1,3,4,5 and 6.

19. In reply to grounds 7 and 8, all counsel for the respondents submitted that the learned trial judge properly evaluated the evidence on record and arrived at the right decision. Therefore the appellants were not entitled to the remedies sought. They prayed that this court dismisses the appeal with costs.

Analysis

20. This is a first appeal. This court is required to re-evaluate the evidence and come up with its own findings pursuant to Rule 30 (1) of the Rules of this Court. See Fr. Narcensio Bemugisa & Ors vs Eric Tibebaaga Supreme Court Civil Appeal No. 17 of 2002, [2004] UGSC 18. I shall proceed to do so.

Ground 1

21. The appellants in the amended plaint claimed that the late John Kibuuka was in possession and the holder of a kibanja interest measuring 3 acres comprised in Block 192 plot 57 belonging to the late E. Nagadya. That John Kibuuka later purchased this interest from the respondent no.1.

22. PW1 (appellant no.1) in his evidence at page 10-11of the record of proceedings in the trial court testified that the Kibanja interest of the late John Kibuuka who was his father measured approximately 3 acres. Upon cross-examination at pages 54-55 of the record of proceedings of 20th October 2014 in the trial court, PW1 stated that the size of the portion of the deceased's interest in Exhibit P3 was not defined. This was due to the fact that the land had not been surveyed yet. Exhibit P3 is the agreement between respondent no.1 and the late John Kibuuka for the purchase of the latter's kibanja interest from respondent no.1. The parties entered into the said agreement on 19th October 1982. The agreement does not state the size of the land.

23. At pages 66-68 of the record of proceedings of the trial court of 20th October 2014, he also stated that the land was three acres but John Kibuuka returned one acre to respondent no.1 because it contains burial grounds. That they remained with two acres. DW1 (respondent no.1) in his testimony appeared not to know the actual size of the land that was occupied by the late John Kibuuka's kibanja. At page 38 of the record of proceedings of 8th April 2015 in the trial court, he stated that he did not know the size of the kibanja but could estimate it to about 2 acres or 1.5 acres out of the 5 acres of the land that belonged to the estate of the late Eroni Nagadya. Besides

the evidence of the above witnesses, there is no other evidence relating to the actual size of the subject land.

24. Therefore, the trial court properly arrived at the conclusion that the evidence available on record does not confirm or determine the specific acreage of the suit land. The first ground fails.

Ground 3

25. In relation to ground 3, it was never in contention whether the late John Kibuuka was a kibanja holder on the land belonging to the estate of the late Eroni Nagadya. What was in contention was the size of the kibanja and the *mailo* interest he may have agreed to receive. There is sufficient evidence on record that John Kibuuka was a kibanja holder on the land that belonged to the late Eroni Nagadya. However, there was no so such alternative prayer, as claimed, in both the original and amended plaint sections for relief. I would not fault the learned trial judge for not making such a declaration.

Ground 4

26. Regarding the issue of failure to visit the locus in quo by the trial court, I do not find such an omission to be a misdirection of the trial court as submitted by the appellants. The object of the visit of the locus in quo is well settled. Sir Udo Udoma CJ (R.I.P)) in Mukasa v. Uganda (1964) EA 698 at page 700 held that:

> 'A view of a locus in-quo ought to be, I think, 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 on some fixed object already exhibited or spoken of in the proceedings…'

27. Also in Yeseri Waibi v. Edisa Lusi Byandala [1982] HCB 28, which was cited by this court in Yowasi Kabiguruka v. Samuel Byarufu, C.A. Civ. Appeal No.18 of 2008 [2010] UGCA 7 it was held that;

> 'The practice of visiting the locus in quo is to check on the evidence given by witness and not to fill the gap for then

> the trial magistrate may run the risk of making himself a witness in the case …..'

28. It would follow that visiting the *locus in-quo* by court is not mandatory. Court has the discretion to decide whether it is necessary to visit the *locus in quo* given the circumstances of the case. In this instant case, the failure to visit the *locus in quo* did not occasion a miscarriage of justice. The evidence adduced in court was sufficient for the trial court to determine the issues before the court.

29. The appellants contend that had the court visited the *locus in quo*, it would have ascertained that the late John Kibuuka's kibanja covered the whole area of the registered land. This is not true. That would require a surveyor's report. John Kibuuka had given up one acre of the land which contained the burial grounds of the Ndiga clan, which the appellants, in light of the amended plaint, were claiming. A visit to the *locus in quo* is in addition to and cannot be a substitute for evidence already given in court. The sketch map the appellants are alluding to was not exhibited and adduced in court as evidence but was only alluded to by the parties in their submissions as noted by the trial court.

30. It appears that one of the reasons why the trial court decided to do away with the visit of the *locus in quo* is because Mr. Lumonya (Counsel for the appellants), during the proceedings of 16th March 2016 in the trial court, prayed that the report prepared by Mr. Cornelius be relied upon instead of court going to visit the locus. Court allowed the prayer and noted that all the parties had agreed to the report. The report was never adduced into evidence.

31. I would hold that ground 4 has no merit.

Ground 5

32. PW1 testified that upon the death of Eroni Nagadya, respondent no.1 approached the late John Kibuuka with an offer of sale of the *mailo* interest to the deceased. To that end, in 1982, the late John Kibuuka entered into an agreement with respondent no.1 for the purchase of the land at a consideration of UGX 80,000. According to the agreement, this was the land where Benedicto Ssalabwa and Lawrence Nabbamba's

houses were situated. The size of the kibanja was not stipulated in the agreement. The late John Kibuuka made a total payment of UGX 70,000. According to PW1, he stated that the balance of UGX 10,000 on the purchase price was to be paid upon obtaining the certificate of title to the land. However, this did not happen.

33. The trial court rightly rendered the agreement null and void because respondent no.1 did not have the capacity to dispose of land belonging to the late Eroni Nagadya to the late John Kibuuka at that time. It should be noted that the purported sale took place in 1982 while respondent no.1 and no.2 obtained letters of administration to the estate of the late Eroni Nagadya in 2006.

34. According to the proceedings in the trial court of 8th April 2015 from page 12, DW2 testified that upon obtaining the letters of administration in 2006, a survey of the entire land was carried out in the presence of respondent no. 1, respondent no.3, appellant no. 2, appellant no. 3 and other people. That a meeting was held thereafter with the late John Kibuuka whereupon it was agreed that he only had a kibanja interest on the land. It was agreed between John Kibuuka and the administrators of the estate of the late Eronii Nagadya that the former would be given 50 decimals (0.050 acres) of the land. However, appellant no. 1 and appellant no.2 were in disagreement. This was never challenged by the appellants. Three plots of the land were registered in the names of John Kibuuka. Exhibit D2 (a), (b), (c) contains the details of the land. Plot 159 measuring 0.047 hectares, Plot 1163 measuring 0.047 and Plot 1157 measuring 0.107 hectares totalling 50 decimals as agreed upon between the parties. It should be noted that the appellants occupy these plots of land though they are not in possession of the certificates of titles.

35. PW1 also stated that the late John Kibuuka returned 1 acre from his kibanja to respondent no.1 because it contained burial grounds of the Ndiga clan. Appellant no.1 while testifying before the trial court in the proceedings of 20th October 2014 stated that his father (John Kibuuka) told him that respondent no.1 approached him and asked him to give him back one acre of land that was his ancestors' cemetery and that he was not supposed to sell that land. That his father returned the land to respondent no.1. At page 41 of the record of proceedings of 26th May 2014, when asked by court if the appellants still had a claim over the one acre of land handed over to respondent no.1, PW1 stated that both parties (John Kibuuka and respondent

no.1) had come to that agreement therefore they had no claim over that particular land. On cross examination, at page 66-68 of the record of proceedings of 26th May 2014, PW1 stated that he was present as John Kibuuka returned the 1 acre of land to respondent no.4.

36. It should be noted that John Kibuuka's original claim in H.C.C.S. No. 385 of 2008 was for two acres of land that were part of the land formerly known as Kyadondo Block 192 Plot 52. Under paragraph 4 of the plaint, he averred that his kibanja originally comprised of three acres but he surrendered one acre of the land that contained the defendant's grave yard. However, when the appellants, being the administrators of the estate of John Kibuuka amended the plaint they claimed 3 acres of land. Exhibit D4, executed by John Kibuuka and witnessed by appellant no.1 indicates that indeed John Kibuuka surrendered 1 acre from his kibanja to Ndiga clan. He stated that the late Eroni Nagadya obtained the land as a beneficiary from Widow Esiteri Alinabe Bisinga which houses the Ndiga clan burial grounds. According to the evidence on record, it is from this land that other three plots on the suit property were created. Since this land was returned to the estate of the late Eroni Nagadya, the appellants had no interest in the same and therefore the respondents did not need to seek their approval to sub-divide this land.

37. This ground therefore fails in relation to the land that was surrendered by John Kibuuka on which the plots of the respondents no. 4, 5 and 6 are situate.

38. Whether or not there was an agreement between the late John Kibuuka and the administrators of the estate of the late Eroni Nagadya with regard to a sub division of the *mailo* interest it was not necessary in law for John Kibuuka or his successors in title to consent to a sub division of the *mailo* interest in this land for as long as it remained in the names of the administrators of the estate of the late Eroni Nagadya.

Ground 6

39. In relation to ground 6, I find no basis to fault the decision of the trial court. The learned trial judge held that the appellants had failed to prove the fraud alleged or that respondent no. 4, respondent no.5 and respondent no.6 are not *bona fide* purchasers for value without notice. It was established by the evidence of both the

appellants and the respondents that John Kibuuka had relinquished any interest in the one acre of land that was subsequently acquired by the respondents no. 4, 5 and 6. The appellants were not in physical occupation of the said plots of land as asserted in this ground of appeal.

40. The appellants failed to establish a claim against the respondents. PW1 (appellant no.1) testified that respondent no.4 bought the land that was returned to respondent no.1. He stated that he was present when respondent no.4 was given the land and that the land was bushy with graves. It should be noted that John Kibuuka had relinquished all his rights and interest in this land when he returned it to respondent no.1. The dealings on this land by the administrators of the estate of the late Eroni Nagadya were no longer his concern.

41. At page 2 of the record of proceedings of 16th march 2016, respondent no.4 (DW2) testified that he and his wife (respondent no.5) are the registered owner of land comprised in Block 192 Plot 1161 located in Buwaate. They bought the land from Charles Mureeba for a consideration of UGX 45,000,000 who had purchased the land from respondent no.1. The land was still registered in the names of respondent no.1 and respondent no.2 as administrators of the estate of the late Eroni Nagadya. That they carried out the due diligence before the purchase of the land. He stated that the LC1 chairperson informed him that the land he was buying was released to the Ndiga clan but taken care of by the administrators of the estate of the late Eroni Nagadya. That appellant no.1 helped him in the clearing of the bush on the land.

42. Further, respondent no. 6 (DW3) in his testimony in the proceedings of 16th March 2016, stated that he is the registered owner of land comprised in Block 192 Plot 1166 located at Buwaate. He bought the land in November 2011. From the evidence he gave in court, he carried out all the necessary due diligence before the purchase of the land. He stated that at the time of sale, the land was registered in the names of respondent no.1and respondent no.2. He further stated that before the purchase of the land he talked to appellant no.2 who is his immediate neighbour. That Joseph Muliika informed him that there was an ongoing case about the suit land but that the land he intended to buy was for respondent no.1 and that he was using the land as burial grounds. He told him that he had no issues with the portion of land that he

intended to buy. This was never challenged by the appellants. That appellant no.2 supplied him building materials during the construction of his house on the land.

43. During cross examination of PW1 by Counsel for respondent no. 6 at pages 213 - 214 of the record of proceedings of 21st October 2014, PW1 stated that John Kibuuka gave back one acre of his kibanja to respondent no.1. He knew the location of this land and it is upon this land that the respondent no.6 constructed his house. At page 218 of the record of proceedings of 21st October 2014, when asked by court why the appellants had sued respondent no.6, PW1 stated that it was court that had decided that they sue respondent no. 6. Upon being asked if the house of respondent no.6 was on the encroached land, PW1 stated that it was not. He emphasized that the land that respondent bought was not part of the 2 acres that they had sued for.

44. In light of the above, the learned trial judge properly arrived at the conclusion that respondent no.4, respondent no.5 and respondent no.6 bought the land *bona fide*. The appellants have no claim whatsoever against the above respondents.

45. This ground has no merit.

46. In light of the fact that the above grounds have been answered in the negative, grounds 7 and 8 are without merit. I find that the learned trial judge properly evaluated the evidence on record and arrived at the right conclusion.

Decision

47. I would dismiss the appeal with costs here and below.

Cross Appeal

Grounds 1 and 2

48. The grounds will be handled jointly as they are inter-related. From Exhibit P.5 (judgement of the Kira Urban Executive Committee LC III), it is indicated under paragraph 1 that matter was filed in the court on 20th June 2006 upon referral by the Deputy RDC Kasangati. John Kibuuka brought this case against respondent no. 1. His claim against him was that he had bought land measuring 2 acres from the

respondent no.1. The court ruled in favour of John Kibuuka and ordered respondent no.1 to give John Kibuuka signed transfer forms in respect of the land and to pay a compensation UGX 150,000 for crops destroyed by him. John Kibuuka was ordered to pay the outstanding amount of UGX 10,000 on the purchase price. The judgement was signed by only three members of the court.

49. Section 4 (2) of the Local Council Courts Act, 2006 states:

> 'The local council court of a town, division or sub-county shall consist of five members appointed by the town council, division council or sub-county council on the recommendation of the respective executive committee.'

50. The quorum of such a court was three members. Three members signed the judgment. That in itself would not be unlawful *per se* unless those members had not been present at the hearing of the case. It was not essential that a decision of that court had to be endorsed by all the members. It is only those members who were present at the hearing of the case that should participate in decision making including signing the decision of the court. The two grounds of cross appeal would fail.

51. However, the LC111 court did not have the jurisdiction to try the case. In matters to deal with land, the village courts are the courts of first instance. Section 10 (1) (e) of the Local Council Act, 2006 states:

> '(1) Subject to the provisions of this Act and of any other written law, every local council court shall have jurisdiction for the trial and determination of—
> (e) matters relating to land.'

52. Section 11 of the Act provides:

> '(1) **Every suit shall be instituted in the first instance in a village local council court**, if that court has jurisdiction in the matter, within the area of whose jurisdiction—
> (a) the defendant actually resides at the time of the commencement of the suit; or
> (b) where the cause of action in whole or in part arises; or
> (c) in the case of a dispute over immovable property, where the property is situated.'

53. In light of the above provision, the village local council court is supposed to be the court of first instance in land matters. Section 32 (2) (a) of the Act provides that an appeal from the judgment and orders of a village local council court shall lie to the parish local council court. Section 32 (2) (b) provides that an appeal from the judgment and orders of a parish local council court shall lie to a town, division or sub-county council court. The Kira Urban Executive Committee LC 111 Court, being a town council court is a second appellate court and therefore had no original jurisdiction to try the matter.

54. It follows that the judgment of the Kira Urban Executive Committee LC III Court contained in exhibit P.5 was null and void but not for the reasons advanced by the cross appellants.

Decision

55. As Obura and Muhanguzi, JJA, agree this appeal is dismissed with costs here and below. The cross appeal is allowed with no order as to costs as the grounds advanced did not succeed.

Signed, dated and delivered at Kampala this 6th day of June, 2019

Fredrick Egonda-Ntende
Justice of Appeal