

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CIVIL APPEAL NO. 0035 of 2017**

- 1. KWESIGWA WILLIAM**
- 2. SAMUEL BIHAGARO**
- 3. BENON KALIGA ::: APPELLANTS**

**VERSUS**

- 1. SSENYONGA HARUNA**
- 2. NYOMBI HUSSEIN (Administrator of the  
estate of the late Sulaiman Mbaziira) ::::::::::::::: RESPONDENTS**
- 3. NAMBAZIIRA JANE (Administrator of  
the estate of the late Mary Nassaka)**

*(An appeal from the decision of the High Court of Uganda at Masaka before Oguli-Oumo, J., dated the 23<sup>d</sup> day of October, 2015 in Civil Suit No. 0037 of 2012)*

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.  
HON. MR. JUSTICE STEPHEN MUSOTA, JA.  
HON. MR. JUSTICE REMMY KASULE, AG. JA.**

**JUDGMENT OF ELIZABETH MUSOKE, JA.**

This appeal is from the decision of the High Court (Oumo-Oguli, J.), wherein the appellants were some of the unsuccessful parties in a suit instituted by the respondents.

**Background**

The respondents (original plaintiffs) commenced the relevant suit in the High Court against the appellants and two others who are not parties to the present appeal. (The five were the original defendants). By their suit, the respondents were seeking against the original defendants, jointly and severally the following prayers; cancellation of the title of the lands comprised in SBR/40 Leasehold Register Volume 3586 Folio 21 Ranch 40 A, Mawogola Ranching Scheme, Sembabule District measuring approximately 259 hectares (suit land), general damages and mesne profit. The basis of

the original plaintiffs' prayers was that the 1<sup>st</sup> original defendant had fraudulently and illegally procured the issuance of the certificate of title of the suit land to himself, and thereafter, he had illegally transferred the same to the appellants.

In their respective defences, the original defendants denied having illegally and/or fraudulently obtained and/or issued the certificate to the suit land. Further, the appellants herein (as counter-claimants) counterclaimed against the respondents for the following prayers; a) an order for a declaration that the certificate of title for LRV 3942 Folio 15 Ranch No. 40 A is null and void; b) an order for cancellation of the aforementioned certificate of title; and c) costs of the counter-claim.

After receiving all the evidence from both sides, the learned trial Judge was satisfied that the respondents had proved their case, and entered judgment in their favour. She made declarations that the respondents are the lawful owners of the suit land, and conversely that the appellants' title was null and void for fraud. The learned trial Judge, therefore ordered for the cancellation of the appellants' title. She further awarded the respondents the following; general damages of Ug. Shs. 50,000,000/= (Fifty Million Shillings); mesne profits for the loss of use of their land for grazing and income they would have earned from the sale of milk and beef from their cows at the rate of Ug. Shs. 40,000,000/= (Forty Million Shillings) per year since 2000 until payment in full; interest on the general damages and mesne profits at 20% from the date of judgment till payment in full. She further issued an order for eviction from the suit land against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, a permanent injunction to restrain the appellants from interfering with the respondent's ownership and costs of the suit. The appellants were dissatisfied with the decision of the High Court and lodged this appeal in this Court on the following grounds:

- "1. The learned trial Judge erred in law and fact by failing to properly evaluate the pleadings thereby coming to the wrong conclusion that the respondents had a cause of action against the appellants.**



2. **The learned trial Judge erred in law and fact by failing to properly evaluate the evidence thereby coming to an erroneous finding that the respondents are the lawful owners of the suit property.**
3. **The learned trial Judge erred in law and fact by failing to properly evaluate the evidence thereby coming to an erroneous finding that the appellants' title to the suit land is null and void for fraud.**
4. **The learned trial Judge erred in law and fact when she awarded the respondents general damages and interest thereon.**
5. **The learned trial Judge erred in law and fact when she awarded the respondents mesne profits and interest thereon.**
6. **The learned trial Judge erred in law and fact when she ordered the Registrar of Titles to cancel the appellant's title and confirm the respondent's title as the right and lawful owner to the suit land.**
7. **The learned trial Judge erred in law and fact when she issued an eviction order and a permanent injunction against the appellants in respect of the suit property."**

### **Representation**

At the hearing of this appeal, Mr. Arthur Murangira, learned counsel appeared for the appellants; while Mr. Rwalinda Geoffrey appeared for the respondents. Court gave counsel for either side guidelines for filing written submissions which were adhered to by the respondents, but not the appellants. For that reason, while I have considered the respondents' submissions in determining this appeal, for the appellants, I have considered only their conferencing notes.

### **Appellants' case**

#### **Ground 1**

Counsel faulted the learned trial Judge for failure to try the issue of whether or not the original plaintiffs had a cause of action against the original defendants as a preliminary point of law before the hearing of the suit. Further that the learned trial Judge had erred when she looked beyond the pleadings in determining whether or not there was a cause of action.



Counsel further contended that the learned trial Judge had disregarded the evidence which proved that the 1<sup>st</sup> defendant's lease over the suit land was granted to him by Sembabule District Land Board in its capacity as successor in title to Uganda Land Commission, the former controlling authority/lessor, and in exercise of its powers and functions as provided for under the law.

Further, it was contended for the appellants that the learned trial Judge had erred when in finding that the 1<sup>st</sup> to 4<sup>th</sup> original defendants had been allocated the suit land in an irregular and illegal manner, she erroneously treated the said defendants as claiming under the same title yet the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants were transferees of the 1<sup>st</sup> defendant. Further still, that the learned trial Judge had failed to implement the import of **Section 59 of the Registration of Titles Act, Cap. 230** to the effect that any irregularity or informality, if any, in the process of acquiring title is not necessarily to constitute a ground for defeating or impeaching such title. The effect of the said provision would have been that as the appellants held a certificate of title, the same could not be impeached on account of the informalities in the process of obtaining the title alleged against them.

Counsel further faulted the learned trial Judge for failure to find that the appellants were bonafide purchasers for value whose interests in the suit land were protected under **Sections 178 and 181** of the **Registration of Titles Act, Cap. 230**. Counsel contended that the learned trial Judge had erroneously held that several allegations of fraud had been made out against the 1<sup>st</sup> to 4<sup>th</sup> original defendants yet no fraud had been pleaded nor proved against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants (appellants herein). In counsel's view, even if fraud had been proved on the part of the 1<sup>st</sup> original defendant, he could still pass good title to the appellants, who being his transferees and in the absence of fraud on their part, would be entitled to protection as bonafide purchasers for value.

### **Grounds 2 and 3**

It was contended for the appellants that the learned trial Judge had erred when she failed to take into account the fact that the plaintiffs had not proven possession of the suit land after the expiry of their initial 5 year lease



in 1987 and further that in the absence of proof of possession and/or renewal of the expired lease, the plaintiffs had failed to establish any claim to the suit land.

Counsel further contended that the learned trial Judge had erred when she failed to take cognizance of the powers and functions of the District Land Boards as provided for by law. It was contended that Sembabule District Land Board had granted a lease over the suit land to the original 1<sup>st</sup> defendant, who had subsequently transferred his interest therein to the appellants.

It was also further contended for the appellants that the learned trial Judge had overlooked the evidence which tended to show that the respondents' lease title over the suit land, which was acquired subsequent to that of the appellants was so acquired by duress and coercion of the Masaka District Land Officer, who had earlier refused to grant the said title. It was therefore contended for the appellants that it was the respondents who had acted fraudulently in obtaining their title.

#### **Grounds 4, 5, 6 & 7**

These grounds were argued jointly. The overriding contention for the appellants in all these grounds was that the learned trial Judge's decision to award general damages, mesne profits; to order for the cancellation of the appellants' title and a permanent injunction against them, was erroneous.

As regards the award of general damages, it was contended for the appellants that the amount of Ug. Shs. 50,000,000/= (Fifty Million Shillings) which was awarded was neither pleaded nor proved, and was awarded based on wrong principles of law.

On the award of mesne profits, counsel contended, firstly that the same was awarded in disregard of Section **2 (m)** of the **Civil Procedure Act, Cap. 71** and the case law on the subject; secondly, that the respondents neither pleaded nor led evidence to establish a proper legal basis for the award of mesne profits; thirdly that in awarding the mesne profits, the learned trial Judge considered matters that were not based on any proof by credible



evidence but rather on a mere statement from the pleadings which was also misconstrued by the lower Court. In all, counsel contended that the award of mesne profits was not only manifestly excessive but was wholly erroneous.

As regards the orders for cancellation of the appellants' title, eviction of the appellants and issuance of a permanent injunction against them, counsel reiterated his submissions and maintained that the learned trial Judge ought to have decided the suit in the appellants' favour.

Counsel for the appellants then prayed that this Court allows the appeal; sets aside the judgment and orders of the High Court; declares the appellants as the rightful owners of the suit land; orders the Commissioner Land Registration to reinstate the appellants' leasehold certificate of title comprised in LRV 3586 Folio 21 Ranch 40A Mawogola Ranching Scheme, Ssembabule District; orders the Registrar of the High Court of Masaka circuit to release to the appellants the security of Ug. Shs. 50,000,000/= paid by them pursuant to the order of the High Court at Masaka in High Court Miscellaneous Application No. 236 of 2015 (Keitirima, J.), an application for stay of execution pending appeal; and orders the respondents to pay the costs of the appeal and in those in the Court below.

### **Respondents' case**

Counsel for the respondents opposed the appeal and replied to the submissions for the appellants as follows:

#### **Ground 1**

On the submissions for the appellant that the learned trial Judge had erred not to try and determine the issue of cause of action as a preliminary point of law before the commencement of the trial, counsel submitted that the appellants and their co-original defendants as well as the respondents had, in their joint scheduling notes, agreed that the issue of the cause of action would be tried as an issue during the trial. For that reason, the learned trial Judge could not be faulted for adopting the course that she took.

Without prejudice to the above, counsel submitted that the trial Court had unfettered discretion to either determine a preliminary point before the trial or to defer it to the end or in the course of trial, depending on the circumstances. The learned trial Judge opted to defer the preliminary point, and when she considered and determined the point, she properly addressed her mind to the pleadings and the evidence before reaching her decision that the original plaintiffs had a cause of action against the original defendants.

Counsel further contended that the evidence on record showed that the suit land, which originally measured 1228.8 hectares belonged to the respondents or their predecessors in title. During the Government Restructuring Scheme in the late 1990s, the suit land was reduced to 259 hectares and the respondents were still the proprietors thereof. Further still, that during the Restructuring exercise, only former owners would be registered on Part A of the suit land, meaning that the appellants, having not been former owners of the suit land, but were now registered as registered proprietors thereof was indicative of fraud in their registration. Counsel supported the learned trial Judge in holding that the appellants' registration as proprietors of the suit land was tainted with fraud.

It was further contended for the respondents that the appellants' failure to produce the sale agreement in respect of the lease was evidence of fraud on their part. If they had bought the land from one Paulo Sabiiti as alleged, they would have produced a sale agreement to that effect. It was also contended for the respondents that, as further evidence of fraud of the appellants, the signatures purportedly on the appellant's predecessor in title's lease agreement were not known to any member of the District Land Board, the purported lessors.

All the above was evidence that the appellants as well as their predecessor in title, were not bonafide purchasers for value as regards the suit land. It was also evidence that the appellants were aware that the suit land did not belong to their predecessor in title but to the respondents. Counsel contended that the appellants participated in the fraud leading to their procuring of the impugned lease title. The appellant's predecessor in title,



one Paulo Sabiiti, having failed to adduce evidence to back up his allegations that he purchased the suit land from one Hajji Njuki Noor, implicated him in the fraud and meant that he could not pass good title to the appellants.

While concluding his submissions on this ground, counsel brought it to the Court's attention that new material had been introduced for the appellant in his submissions which was not on Court record. This new material, which counsel asked court to reject for having not been raised in the lower Court and not being backed by any evidence, was in respect of averments to the effect that there was evidence showing that by the time the appellants applied for and got their lease over the suit land, the respondents' lease had expired and the suit land had reverted to the Sembabule District Land Board. Counsel asked Court to disregard this and dismiss this ground of appeal.

### **Ground 2 and 3**

Counsel supported the learned trial Judge's findings that the respondents were the lawful owners of the suit land. As regards the arguments for the appellants that the respondent's lease had expired in 1987, counsel submitted that this was misconceived because the Final Valuation Report of the Masaka Ankole Ranching Scheme dated 25<sup>th</sup> August, 2005, showed that the respondents were still the registered proprietors over the suit land.

Counsel repeated his earlier arguments that only former owners of the Ranch would be allowed to own "Part A" titles, and also the arguments surrounding the fraudulent acts of one Paulo Sabiiti, the appellant's predecessor in title over the suit land. He further contended that the appellants had refused to conduct a search to establish the true owners of the suit land for fear of finding out the truth. Further still, that the appellants' certificate of title did not have a root title.

Counsel further highlighted the following irregularities in the process of registration of the appellants; first, the purported lease to the appellants is undated and the names of the Chairman and Secretary to the District Land Board are not included thereon. It was not enough that the two had appended their signatures on the lease. Secondly, failure by the appellants





to adduce in evidence the purchase agreements and transfer forms to prove that the suit land had been transferred to themselves proved fraud on their part. Thirdly, the appellants' failure to disassociate themselves with their predecessor in title, Paulo Sabiiti's fraudulent acts meant that they were participants themselves in those acts of fraud.

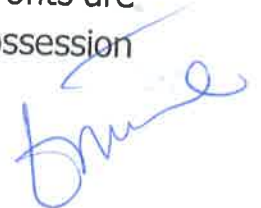
The evidence of the above fraudulent acts was sufficient for the learned trial Judge to order for the cancellation of the appellants' title for fraud as it was attributable to the appellants.

#### **Ground 4**

Counsel supported the award of general damages submitting that the award of Ug. Shs. 50,000,000/= was justifiable having regard to the emotional stress and inconvenience caused by the appellants to the respondents. The respondents pleaded for general damages, which were duly awarded by the trial Court. Counsel cited **Robert Cuossens vs Attorney General, Supreme Court Civil Appeal No. 001 of 1998** where it was held that an appellate Court will not interfere with an award of damages by a trial Court unless the trial Court has acted upon a wrong principle of law or that the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. He contended that the learned trial Judge had exercised her discretion judiciously, and asked this Court to dismiss the objections by the appellant to the award of the general damages.

#### **Ground 5**

Counsel supported the decision of the learned trial Judge on mesne profits submitting that it was justifiable that the appellants who were rightly found to have wrongfully possessed the suit land, grazing cattle thereon and carrying out other economic activities while wrongfully depriving the respondents of their enjoyment of the suit land, would pay mesne profits. In support of his submissions, counsel cited **Elliot vs. Boyton [1924] 1 Ch. 236**, where Warrington, L.J held that damages by way of mesne profits are awarded in cases where the defendant has wrongfully withheld possession



of land from the plaintiff. He asked this Court to maintain the orders of the learned trial Judge on mesne profits.

### **Grounds 6 and 7**

It was contended for the respondents that since it had been proved that the appellants had acted fraudulently in procuring their registration in respect of the suit land, the learned trial Judge was, in the circumstances, left with no option but to order for the cancellation of their title and to order for their eviction from the suit land, as well as to issue a permanent injunction against them to stop them from any continued interference with the suit land. Counsel submitted that under Section **176 (C)** of the **Registration of Titles Act, Cap. 230**, a court can order for cancellation of the title of a registered proprietor, whose registration was procured by fraud, which was exactly how the respondents had got registered on the suit land. For that reason, the Court was justified to order for cancellation of the appellants' title.

All in all, counsel contended that the Judgment and decree of the lower Court is the true reflection of the law and facts pertaining to the ownership of the suit land, and asked this Court to dismiss the appeal with costs to the respondents.

### **Resolution of the Appeal**

I have perused the court record, carefully considered the submissions of both counsel, the law applicable, and the authorities cited and those not cited but relevant to the determination of this appeal. I am alive to the duty of this Court, as a first appellate court, to reappraise the evidence on record and draw its own inferences. **See: Rule 30 (1) of the Judicature (Court of Appeal Rules) Directions S.I 13-10.** The duty of the first appellate court was also stated in **Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997** as follows:

**"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."**



I will now proceed to determine this appeal, bearing the above principles in mind. In my assessment, all the grounds of appeal relate to two questions, the first being; whether the respondents are the rightful owners of the suit land as found by the learned trial Judge; and the second, whether the learned trial Judge's orders on damages, mesne profits and other related orders were justified in the circumstances of the case.

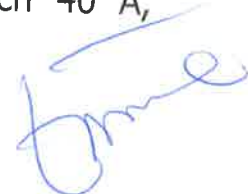
As to whether the respondents are the lawful owners of the suit land as found by the learned trial Judge, I have found it necessary to re-evaluate the evidence on record in order to resolve the issue. I have found that the evidence established the following facts, summarized below:

The suit land was carved out of a larger piece of land measuring approximately 1228.8 hectares. The latter piece of land was registered and comprised in Leasehold Register Volume 1343 Folio 19, Mawogola Ranch No. 40, land at Masaka. It was held on a lease granted by Uganda Land Commission to Sulaiman Mbaziira, Haruna Senyonga and Mary Nassaka for a term of 5 years from January 1985. Senyonga is one of the respondents while the other two lessors are predecessors in title for the other two respondents.

The suit land now measures approximately 259 hectares. This is because during the Ranch Restructuring Exercise carried out in some parts of Uganda starting in the early 1990s, most of the land was surrendered to the Government, with the registered proprietors retaining a smaller portion of the land.

It should be noted that the respondents' lease expired in or about 1987. When the said lease expired, there was no immediate effort to apply for its extension. Consequent to the said lack of effort and action, two competing claims arose over the suit land.

First, on the 22<sup>nd</sup> of August, 2006 Paulo Sabiiti, one of the original defendants got registered as the registered proprietor of the suit land. His holding was registered in Leasehold Register Volume 3586 Folio 21, Ranch 40 A,



Mawogola Ranching Scheme, Sembabule District on a lease from Sembabule District Land Board for 49 years from 1<sup>st</sup> July 2002.

Mr. Sabiiti testified that in 1982, he went onto the suit land without any colour of right and started using the land to rear his cattle. In 2004, he encountered a rogue called Hajji Nulu Njuki who masqueraded as the owner of the suit land, and demanded for payment from Mr. Sabiiti. Mr. Sabiiti paid him and the rogue disappeared without rendering the necessary assistance for processing a certificate of title. Mr. Sabiiti stated that he had expected the rogue to sign transfer forms to him which he didn't.

Mr. Sabiiti, then went to the Land Office, and he was advised that the suit land had been held on a lease which had long expired and there was no renewal of the same. He was advised to apply for the lease of the land, which he did. Subsequently he obtained a lease for the suit land. Mr. Sabiiti, then transferred his interests in the suit land to the appellants, who got registered thereon in 2008.

As for the respondents, they applied for the lease over the suit land on an understanding that they were entitled as the sitting tenants to have their earlier lease referred to above, extended. They were accordingly granted a lease by Sembabule District Land Board of 49 years from 1<sup>st</sup> July, 2008. This lease which is at page 27 of the record was granted to Senyonga Haruna, Hajji Sulaiman Mbaziira and Mary Nassaka as tenants in common. Strangely, this lease was signed by the first appellant and Hajji Sulaiman Mbaziira and Mary Nassaka, who, at the material time, were indicated as deceased. Nonetheless, on 3<sup>rd</sup> February, 2009, the respondents were registered as proprietors of the suit land, in a holding comprised in Leasehold Register Volume 3942 Folio 15, Ranch 40A, Masaka Ranching Scheme, Masaka.

Hence the appellants' predecessor in title got registered as the proprietor of the suit land at an earlier date than the respondents. Therefore, in order to have the certificate of title of the appellants cancelled, the respondents instituted the suit in the lower Court and made several allegations of fraud against the appellants, as follows; first that the appellants' predecessor in title had purported to buy the suit land from one Hajji Noor Mbabali, who



had no authority whatsoever to sell the land; secondly that Mr. Sabiiti, the appellants' predecessor in title had purported to buy the suit land when the District Land Board had declared the said acquisition fraudulent; thirdly, that Mr. Sabiiti, the appellants' predecessor in title had forged the signature of the Chairman and Secretary of Sembabule District Land Board on the lease which was purportedly granted to him; fourthly, that the appellant's predecessor in title had applied for a lease of the suit land well knowing that the respondents were still the registered owners.

In addition, there were allegations of illegalities and irregularities made against the appellants' certificate of title; firstly, that their title had no root title, as the same was "grounded" in the same Land Office File Number SBR/40 which is the same file number for the respondents' land; secondly, that Sembabule District Land Board had approved two grants of leases on the same land at two different sittings and for two different groups of people; thirdly, that the appellants' lease was undated and the names of the Chairman and Secretary of the District Land Board were undisclosed; and fourthly, that the appellants' lease did not indicate the names of the officials who signed on behalf of Sembabule District Land Board.

I have addressed my mind to the above allegations. I will start by reiterating that the initial lease which was granted by the Uganda Land Commission to the respondents expired by effluxion of time in or about January 1987. In **Dr. Adeodanta Kekitiinwa & 3 Others vs. Edward Haudo Wakida, Mpagi Bahegeine, JA** observed that:

**"It is well established that when a lease for a definite term has been terminated by effluxion of time (as was the lease before court), it means the stage has been reached when the lessee or tenant has no longer any legal right on the land and is merely a trespasser."**

The legal implication is that the land held on the lease reverted back to the controlling authority, in this case, Sembabule District Land Board which could choose to reallocate it. Therefore, for about 15 years from 1987 when the lease expired until 2002 when Mr. Sabiiti, the appellants' predecessor in title obtained a lease over the suit land, the land had reverted back to Sembabule



District Land Board. It must be observed that the respondents never expressed any interest in applying for an extension of their lease during that time.

The respondents claimed during the trial that the lease granted to Mr. Sabiiti was fraudulent. I have considered each of the allegations of fraud below.

There were allegations that Mr. Sabiiti, the appellants' predecessor in title had forged the signature of the Chairman and Secretary of Sembabule District Land Board on the lease which was purportedly granted to him.

To sustain these allegations, the respondents as the original plaintiffs relied on the evidence of PW3, Kalinkiriza Patrick who testified that he was the Secretary of Sembabule District Land Board around 2007. During his time in office, Sembabule District Land Board had accepted a request from the respondents to extend their lease over the suit land to 49 years. After extending the said lease, they had requested the Lands Office to register the respondents, but the respondents were not registered until complaints were made against one Ssekyewa in the Land Office. Apparently, the said officer had refused to register the respondents because the appellants' predecessor in title (Mr. Sabiiti) already had a lease over the same land.

PW3, was adamant that the appellants' title had been fraudulently obtained. However, he never substantiated this claim, and during cross examination at page 181 of the record, he said that he had never seen the said title. Clearly, he knew very little about the circumstances of the registration of the appellants. None of the original plaintiff's witnesses substantiated and or indeed proved any fraud on the part of the appellants or their predecessor in title.

I note that in **Kampala District Land Board & Another vs. Venansio Babweyaka & 3 others, Supreme Court Civil Appeal No. 2 of 2007 Odoki, C.J** stated that fraud may be defined to include dishonest dealing in land or sharp practice intended to deprive a person of an interest in land, including an unregistered interest.



In **Kampala Bottlers vs. Damanico (U) LTD, Supreme Court Civil Appeal No. 22 of 1992, Wambuzi, C.J** observed that:

**"Fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of it."**

Having re-evaluated the evidence, I have not found any dishonesty in dealing in the suit land, which is attributable to the appellants or their predecessor in title. I have instead found that when the respondents' lease expired in 1987, there was no effort by them to apply for extension of their lease. Instead the appellants rightly applied for a lease over the same, which was granted in 2002, fifteen years later. Therefore, when the respondents applied for and obtained a lease in 2007, there was no land available for leasing. If the Sembabule District Land Board Officials had been cognizant of this position, they would not have granted a lease to the respondents.

I have considered some of the alleged illegalities and/or irregularities especially alleged against the appellants' title; firstly, that their title had no root title, as the same was "grounded" in the Land Office File Number SBR/40 which is the same file number for the respondents' land; secondly, that Sembabule District Land Board had approved two grants of leases on the same land at two different sittings and for two different groups of people; thirdly, that the appellants' lease was undated and the names of the Chairman and Secretary of the District Land Board were undisclosed; and fourthly, that the appellants' lease did not indicate the names of the officials who signed on behalf of Sembabule District Land Board.

In my view, the first, third and fourth allegations were mere irregularities, which were no fault of the appellants' predecessor in title or the appellants themselves. I cannot fault them for any deficiencies in that connection. In any case, as long as the offices of the persons signing the lease are indicated, there is no law requiring that the names of the office holder have to be indicated thereon, as well. As regards the second allegation that Sembabule District Land Board granted two leases over the same land, I find this to be



an acknowledgment on behalf of the original plaintiffs that the appellants' lease was validly granted by the Sembabule District Land Board.

Therefore, having re-evaluated the evidence, and with the greatest of respect, I am unable to agree with the conclusions reached by the learned trial Judge attributing fraud on the part of the appellants in the process of their getting registered as the proprietors of the suit land.

I would therefore set aside the judgment and orders of the trial Court and substitute the same with an order dismissing the respondents' suit in the trial Court and allowing the appellants' counterclaim. The appellants shall have the costs of the appeal and those in the Court below.

This appeal is so disposed of accordingly.

As Hon. Justice Stephen Musota, JA., and Hon. Justice Remmy Kasule, Ag., JA agree, it is so ordered as stated in this judgment.

Dated at Kampala this .....<sup>20<sup>th</sup></sup> day of <sup>July</sup>..... 2020.



**Elizabeth Musoke**

Justice of Appeal

**THE REPUBLIC OF UGANDA**

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5

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- 2. SAMUEL BIHAGARO**
- 3. BENON KALIGA ::: APPELLANT**

10

**VERSUS**

- 1. SSENYONGA HARUNA**
- 2. NYOMBI HUSSEIN** (Administrator of the estate of the late Sulaiman Mbaziira)
- 3. NAMBAZIIRA JANE** (Administrator of the Estate of the late Mary Nassaka ::::::::::::::::::::::::::::::::::::::: **RESPONDENT**

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**(CORAM: Elizabeth Musoke, Stephen Musota JJA, & Remmy Kasule Ag. JA)**

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**JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA**

I had the benefit of reading in draft the judgment of my sister Hon. Justice Elizabeth Musoke, JA.

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I agree with her reasoning and order that the judgment and orders of the trial court be set aside and the respondent’s suit at the trial court be dismissed. I also agree that the appellant’s counterclaim in the lower court be allowed.

The appellants shall be paid the costs in this court and the court below.

Dated at Kampala this.....<sup>20<sup>th</sup></sup> day of .....<sup>July</sup> 2020

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Stephen Musota  
**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**  
**In the Court of Appeal of Uganda**  
**At Kampala**

**Civil Appeal No. 0035 of 2017**

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*Versus*

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3. Nambaziira Jane ::: Respondents  
*(Administrator of the Estate of the late Mary Nassaka)*

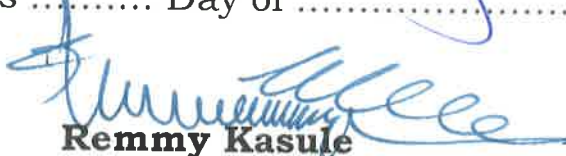
**Coram: Hon. Justice Egonda-Ntende, JA**  
**Hon. Justice Stephen Musota, JA**  
**Hon. Justice Remmy Kasule, Ag. JA**

**Judgement of Hon. Justice Remmy Kasule, Ag. JA**

Having had the opportunity to read through the draft Judgment of Hon. Lady Justice Elizabeth Musoke, JA, I concur in her conclusion that the appeal be allowed with the result that the respondent's suit in the High Court be dismissed and the appellants' counter claim be allowed in the terms the learned Justice proposes.

I too award the costs of the appeal and those of the Court below to the appellants.

Dated at Kampala this 20<sup>th</sup> Day of July 2020.

  
**Remmy Kasule**  
**Ag. Justice of Appeal**