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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Civil Appeal No. 102 of 2015

(Arising from High Court of Uganda (Land Division) Civil Suit No. 0418 of 2012)

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1. Sam Katabazi

2. Francis Ruhangara

3. Jane Mulerwa



..... **Appellants**

Versus

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1. Katsitsi David

2. Kyasimire Joi

3. Yokana Rwabirinda

4. Edward Muharwe



..... **Respondents**

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**Coram: Hon. Justice Geoffrey Kiryabwire, JA
Hon. Lady Justice Monica Mugenyi, JA
Hon. Justice Remmy Kasule, Ag. JA**

Judgment of Justice Remmy Kasule, Ag. JA

This is a first appeal from the Judgment of the **High Court Land**
30 **Division (Kwesiga, J.) in Civil Suit No. 0418 of 2012** delivered
on 20th October, 2014.

Introduction:

The Appellants, as Plaintiffs at trial, sued the Respondents as
defendants, in the said Civil Suit seeking Orders of vacant
35 possession, cancellation of title to the suit land, a permanent
injunction restraining the Respondents from further trespassing
on the land, an order for mesne profits, as well as general damages
and costs of the suit.

At trial, evidence, that was not contradicted was adduced that the
40 suit land was comprised in Bulemezi Block 919 Plot 7 measuring
511.3 hectares situated at Kiswaga and known as “Kyabagagi
Estate”.

A Certificate of Title was first issued in respect of this land on 10th
January, 2001. It was a lease for 5 years starting from 1st
45 November, 2000. The Lessor was Uganda Land Commission. The
Lessees were: Laurensio Ruremesa, Nkulunziza, Petero Kagiye,
Yozefu Sehene, Kanyemera, Mabubu and Kaberuka.

This Certificate of Title was tendered in evidence as exhibit PE.2.

On 24th January, 2001, the Lessees now registered as proprietors
50 of the suit land on the said Certificate of Tittle, Exhibit PE.2,
executed a written agreement whereby they sold, at a
consideration of 170 cows, the suit land to the Respondents, that
is: Katsitsi, Joi Kyasimire, Rwabirinda Yokana and Muhairwe

Edward. This agreement and its English translation was tendered
55 in evidence as Exhibit DE.2.

On 20th March, 2007, the Respondents applied and were granted
an extension of a lease to 44 years from 31st October, 2005. The
application for the lease extension was exhibited as Exhibit DE.3.

A new Certificate of Title with the extended lease with the
60 Respondents as registered proprietors was exhibited as DE.2.

Evidence was also adduced regarding the presence of the name
Kanyemera as one of the lessees who applied for the certificate of
title of the suit land that was issued on 10th January, 2001.

It was also this Kanyemera who was one of those who sold the suit
65 land to the Respondents on 24th January, 2001 as per Exhibit
DE.2.

Sam Katabazi (Pw1) admitted in his evidence that Kanyemera
James was his biological father and that he died in 1983. Katabazi
together with Francis Ruhangara and Mulerwa Jane, all children
70 of the deceased father, had obtained from the High Court Letters
of Administration in Administration Cause No. 1454 of 2005,
Exhibit PE.1 to administer their deceased father's estate.

The trial Court entered Judgment in favor of the Respondents as
it found that the Respondents were bona fide purchasers of the
75 suit land comprised in Bulemezi Block 919 LRV 2856 Folio 18, Plot
7, land at Kisaga-Kyabagagi and that the Appellants had failed to
prove fraud of any colour against the Respondents.

Dissatisfied, the Appellants lodged this appeal.

80 **Grounds of Appeal:**

1. *That the learned trial Judge erred in law and fact in allowing the Respondents to depart from their defence and by finding that the first Appellant, Sam Katabazi participated and signed the purported sale and lease agreements as Kanyemera, when the same had not been*
85 *pleaded.*

2. *That the learned trial Judge erred in law and fact by finding that the first Appellant Sam Katabazi, represented the entire family of the late Kanyemera James in the purported sale and transfer of the suit land and cured and ratified the sale and transfer to the Respondents, by the subsequent grant of Letters of Administration, when the first Appellant lacked authority to bind the estate at the time of the purported*
90 *sale and transfer.*

3. *That the learned trial Judge erred in law and fact in finding that the Respondents were bonafide purchasers for valuable consideration and that no fraud or any other malafides were proved against them or attributed*
95 *to them.*

4. *The trail Judge failed to evaluate the evidence and hence came to a wrong conclusion.*

Legal Representation:

At the date of hearing the appeal, the Appellants were
105 represented by learned Counsel Nicholas Atuhairwe. The first Appellant was also present in Court. Counsel for the

110 Respondents and the Respondents themselves were absent from Court, though duly served with Notice of the Hearing date. In absence of any explanation for their none attendance the hearing of the appeal proceeded in their absence.

Submissions:

115 The Appellants' Counsel had filed and served Counsel for the Respondents with their written submissions. The Respondents did not reply to the submissions. The hearing of the appeal therefore proceeded on the basis of written submissions and conferencing notes filed in Court only by the Appellants' Counsel.

Ground 1:

120 That the learned trial Judge erred in law and fact in allowing the Respondents to depart from their defence and by finding that the first Appellant, Sam Katabazi participated and signed the purported sale and lease agreements as Kanyemera, when the same had not been pleaded.

Submissions of Counsel for the Appellant:

125 The Appellants submitted that the Respondents at the trial advanced evidence through a witness to prove misrepresentation which was never pleaded by them as per their written statement of defence. They relied on the cases of **Inter Freight Forwarders (U) Ltd vs East African Development Bank (1990-1994) EA117** and **Nsubuga vs Attorney General [1993] 1 KALR** where it was held that a defence not pleaded in
130 the written statement of defence is inadmissible.

The Respondents were therefore bound by their pleadings. However, at trial, the Respondents relied upon an alleged mis-
135 representation of the first Appellant having participated in the application for the suit land and executing a lease on 10th January, 2001 as well as a sale agreement on 24th January, 2001 as Kanyemera and not as Sam Katabazi. The Respondents had not pleaded this in their written statement of defence.
140 Therefore the learned trial Judge erred to have allowed them to adduce such evidence, learned Counsel for the Appellants so submitted.

The learned trial Judge, according to Counsel for the appellants, was in error to have based his decision in the case on that
145 wrongly admitted evidence. Ground 1 therefore ought to be allowed.

Ground 2:

That the learned trial Judge erred in law and fact by finding that the first Appellant Sam Katabazi, represented the entire family
150 of the late Kanyemera James in the purported sale and transfer of the suit land and cured and ratified the sale and transfer to the Respondents, by the subsequent grant of Letters of Administration, when the first Appellant lacked authority to bind the estate at the time of the purported sale and transfer.

155 In respect of this ground, learned Counsel for the Appellants reiterated the submissions made regarding ground 1. He reasoned that the Court cannot sanction an illegality once such illegality is brought to its attention. Counsel relied on the case of **Makula International Ltd vs His Eminence Emmanuel**

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Cardinal Nsubuga Wamala and Another [1982] H.C.B. 11. It was argued for the Appellants that the Respondents could not rely on the signature of the first Appellant on the sale agreement of 24th January, 2001 as the said first Appellant did not have any authority to deal with the property of Kanyemera, the deceased, by the time of the purported sale.

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Learned Counsel submitted for the Appellants that the Certificate of Title is conclusive evidence of ownership of land. Therefore the suit land in question according to its Certificate of Title forms part of the estate of the deceased Kanyemera since his name appears on the Land Title as one of the registered proprietors.

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As to whether the signing by Katabazi of the sale agreement of 24th January, 2001, Exhibit DE.2, binds the other family members of Kanyemera's Estate, learned Appellants' Counsel referred to **Section 192 of the Succession Act Cap 162** states that provides that:

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"Letters of Administration entitle the administrator to all the rights belonging to the intestate as effectually as if the administration had been granted at the moment after his or her death".

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However **Section 193** of the same **Act** provides that;

"Letters of Administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate".

185 Appellants' Counsel therefore submitted that the alleged acts of
Sam Katabazi as administrator of Kanyemera's Estate which
diminish or damage the said Estate are invalid. Appellants'
Counsel relied on the authority of **Israel Kabwa vs Martin
Banoba: Supreme Court Civil Appeal No. 52 of 1995**, for this
190 submission.

Therefore, learned Counsel argued that the first Appellant's
(Katabazi) acts of signing on the lease agreement and application
for the Certificate of Title dated 10th January, 2001 were validated
by the grant of Letters of Administration by virtue of **Sections 192
195 and 193 of the Succession Act**. But the sale agreement dated
24th January, 2001, Exhibit DE1, cannot be said to have been
rectified by the grant of Letters of Administration to the Estate of
Kanyemera because such acts tantamount to intermeddling in the
estate of the deceased Kanyemera, prohibited by **Section 268 of
200 the Succession Act, and Section 11 of the Administrator
General's Act, Cap, 157**.

Accordingly, learned Counsel maintained that the conclusion of
the learned trial Judge that the grant of Letters of Administration
to the Estate of Kanyemera validated the acts of Sam Katabazi is a
205 decision reached in error as the grant only validates actions that
are meant to preserve the deceased's estate. Ground 2 therefore
had to succeed.

Ground 3:

That the learned trial Judge erred in law and fact in finding that
210 the Respondents were bonafide purchasers for valuable

consideration and that no fraud or any other malafides were proved against them or attributed to them.

The Appellants' Counsel submitted that a plea of "*bona fide*" is an absolute defense to an equitable claim. He relied on **David Sejjaka Nalima vs Rebecca Musoke: Civil Appeal No. 12 of 1985**, where
215 it was held that:

*"the effect of this Section is that once a registered proprietor has purchased land in good faith, his title cannot be impeached on account of fraud of the previous registered
220 proprietor"*.

Learned Counsel also referred to the persuasive case of **Hannington Njuki vs William Nyanzi HCCS No. 434 of 1996**, wherein the elements that have to be proved for a person to successfully rely on the principle of bona fide purchaser for value
225 without notice were stated. These include that; one holds a Certificate of Title, purchased the property in good faith, had no knowledge of the fraud, purchased for valuable consideration, the vendor had apparent valid title, and that such a one purchased without notice of any fraud and was not a party to the fraud.

Learned Counsel also relied on the persuasive decision of **Amratlal Purshottam Bhimji vs Gian Singh Bhambra & Others HCCS No. 298 of 2010**, where it was held that a "*bona fide purchaser*" is one
230 who buys property for value without notice of another's claim, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of the prior
235 adverse claims. A "*bona fide purchaser*" does all that is reasonably possible and necessary in his or her power to find about all

material facts pertaining to property before he or she could commit himself or herself to purchase the same. To be a bona fide purchaser, one must have done due diligence and exercised caution before entering into a transaction of the nature that would ultimately be binding upon him or her.

Learned Counsel for Appellants further elaborated that both in **David Sejjaka Nalima vs Rebecca Musoke (Supra)** and **Sir John Bagaire vs Matovu CA No. 7 of 1996**, it was stressed that lands are not vegetables which are bought from unknown sellers and that buyers of land must make thorough investigations not only of the land itself but also of the owners.

Counsel for the Appellants thus submitted that the Respondents were in error to regard Sam Katabazi who is said to have introduced himself as Kanyemera, was indeed the real Kanyemera. This was proof that the Respondents did not do thorough search to establish ownership of the suit land. The Respondents were therefore not bona fide purchasers for value without notice of any fraud as regards the suit land.

Learned Counsel for Appellants concluded that the Respondents had constructive notice of the fact that Sam Katabazi was not the real owner of the suit land due to their failure to do due diligence. Ground 3 had therefore to be allowed.

Ground 4:

The learned trial Judge failed to evaluate the evidence and hence came to a wrong conclusion.

Appellants Counsel invited this Court, as a first appellate Court, to exercise the powers to re-appraise evidence and draw inferences
265 from the facts as established by the evidence adduced at trial. Learned Counsel relied on the case of **Fredrick Zaabwe vs Orient Bank and 5 Others: Supreme Court Civil Appeal No. 04 of 2006** and **Kifamunte Henry vs Uganda: Supreme Court Criminal Appeal No. 10 of 1997** to support this proposition.

270 According to learned Counsel, the Appellants' witnesses Pw1, Pw2 and Pw4 were straight forward, consistent and were not in any way shaken in cross-examination at the trial. Their evidence ought therefore to have been believed by the learned trial Judge.

However on the contrary, the Respondent's witnesses Dw1, Dw2
275 and Dw3 were not truthful and straight forward in their respective testimonies to Court.

Counsel for Appellants therefore contended that the learned trial Judge failed to properly evaluate the evidence that was before him, leading him to believe and rely on the unreliable evidence adduced
280 for the Respondents and rejecting the credible evidence adduced for the Appellants.

As a result of the failure to properly evaluate the evidence the learned trial Judge wrongly held that the suit land was properly sold to the Respondents. Appellants Counsel prayed for Ground 4
285 to be allowed.

Submissions for Respondents:

As already stated, the Respondents did not file in Court any conferencing notes and/or any written submissions. They did not

attend the conferencing on 29th October, 2015. They did not also
290 attend the hearing of the appeal on 25th February, 2021, though
they were duly served.

Resolution of the Grounds of Appeal:

Ground 1 and 4 will be resolved separately, while grounds 2 and 3
will be dealt with together.

295 **Ground 1:**

The Appellants fault the learned trial Judge for having allowed the
Respondents to depart from their pleadings in their defence and
by finding that the first Appellant Sam Katabazi, participated and
signed the lease agreements and purported sale of the suit land as
300 Kanyemera who was dead, when the Respondents had not so
pleaded the same.

Order 6 Rule 7 of the Civil Procedure Rules bars a party to a
cause from departing from that party's pleadings. The position of
the law is that no pleading shall, except by way of amendment,
305 raise a new ground or contain any allegation of fact inconsistent
with the previous pleading of that party. See: **Interfreight
Forwarders (U) Ltd vs East African Development Bank [1990-
1994] EA 117.**

The Plaintiffs now Appellants, pleaded in paragraph 4 of their
310 plaint in **HCCS No. 418 of 2012**, that the Defendants
(Respondents) upon entering on the suit land in 2005 also engaged
in acts of fraudulent transfer of the said land. Amongst the
particulars of fraud allegedly carried out by the Defendants was:

315 “4.

.....

Particulars of Fraud

“(i).....

(ii)

320 (iii) *purporting to transfer the suit land using instruments allegedly issued by a deceased person*

(iv).....

(v).....”

The Respondents as Defendants in the suit pleaded in their
325 defence in reply to the above averment of the Plaintiffs as here
under:

“3. Paragraph 4(1) is denied in toto and it is denied that the land occupied by the defendans belongs to any deceased person’s estate.

330 4.

5.

6.

7. *The allegations of fraud as set out in the plaint and in the particulars of fraud [(i)-(v)] are denied and the Plaintiffs shall
335 be put to strict proof thereof.*

8. *In further answer to paragraphs 4(1-v) the Defendants state that they are bona fide purchaser for value and purchased the suit land from Laurensio Ruremeza, Nkulunziza, Kanyemera,*

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Petero Kagire, Yosefu Sehene, Mabubu and Kaberuka the former registered proprietors.

9. *The Defendants deny 4(ii), (iii), (iv) and (v) and add that all the instruments of ownership were duly executed by the registered proprietors and the same were genuine". (Sic)*

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The Appellants pleaded in their plaint in the suit that the transfer of the suit land into the names of the Respondents whereby they were registered as proprietors was invalid, because amongst other alleged frauds, there was the fraud of the suit land having been transferred to the Respondents, by transferors, one of whom was already dead at the time the transfer was made.

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The Respondents, as Defendants, replied to the above assertion by pleading in paragraphs 3,7,8 and 9 of their written statement of defence denying the Appellants' stated assertion. They specifically pleaded the names of the transferors from whom they bought the suit land. They also pleaded that all the instruments relating to the transfer of the suit land were genuine. The pleadings were then closed.

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From the above it is clear that the pleadings of both the Appellants (Plaintiffs) and Respondents (Defendants) clearly raised the issue as to whether or not the execution of the transfer of the suit land to the Respondents included a name of a deceased person as one of the transferors, and if so, who that one was.

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There was therefore no departure from the written statement of defence when, at trial, the Respondents, as Defendants,

adduced evidence relating to this subject, and the Appellants responded to the same in the manner they chose to.

The trial Judge thus committed no error for allowing such evidence to be adduced and dealt with by the trial Court.

370 Therefore the submission of the Appellants faulting the learned trial Judge for allowing the Respondents to depart from their defence by finding that the first Appellant, Sam Katabazi, participated and signed the purported sale and lease agreements as Kanyemera, when the same had not been
375 pleaded, has no merit at all. Ground 1 is accordingly disallowed.

Grounds 2 and 3:

As to whether the learned trial Judge erred in holding that the first Appellant represented the entire family of the late
380 Kanyemera James, in the purported sale and transfer of the suit land to the Respondents, is an issue whose resolution is part and parcel of the determination of the question of whether or not the Respondents were bona fide purchasers for valuable consideration of the suit land. That is why the two grounds are
385 thus resolved together.

The un contradicted evidence adduced before the trial Judge was that one James Kanyemera, the biological father of the first Appellant, Sam Katabazi, died in 1983. Kanyemera was also father-in-law of Ruremesha Yosamu (Dw2), who in 1977,
390 together with others including Kanyemera, applied to be granted a lease on the suit land. Kanyemera died before the application had been granted. The application was later granted and the

suit land comprised in Plot 7, Block 919 Bulemezi, approximately 511.3 hectares, at Kiswaga, Kyabagagi Estate, Luwero District was given a Certificate of Title on 10th January, 2001 for a lease of 5 years starting from 1st November, 2000.

The registered proprietors of the said were Dw2, Ruremesha Laurensio, who on converting to Protestantism from Roman Catholic, got the name Ruremesha Yosamu. The others were Nkurunziza, Kanyemera, Petero Kagye, Yossefu Shehne, Mabubu and Kaberuka. They held the suit land as tenants in common in equal shares.

Ruremesha (Dw2) further testified at the trial, that on signing the lease agreement of 10th January, 2001, the first Appellant, Sam Katabazi, signed the said lease agreement as Kanyemera, the name of his father who was by then dead. Kanyemera had never settled on the suit land. He stayed in Kisozi and that is where he died and his remains buried.

In 2001, Ruremesha (Dw2), together with the first Appellant, under the names of his deceased father Kanyemera, and the other registered proprietors of the suit land, namely Nkurunziza, Sehene, Kaberuka and Mabubu sold the suit land to the Respondents, at a consideration of 120 cows. A written sale agreement was executed on 24th January, 2001 and the first Appellant, together with Dw2 and the other registered proprietors, signed the same as sellers. The first Appellant again signed under the name of Kanyemera, his deceased father. The Respondents, the buyers of the suit land, were not informed that the first Appellant's true names were Sam

420 Katabazi, but was signing the sale agreement under the names
of Kanyemera, his deceased father.

At the conclusion of the sale, the suit land, was transferred into
the names of the Respondents, who applied for the extension of
the lease to 44 years, which application was granted and a
425 Certificate of Title was issued to the Respondents on 24th July,
2012.

According to Francis Ruhangara (Pw2), son of Kanyemera, the
deceased Kanyemera, even though he (Kanyemera) had his
main home in Kisozi, was living on the suit land with some of
430 his family members like Pw2, before he died. They were grazing
cattle on the same. There were 5 houses, the deceased's house
being of iron sheets and the others for his children being grass
huts. They had a dam on the suit land. The said suit land was
fenced, with neighbours being Munyambo in the east, then
435 Rwaheru and Bahigi. Kanyemera and his family left the land in
1987 due to the war that was going on in the country.

Rwashambya Henry (Pw3) knew the late Kanyemera James. He
stayed in Kisozi but also in Kiswaga, Wakyato, now Nakaseke
District on the suit land. The father of this witness, Pw3, one
440 Steven Rwaburima, was a neighbour of the deceased Kanyemera
James, both in Kisozi and also on the suit land at Kiswaga,
Wakyato. Pw3 was in the 1980s the Secretary of Kyamaweno
Committee, assisting residents of the area where the suit land
was situate, to migrate to other areas because of the war. He
445 thus knew that Kanyemera James left the suit land during the
war period.

Pw4 Bizuru John, also confirmed that Kanyemera James before he died in 1983 used to live on the suit land and he, Pw4, was his neighbour.

450 From the above evidence, I find it safe to infer that by 1977 when a formal application to have a leasehold title over the suit land was lodged, Kanyemera James, had already had interest as occupant/user of the suit land.

455 Exhibit PE.2, the certificate of Title of the suit land is proof that, even though Kanyemera James had died in 1983, he was still registered as one of the proprietors of the suit land as tenants in common together with Laurensio (Yosamu) Ruremesha Dw2, Nkurunziza Petero Kagiye, Yosefu Sehene, Mabubu and Kaberuka. Therefore, the estate of Kanyemera James had
460 registered interest in the suit land.

It is contended for the Respondents that on 24th January, 2001, they (Respondents) bought the suit land from the registered proprietors, including one Kanyemera, with the consideration of 120 cows being given by the buyers to the sellers. A written
465 sale agreement, Exhibit DE1, was executed between the parties. The Respondents as buyers after execution of the sale had the Certificate of Title to the suit land transferred and registered into their names on 31st January, 2001.

470 The Appellants contended that the estate of Kanyemera James never sold their interest in the suit land to the Respondents and that the eviction of the estate representatives from the suit land was unlawful. They accordingly prayed for an order of

cancellation of title issued in respect of the suit land, an injunction, mesne profits and damages from the Respondents.

475 The Respondents on the other hand, contended that they, as bona fide purchasers for value without notice, acquired by purchase the suit land and that the first Appellant participated in the sale of the suit land to them as Kanyemera James. The Respondents did not know and had no notice at all at the time
480 of purchase of the suit land that the first Appellant was not Kanyemera James and that his true names were and are Sam Katabazi.

I have very carefully submitted to fresh examination and review the evidence adduced at trial for both the Appellants and the
485 Respondents.

The first Appellant Sam Katabazi testified on 16th October, 2013 on oath and was cross-examined as Pw1. He was the youngest son of James Kanyemera's seven children. He is not the heir of his father, the heir being one Sekamara. He is with his elder
490 brother Francis Ruhangara (Pw2) and sister Jane Mulerwa, administrators of their said father's estate under **High Court of Uganda Administration Cause No. 1454 of 2005**: Exhibit PE 1.

His father died in 1983 and he left him and the rest of his other
495 children the suit land from which they were evicted by the Respondents in July, 2005. The eviction forced them to hire land elsewhere for grazing their cattle at an annual rent of UGX 5,000,000=. It is in September, 2012, that they, as administrators to the estate of their late father, filed a case in

500 the **High Court Civil Suit No. 418 of 2012** which they lost and then lodged this appeal.

Pw1 categorically stated that his father did not know how to write, let alone sign his names and that the signature of “Kanyemera” appearing on the lease documents in the
505 Certificates of Title Exhibits PE2, DE2 and the sale agreement of 24th January, 2001, Exhibit DE1, were not of his father.

Regrettably, at trial in the High Court, Counsel for the Respondents in cross-examination of Pw1, did not challenge Pw1 to confirm or deny that he, Pw1, is the one who falsely
510 presented himself to the Respondents and executed by writing and/or signing on the exhibits PE2, DE2 and DE1 as “Kanyemera” when he was not and when his true identity was Sam Katabazi son of Kanyemera.

It is also a matter of further regret, that at the same trial the
515 Respondents through their Counsel never prayed to Court to have the handwriting of Pw1 taken as a sample to be examined together with the handwriting of “Kanyemera” on exhibits PE2 and DE2 and DE1 with a view to determining whether or not it is the handwriting of Pw1 that is on Exhibits PE2, DE2 and DE1
520 as relate to “Kanyemera” and a report of that handwriting expert submitted to the trial Court.

This independent evidence was of crucial importance for the trial Court to fairly decide as to which version was truthful, the one of the Appellants that Pw1, or any other person of the estate
525 of Kanyemera, never sold the share of the late Kanyemera in the suit land to the Respondents, or that of the Respondents that

Sam Katabazi (Pw1), presented himself and/or was also presented by other members of the estate of Kanyemera James, that he was in fact the Kanyemera James, and he participated
530 as such, in the sale of the share of Kanyemera in the suit land to the Respondents by signing exhibits PE2, DE2 (the leases and Certificates of Titles the original (PE.2) and current (DE2)) and DE1 (the sale agreement). This would have gone to prove that, for all intents and purposes, the Respondents had been made
535 to believe that they had bought the suit land from Kanyemera James, one of the registered proprietors of the suit land, and that he (Kanyemera James) was alive at that time of buying the land.

The evidence of Pw1, Pw2, Pw3 and Pw4 was to the effect that
540 before he died in 1983, the late Kanyemera James, though he was settled elsewhere in Kisozi, where he had his home and where he was buried, he had also established a settlement on the suit land at Kiswaga, Wakyato Parish, then Luwero District, but now Nakaseke District. Bisuru John (Pw4) was one of his
545 neighbours on the suit land. Rwashambya Henry (Pw3) was more or else an independent witness. He was not related to Kanyemera or any of the parties to the suit. Pw3's father stayed for a long time as a neighbour of James Kanyemera in Kisozi. Kanyemera also stayed on the suit land where again Pw3's
550 father was a neighbour.

Pw3 during the NRA war in Luwero Triangle was Secretary of "Kyamaweno Committee" that handled migration issues of the people in the Luwero Triangle where the war was most intensive.

555 It was during this period that the people of the estate of James Kanyemera left the suit land because of the war. In 2005 when Pw3 returned to the land, he found that the James Kanyemera's estate people, were no longer on the suit land. He learnt that the suit land had been sold to other people.

560 Pw2's testimony was that before his father James Kanyemera died in 1983, he and his father, and other children were living on the suit land doing cattle grazing. They lived there with other co-owners of the suit land. They were 7 in number. Later, after the war the Respondents evicted the witness and the rest of the Kanyemera estate members from the suit land, asserting that 565 they, the Respondents, had bought the suit land. His father the late Kanyemera had put up five house structures on the suit land, his house having been of iron sheets, and the rest for the children were grass thatched huts. There was a dam and the land was fenced. The owners collectively used the land. They 570 as the Kanyemera family and others had vacated the land in 1987 because of the war.

Yokana Rwabirinda (Dw1), one of the original registered proprietors of the suit land, testified that he, and the other original registered proprietors, including James Kanyemera, 575 applied for the land in 1977. They used the land jointly not parcelling it out to individual registered proprietors.

The learned trial Judge in his Judgment held that:

580 *"Pw1, Pw2, Pw3 and Pw4 testified that Kanyemera died in 1983 and it follows that Kanyemera could not have signed the lease agreement in 2001 (30 years after death). The*

unchallenged evidence from the defence is that Sam Katabazi (Pw1) and the first Plaintiff a son of Kanyemera presented himself as Kanyemera and signed the lease agreement in 2001. He signed in the name of Kanyemera”.

585 I have very carefully subjected to strict scrutiny the evidence
adduced in the suit at trial. I find that at trial it was never put
to Sam Katabazi (Pw1), now the first Appellant and was the first
Plaintiff in the suit, that he presented himself to the
Respondents, as the buyers of the suit land, calling and bearing
590 himself out as James Kanyemera, the registered proprietor and
one of the sellers of the suit land. It was also never put to him
that it was him, Sam Katabazi, who received the cows paid for
the suit land as Kanyemera James, or for and on behalf of the
estate of the late Kanyemera James.

595 Sam Katabazi (Pw1) was also never required to deny or confirm
whether or not the writing of “Kanyemera” on the said exhibits
PE2, DE2 and DE1 was his. His own handwriting was never
taken to be compared with that on exhibits PE2, DE2 and DE1
and a report submitted to the trial Court by a qualified
600 handwriting expert.

All the above support the inference that the assertion by the
Respondents that it was Sam Katabazi, Pw1, who presented
himself to them as James Kanyemera and executed the sale of
the suit land to them, to have been a mere make up defence
605 devoid of truth on the part of the Respondents. Otherwise the
Respondents would have put and questioned, Sam Katabazi,

about the same. Independent evidence of a handwriting expert would also have established the truth.

Therefore, with great respect, I have come to the conclusion that
610 the learned trial Judge was in error for having not addressed his
mind to this aspect of the case. This is the more so because
Pw1, Pw2, Pw3 and Pw4 as well as Dw1 and Dw2 all testified
that from 1977, Kanyemera James, had had interest in the suit
land and had applied, together with six others, for a land title
615 by reason of this interest to the Uganda Land Commission. The
application had been lodged by 1983 when he died.

According to Pw1, Pw2, Pw3 and Pw4, James Kanyemera, while
having his main home on the land at Kisozi, he also settled on
the suit land, at Kiswaga-Kyabagagi Estate, by doing cattle
620 grazing thereon. For this purpose he had put up an iron sheet
house for himself and grass thatched huts for his children.
After his death his children and his other people were on this
land, but they had to leave when the war in the Luwero Triangle
intensified. After the war the late Kanyemera's children and his
625 other people returned to the land until in 2005 when they were
evicted therefrom by the Respondents who claimed to have
bought the said suit land.

The learned trial Judge found in his Judgment that witnesses
Ruremesha Yosamu (Dw2) and Kamuhanda Godfrey (Dw3) were
630 truthful witnesses. With respect to His Lordship the learned
trial Judge, the record of the trial Court proceedings does not
support his conclusion.

Dw2 stated on oath that though he knew that the real James Kanyemera had died in 1983, he did not tell this fact to the buyers of the suit land. Instead he let Sam Katabazi falsely present himself to the sellers as the real James Kanyemera. He offered no explanation as to why he so conducted himself in this transaction.

The evidence on the Court record also showed that Ruremesha Yosamu (Dw2) was a brother to Katsitsi, the first Respondent, one of those to whom the suit land was sold. Dw2 was also a son in law of the real James Kanyemera. Dw2's wife was a biological daughter of James Kanyemera. It is therefore most improbable that Katsitsi David, the first Respondent did not know that the real James Kanyemera had long died and that Sam Katabazi, the first Appellant, was not the real James Kanyemera and was therefore not one of the registered proprietors of the suit land.

Through the first Respondent, the other Respondents also most likely knew that Sam Katabazi, the first Appellant was not the real James Kanyemera. At any rate the burden was upon the Respondents to satisfy the trial Court that they established the proper identities of those from whom they bought the land, from the Local Council leaders, community and customary leaders so as to ensure that they were buying the suit land from the true proper owners.

Dw2 was also not straight forward as to the change of his names. He signed the sale agreement as Laurensio Ruremesha, but at trial he called himself Yosamu Ruremesha, asserting that

660 he had changed religion from Roman Catholicism to
Protestantism and as such he had been given a new name. He
never showed to Court his identity card, let alone a church
certificate showing change of names. Such a witness cannot be
said to be a truthful witness.

665 As to Kamuhanda Godfrey (Dw3), he was very self-contradictory
in his evidence.

His testimony was that the Appellants and Respondents went to
him as LC I Chairman to make the agreement of sale of the suit
land, Exhibit DE1. While the agreement itself states that it was
670 written by the chairman LC I, his testimony was that the sellers
and buyers went to him with an already written agreement. He
was then requested by the parties to the agreement to sign and
stamp the same. The parties had already signed the same. He
agreed to the request then signed and stamped the said sale
675 agreement. He never offered any explanation for this
contradiction.

Though Dw3 claimed that he did not know the sellers before
because they were not residents of his area, he never asked
them to produce to him any identity cards to establish their true
680 identities to him.

It is my considered view that had the learned trial Judge
addressed the contradictions in the evidence of Dw2 and Dw3,
he would not have come to the conclusion that Dw2 and Dw3
were truthful witnesses.

685 The learned trial Judge also held in his Judgment that:

690 *"It is also not in dispute that Katabazi is the Administrator of the Estate of the late Kanyemera with effect from 24th August, 2010 under High Court Administration Cause 1454 of 2005. See P1. In my most considered view, the authority conferred upon Katabazi under the grant of Letters of Administration confirms all his acts and transaction he entered or executed on behalf of the Estate before the grant. His authority covers the Estate from the time of death of his father. He has the right to sue and be sued by authority of the Letters of administration of the period after the*
695 *death of his father".*

The learned trial Judge, proceeded to further hold that as regards the validity and legality of the signatures of Sam Katabazi signing as Kanyemera on the sale agreement, Exhibit DE1 and any other instruments that passed title to the Respondents as buyers of the suit land, the same were ratified
700 by the grant of Letters of Administration to the Estate of Kanyemera to Sam Katabazi the first Appellant. The learned trial Judge then concluded:

"I have not found any illegality in the circumstances of the case".
705 His Lordship then reasoned that both the evidence and the succession law allows that the authority under the grant of Letters of Administration covers the acts done by the Administrator in respect of the Estate before the grant.

I, with the greatest respect to His Lordship the learned trial
710 Judge, do not agree with the above stated reasoning and conclusion His Lordship reached.

The Letters of Administration granted in **High Court Administration Cause No. 1454 of 2005** were to three people: Katabazi Sam (son), Ruhangara Francis (son) and Mulerwa Jane (daughter) all children of the late Kanyemera James. The grant was made on 24th August, 2010. The said Letters of Administration were not granted to Katabazi Sam alone and as such he, Katabazi Sam, was not the sole administrator of the Estate of late James Kanyemera as the learned trial Judge implied when he held that:

“It is also not in dispute that Katabazi is the Administrator of the Estate of the late Kanyemera with effect from 24th August, 2010 under High Court Administration Cause No. 1454 of 2005. See P1”.

No evidence was adduced before the learned trial Judge that the other co-administrators, namely Ruhangara Francis (son) and Mulerwa Jane (daughter) were ever in the know, let alone ever participated and/or ever approved the alleged acts, attributed by the Respondents to Sam Katabazi, as regards the sale of the suit land to the Respondents and collecting the purchase price of cows allegedly paid for the suit land, for and on behalf of the estate of James Kanyemera.

It is true that **Section 192 of the Succession Act, Cap 162**, is to the effect that Letters of Administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death. However it cannot be read and/or implied in that Section that where the administrators

are more than one, the acts or omissions of a single
740 administrator, bind and are taken as acts of all the other
administrators even when those other administrators never
knew, never participated and never approved those acts as
regards the estate they collectively administer.

At any rate, **Section 193 of the Succession Act, Cap. 162**, is
745 to the effect that Letters of Administration do not render valid
any intermediate acts of the administrator tending to the
diminution or damage of the intestate's estate. The alleged act
of selling the interest of James Kanyemera in the suit land
amounted to diminution or damage of the intestate estate of
750 James Kanyemera according to averments in the plaint in **High
Court Civil Suit No. 418 of 2012**. As such **Section 193 of
the Succession Act** operated in favour of the administrators of
the estate of James Kanyemera.

The learned trial Judge never considered at all the implications
755 of **Section 193 of the Succession Act** before holding that the
alleged signature of Katabazi in lieu of Kanyemera on the
agreement of sale, Exhibit DE1 and the Lease Agreement under
Exhibit PE2 passed Title of the suit land to the Respondents and
that this was ratified by the grant of Letters of Administration
760 to the Estate of James Kanyemera to Sam Katabazi as a co-
administrator with two other administrators.

Indeed the learned trial Judge further erred when he reached
the conclusions he reached without addressing the fact that
under **Section 11(1) and (2) of the Administrator General's
765 Act**, anyone who intermeddled in the estate of James

Kanyemera, when not authorized by the law or authority of the Administrator General, was committing a criminal offence, if the intermeddling was not to preserve the property of the estate. A subsequent grant of the Letters of Administration to the Administrators of the Estate of James Kanyemera could not validate an invalid and void act that was also criminal under the law.

I, with respect, after subjecting all the evidence to a fresh review, find that the learned trial Judge was not justified to hold that the Respondents were bona fide purchasers of the suit land for valuable consideration without notice of any fraud and/or maldives against or attributed to them. The Respondents bought the suit land while fraudulently and through malvide suppressing the interest of the estate of James Kanyemera in the suit land. James Kanyemera before he died had acquired and developed this interest as co-owner of the suit land in 1977 and had, with other co-owners, applied to the Uganda Land Commission to be granted a formal leasehold Title to the same by the time of his death in 1983. When the said application became successful and a formal Certificate of Title was issued in 2001, James Kanyemera's interest as co-owner of the suit land was properly stated in the said Certificate of Title, Bulemezi Block 919 Plot 7 Leasehold Register Volume 2855 Folio 18 Land at Kiswaga, Kyabagagi Estate, Luwero (now Nakaseke) District: Exhibit PE2. The Estate of James Kanyemera, through its administrators appointed by the High Court, became vested with the same interest in the said suit land. I accordingly allow grounds 2 and 3 of the Appeal.

Ground 4:

795 With regard to ground 4 of the appeal, that the learned trial
Judge failed to evaluate the evidence and hence came to a wrong
decision, I find the ground too broad and too vague and thus
contrary to **Rule 86(1) of the Court of Appeal Rules**. That Rule
mandatorily requires a Memorandum of Appeal to set forth
800 concisely and under distinct heads, without argument or
narrative, the grounds of objection to the decision appealed
against, specifying the points alleged to have been wrongly
decided and the nature of the order which it is proposed to ask
the Court to make.

805 Ground 4 alleges that the learned trial Judge failed to evaluate
evidence without specifying which evidence and in respect of
which particular points in the Judgment of the learned trial
Judge. The evidence as relate to the specific points raised in
grounds 1,2 and 3 of the appeal has already been dealt with in
810 this Judgment.

Accordingly ground 4 of the appeal is struck out as being
contrary to **Rule 86(1)** of the Rules of this Court.

The Appellants prayed this Court to set aside the decision of the
High court, but did not go further to pray for specific Orders as
815 regards the ownership of the suit land.

The Respondents have succeeded in respect of grounds 1 and 4
of the appeal. However the Appellants have been successful in
grounds 2 and 3 of the appeal, which grounds have in effect
been the essence of the appeal.

820 I find that the Respondents were not bona fide purchasers of the
suit land for valuable consideration as far as the interest of the
late James Kanyemera in the said suit land was concerned.

By reason of the above finding, I set aside the Judgment of the
learned trial Judge dated 20th October, 2014. I order that the
825 Appellants, Sam Katabazi, Francis Ruhangara and Jane
Mulerwa, as administrators of the estate of the late James
Kanyemera, under **High Court Administration Cause No.
1454 of 2005**, be registered as co-owners having acquired the
interest of the late James Kanyemera in the said suit land. They
830 are to be so registered together with the Respondents, that is
Katsitsi David, Kyasimire Joi, Yokana Rwabirinda and Edward
Muharwe as the other co-owners. Therefore the Certificate of
Title of the suit land comprised in Kiswaga, Kyabagagi Estate,
Leasehold Register Volume 4368 Folio 24 Plot 7 Bulemezi Block
835 919 Luwero (now Nakaseke) District, Exhibit DE2, is to be
registered into the joint names of the Appellants Sam Katabazi,
Francis Ruhangara and Jane Mulerwa, administrators of the
Estate of James Kanyemera under **High Court Administration
Cause No. 1454 of 2005** and those of the Respondents Katsitsi
840 David, Kyasimire Joi, Yokana Rwabirinda and Edward
Muharwe. All are to hold the land in issue as tenants in
common with the Appellants collectively holding the share for
the estate of the late James Kanyemera, which share shall be
equal to each share of each one of the Respondents out of the
845 acreage of 511.3 hectares of the suit land.


The responsible Luwero/Nakaseke District Land Board and the Registrar of Titles, Ministry of Lands, Housing and Urban Development are to effect the necessary registrations on the Certificate of Title and the Lease comprised in Leasehold Register Volume 4368 Folio 24 Bulemezi Block 919 Plot 7 at Kiswaga, Kyabagagi Estate, Luwero (now Nakaseke) District, approx. 511.3 Hectares Exhibit DE2, within a period of three (3) calendar months from the date of delivery of this Judgment.

Once the necessary registrations have been effected, it will be up to the Appellants and Respondents as owners of the suit land as tenants in common to decide whether to use the whole suit land jointly or to restrict each one to a particular demarcated area, all areas including the one of late Kanyemera James now collectively owned by the Appellants, being equal in acreage.

In conclusion ground 1 of this appeal stands dismissed, ground 4 is struck out and grounds 2 and 3 are allowed in the terms and orders set out herein above.

As to costs, the essence of the appeal has been the resolution of grounds 2 and 3. Since the Appellants have succeeded in the two grounds 2 and 3, I award $\frac{3}{4}$ of the costs of the appeal and the full costs in the Court below to the Appellants, as against the Respondents jointly and/or severally.

Dated at Kampala this19th..... day ofJuly..... 2021.


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

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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 102 OF 2015

1. SAM KATABAZI
2. FRANCIS RUHANGARA
3. JANE MULERWA

} ===== APPELLANTS

VERSUS

1. KABATSITSI DAVID
2. KYASIMIRE JOI
3. YOKANA RWABIRINDA
4. EDWARD MUHARWE

} ===== RESPONDENTS

(An appeal from the decision of the High Court of Uganda at Kampala (Land Division) before Kwesiga, J. dated the 20th day of October, 2014 in Civil Suit No.418 of 2012)

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.
HON. LADY JUSTICE MONICA MUGENYI, J.A.
HON. MR. JUSTICE REMMY KASULE, Ag. J.A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Remy Kasule, Ag. J.A.

I agree with his Judgment and I have nothing to add. Since the Hon. Lady Justice Monica Mugenyi, J.A. also agrees, we hereby order that:-

1. The Appeal is allowed partly.
2. A declaration doth hereby issue that the Respondents were not bona fide purchasers of the suit land.
3. The Appellants, as Administrators of the estate of the Late James Kanyemera, are to be registered as co-owners of the suit land together with the Respondents as co-owners of the suit land.
4. The Appellants and the Respondents are to hold the land as tenants in common.
5. $\frac{3}{4}$ of the costs of this Appeal and full costs in the Court below are awarded to the Appellants as against the Respondents jointly and/ or severally.



It is so ordered.

Dated at Kampala this ^{25th} day of ^{Aug} 2021.

.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

CORAM: KIRYABWIRE AND MUGENYI, JJA AND KASULE, AG. JA

CIVIL APPEAL NO. 102 OF 2015

BETWEEN

1. SAM KATABAZI
2. FRANCIS RUHANGARA
3. JANE MULERWA APPELLANTS

AND

1. DAVID KATSITSI
2. JOI KYASIMIRE
3. YOKANA RWABIRINDA
4. EDWARD MUHAIRWE RESPONDENT

**(Appeal from the Judgment of the High Court of Uganda (Kwesiga, J) in Civil Suit No.
418 of 2012)**

JUDGMENT OF MONICA K. MUGENYI, JA

A. Introduction

1. I have had the benefit of reading in draft the judgment of my brother, Hon. Justice Kasule in this Appeal. I agree with the conclusion that the Appeal substantially succeeds but do, nonetheless, deem it necessary to highlight my reasons therefore in the ensuing observations.
2. The Appeal is rooted in the following grounds of appeal:
 - I. *That the learned trial Judge erred in law and fact in allowing the respondents to depart from their defence and by finding that the 1st appellant, Sam Katabazi participated and signed the purported sale and lease agreements as Kanyemera, when the same had not been pleaded.*
 - II. *That the learned trial Judge erred in law and fact by finding that the 1st appellant Sam Katabazi, represented the entire family of the late Kanyemera James in the purported sale and transfer of the suit land and cured and ratified the sale and transfer to the respondents, by the subsequent grant of Letters of Administration, when the 1st Appellant lacked authority to bind the estate at the time of the purported sale and transfer.*
 - III. *That the learned trial Judge erred in law and fact in finding that the respondents were bonafide purchasers for valuable consideration and that no fraud or any other malafides were proved against them or attributed to them.*
 - IV. *The trial Judge failed to evaluate the evidence and hence came to a wrong conclusion.*
3. I do agree with the conclusions arrived at in the lead judgment with regard to *Grounds 2, 3 and 4* of the Appeal and the reasons therefor. With regard to *Ground 1*, however, I would arrive at the same conclusion albeit from a different perspective.
4. The Appellants faulted the trial judge for accepting on the court record evidence in respect of an allegedly unpleaded matter, and relying upon that evidence in determining the dispute as between the parties. It is the Appellants' contention that the trial judge thus

erroneously endorsed a departure from the respondents' pleadings in contravention of Order 6 rule 7 of the Civil Procedure Rules (CPR).

5. I carefully reviewed the material on record. As observed in the lead judgment, paragraph 4(iii) of the Plaint does reflect the following particular of fraud:

(iii) Purporting to transfer the suit land using instruments allegedly issued by a deceased person.

6. That averment is duly and directly responded to in paragraph 8 of the Written Statement of Defence as follows:

The defendants deny 4(ii), (iii), (iv) and (v) and add that all the instruments of ownership were duly executed by the registered proprietors and the same were genuine. (my emphasis)

7. The Respondents' evidence that the First Appellant (PW1) had facilitated the disposal of the suit land sought to support this averment in the Written Statement of Defence. It is not true, therefore, that this evidence constituted a departure from the Respondents' pleadings as proposed by the Appellants. It was not an afterthought either. It arose in the Appellants' evidence and the Respondents' capitalized on it to support their contention that they had no notice of fraud (by way of the supposed misrepresentation or at all) in so far as they had allegedly dealt with all the rightful proprietors of the suit land. They therefore could not have been expected to plead what they purportedly did not know. The bonafides of the Respondents' contestations that the First Appellant had misrepresented himself to them as James Kanyemera, one of the registered proprietors of the suit premises, speaks to *Ground 2* of this Appeal as I will expound shortly. For present purposes, in concurrence with the lead judgment, I would disallow *Ground 1* of the Appeal.
8. I might add that the connotation of misrepresentation would appear to have arisen from the First Appellant's own testimony that he was the son of Kanyemera. The Respondents sought to make mileage out of it to argue (successfully before the trial court and unsuccessfully on Appeal) that they were bonafide purchasers with no notice of fraud. The duty upon the trial court was to *inter alia* determine whether indeed the Respondents had no notice of the said fraudulent misrepresentation.

9. Before the trial court, it was the Appellants' case that neither the first Appellant nor any other member of the James Kanyemera's Estate had sold his share in the suit land to the Respondents. The Respondents, on the other hand, contended that the First Appellant misrepresented himself and/or was misrepresented by other members of James Kanyemera's Estate as James Kanyemera himself, and he participated as such in the sale of the said Estate's portion of the suit land by executing the leases and Certificates of Titles (Exhibits PE2 and DE2 respectively), as well as the sale agreement (Exhibit DE1). This would appear to be a case of a co-plaintiff that misrepresents himself to buyers as a co-proprietor of property then turns around to claim that he never sold the property to the respondents. The question is whether there is adequate proof of the plea of bonafide purchaser for value with no notice of fraud; stated differently, whether indeed the Respondents in this case did not have notice of the underlying connotations of misrepresentation and thus fraud.
10. A re-evaluation of the evidence is instructive. Mr. Godfrey Kamuhanda (DW3) testified that though he knew that the real James Kanyemera had died in 1983, he hid this fact from the buyers of the suit land and let whoever presented himself as James Kanyemera falsely present himself to the sellers as the real James Kanyemera. This piece of evidence would support the notion that the Respondents were unaware at the time they purchased the suit land that the First Appellant was in fact Sam Katabazi and not James Kanyemera, his deceased father, as he had held out to be. However, also on record is evidence that the First Respondent, David Katsitsi (one of the purchasers of the suit land), is a brother to DW2 – Yosamu Ruremesha, who in turn was James Kanyemera's son-in-law (married to the latter's daughter). Given these close relations, it does seem reasonable to conclude (as did Kasule, Ag. JA) that it is most improbable that that particular buyer was not aware of James Kanyemera's death so as to question the authenticity of anyone purporting to execute the land conveyancing instruments that the First Appellant executed. This would roundly discredit the Respondents' contestations to the contrary.
11. In any event, the Appellants having alluded to fraud in the purchase of the suit land, in response to which the Respondents invoked the plea of bonafide purchaser for value with no notice of fraud, they (the Respondents) bore the onus of proof of their plea in defence. Thus, they should have demonstrated efforts on their part to ascertain the veracity of the title sought to be passed to them and the capacity of the sellers to do so. Failure to do

so, in the face of their close proximity with and knowledge of the First Appellant viz the deceased owner of the suit property, would lead to the inevitable conclusion that the Respondents did have sufficient notice of the misrepresentation in issue presently. A reasonable person in the shoes of the First Respondent would most certainly have been alert to the aphorism that dead men do not walk: James Kanyemera could not have risen from the dead to execute transfer instruments in 2001. Consequently, the Respondents cannot benefit from the defence of bonafide purchaser for value with no notice of fraud.

12. In the result, I concur with the lead judgment's findings on *Ground 3* of the Appeal and would similarly resolve it in the affirmative. Being in further agreement with the conclusions therein on *Grounds 2 and 4*, I do respectfully agree with the conclusion in the lead Judgment that *Ground 1* of the Appeal stands disallowed; *Ground 4* is struck out, and *Grounds 2 and 3* are allowed. I do similarly abide the decision on costs in the terms set out therein.

It is so ordered.

Dated and delivered at Kampala this ^{25th} day of Aug....., 2021.



Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL