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**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL AT UGANDA AT KAMPALA
CIVIL APPEAL NO. 191 OF 2020**

(Coram: Kibeedi, Gashirabake and Kihika, JJA)

1. HAMURWA TOWN COUNCIL

10 **2. KABALE DISTRICT LAND BOARD**

3. RUBANDA DISTRICT LAND BOARD:.....:APPELLANTS

VERSUS

SANYU ROMINA MARY:.....:RESPONDENT

15 *(Appeal from the decision of the High Court of Uganda at Kabale
before Kazibwe-Kawumi, J. in Civil Suit No. 16 of 2013 dated 25th
July, 2019)*

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

20 This appeal is from the judgment and orders of the High Court of
Uganda at Kabale before Kazibwe-Kawumi, J, in Civil Suit No. 16 of
2013 dated 25th July, 2019.

Background

25 The respondent and two others, then the administrators of the
estate of the late Simeo Ruritwa (“the administrators”), sued the
appellants and two others, for a declaration that they were the
lawful owners of unregistered land measuring 17 hectares (the large
parcel of land), then situated at Karukara Trading Centre,
Hamurwa Town Council, Hamurwa Parish, Hamurwa Sub-County,

CIBX

5 Rubanda County, Kabale District. The large parcel of land included
a portion, on which the local authorities had set up a market (“old
market land”). The current size of Karukara Market also includes
land that the local authorities rented from the administrators in
2010 as they sought to expand the old market. There is no contest
10 that the additional land rented in 2010 belongs to the
administrators, and the dispute between the parties relates solely to
the ownership of the old market land.

In addition to the declaration referred to earlier, the administrators
also sought an order to compel the 3rd appellant to issue them with
15 a certificate of title for the large parcel of land with the old market
land included, a permanent injunction to restrain the 1st and 3rd
appellants from interfering with their possession of the old market
land, special and general damages for trespass, mesne profits,
interest and costs of the suit.

20 An outline of the facts of the case is that until the institution of the
suit in the trial Court, the 1st appellant managed a market, within
its jurisdiction, at Karukara Trading Centre. The administrators
averred, in their plaint, that the old market land was part of the
large parcel of land in the possession of the late Simeo Ruritwa
25 prior to his death, and to which they succeeded after his death. The
late Ruritwa had, on 22nd June, 1973, been granted a lease offer for
the large parcel of land by the Uganda Land Commission, then the
controlling authority.

5 The administrators further averred that the late Ruritwa, subsequent to obtaining the lease for and taking possession of the large parcel of land, allowed Kabale District Local Government, then responsible local authority to operate a market thereon but informed the local authority that if it was **“interested in**
10 **maintaining the market, the proprietor of the land would let out the portion being used for that purpose on such terms as to rent, nature of structures to be erected, actual user or otherwise as would be agreed from time to time”**. The administrators’ pleading did not indicate that the late Ruritwa ever
15 collected rent from the local authority in accordance with the said agreement. However, in 2010, the administrators demanded and received rent for the extra land in the agreement termed “unbuilt land” from Kabale District Local Government (“KDLG”) as the local authority overseeing the management of the old market. It appears
20 that KDLG continued to pay rent from then onwards.

Meanwhile from 2010, the administrators embarked on the process of obtaining a certificate of title for the large parcel of land from the 2nd appellant. The latter granted them a freehold offer and on 9th July, 2010 authorised a survey of the land. However, on 17th
25 December, 2012 the 1st appellant’s Town Clerk wrote a letter to the 2nd appellant requesting it to halt the processing of the certificate of title for the administrators because the survey for the administrators’ large parcel of land had unlawfully incorporated the old market land which did not belong to the administrators.
30 Subsequently, in June, 2013, the local authorities allegedly fenced

5 off the old market land an act the administrators alleged interfered with their possession of the old market land. The local authorities also stopped paying rent for the old market land to the administrators.

Due to these developments, the administrators filed the suit in the
10 trial Court to protect their interests in the old market land and also to cause the 3rd respondent to issue them a certificate of title for the large parcel of land.

The 1st and 2nd appellants and KDLG, then the responsible local authorities in the area in which the old market land was situated,
15 filed a defence in which they denied the administrators' claims. They averred that the old market land measuring approximately 1 acre was Government land on which the local authorities had set up and operated a market since 1953. They further averred that the old market land was not part of the large parcel of land for which
20 the late Ruritwa had obtained a lease in 1973. They claimed that the late Ruritwa's land had subsequently become registered as Plot 6, Block 117 and that its cadastral map excluded the old market land. They also averred that the old market land was, since 1953, occupied and developed by the local authorities without objections
25 from the late Ruritwa or indeed from the administrators shortly after his death.

The 1st and 2nd appellants and KDLG noted that the administrators had applied to be issued with a certificate of title for certain unregistered land neighbouring the old market land, but averred

5 that in that process they had attempted to encroach on the old
market land. They therefore contended that the administrators'
attempt to encroach on the old market land was motivated by fraud
and it was upon learning of this fraud that the local authorities had
halted the process of registration of the administrators' certificate of
10 title. The local authorities prayed for dismissal of the
administrators' suit.

The local authorities also counter-claimed against the
administrators for a declaration that all steps the latter had taken
to obtain a certificate of title for the large parcel of land (with the old
15 market land included) were unlawful and void at law, for a
permanent injunction restraining the administrators from taking
any further steps to register the said land in their names, costs of
the counter-claim and general damages.

After hearing the evidence, the learned trial Judge rendered
20 judgment in favour of the respondent, at the time the only surviving
administrator of the estate of the late Ruritwa. The trial Judge
found that the respondent is the owner of the large parcel of land
measuring 17 hectares and that the old market land was part of
that land. He therefore ordered the 3rd appellant to process a
25 certificate of title for the respondent for the large parcel of land. The
learned trial Judge also ordered the 1st appellant to pay to the
respondent mesne profits of Ug. Shs. 77,760,000/=, and general
damages of Ug. Shs. 20,000,000/=, with interest of 8% on the

5 respective awards, from the date of judgment till payment in full.
The 1st appellant was also ordered to pay the costs of the suit.

The appellants were aggrieved with the judgment and orders of the learned trial Judge and now appeal to this Court on the following grounds:

- 10 **"1) The learned trial Judge erred in law and fact when he failed to make a decision/finding in respect of the counterclaim as against the respondent.**
- 2) The learned trial Judge erred in law and fact when he held that the 1st appellant was not a bonafide occupant of a**
15 **portion of land known as the old market at Karukara Trading Centre.**
- 3) The learned trial Judge erred in law and fact when he relied on his naked vision and sight to conclude that the**
20 **respondent was the owner of 17 hectares of land, comprising the portion on which the old market is situated without a supporting survey or expert report to confirm the extent of the usage of the land.**
- 4) The learned trial Judge erred in law and fact when he stifled the rights of the appellants to tender in the deed plans and**
25 **cadastral sheets for Block 117 Plot 6 which were the basis of their defence and counterclaim and yet proceeded to make findings based on them.**
- 5) The learned trial Judge manifested bias and this prevented him from reaching the correct decision.**

- 5 6) *The learned trial Judge erred in law and fact in holding that the falsehoods and misrepresentations occasioned by the 1st-3rd respondents did not amount to fraud.*
- 7) *The learned trial Judge failed to properly evaluate the evidence before him and consequently reached a wrong*
10 *decision.”*

The appellants prayed this Court to allow the appeal and set aside the judgment and orders of the trial Court.

Representation

At the hearing, Mr. Twinomugisha Mugisha and Ms. Asimwe Fiona
15 Bamanya, both State Attorneys in the Attorney General’s Chambers appeared for the appellants. Mr. Benson Tusasirwe, appeared for the respondent.

Written submissions were filed for the respective parties.

Analysis

20 I have carefully considered the court record and other relevant materials like the submissions of counsel, and authorities cited. This is a first appeal and it is now well-established that while handling first appeals, this Court shall reappraise the evidence and reach its own conclusions on all issues under determination. This
25 duty is underscored by **Rule 30 (1) (a)** of the **Rules of this Court** which provides that on a first appeal from a decision of the High Court in exercise of its original jurisdiction, this Court may reappraise the evidence and make inferences of fact. The duty was also explained in the case of **Uganda vs. George Wilson Ssimbwa,**

5 **Supreme Court Criminal Appeal No. 37 of 1993 (unreported)**
where it was stated that:

10 *“This being the first appellate court in this case, it is our duty to
give the evidence on record as a whole that fresh and exhaustive
scrutiny which the appellant is entitled to expect, and draw our
own conclusions of fact.”*

The above principles shall be applied in this judgment.

I will now proceed to consider the grounds of appeal, in the
following manner; grounds 2, 3, 4 and 7 jointly, followed by
grounds 1 and 6 jointly. Ground 5 was abandoned.

15 **Ground 2**

Appellant’s submissions

The appellants, in ground 2, complained that the learned trial
Judge erred in law and fact when he held that the 1st appellant was
not a bonafide occupant of a portion of land known as the old
20 market at Karukara Trading Centre. Counsel for the appellant relied
on **Section 1 (e)** and **Section 29 (2) (b)** of the **Land Act, Cap. 227**
which define a bonafide occupant to include a person who before
the coming into force of the 1995 Constitution had been settled on
the land by the Government, which may include a local authority.
25 Counsel also cited the cases of **Kampala District Land Board and
Anor vs. National Housing and Construction Company [2005] 2
EA 69** and **Kampala District Land Board and Another vs.
Venansio Babweyaka and Others, Supreme Court Civil Appeal
No. 02 of 2007 (unreported)** which establish the principle that a

5 person who had been in possession of land for twelve years at the
time of the coming into force of the 1995 Constitution qualifies as a
bonafide occupant.

Counsel then submitted that the evidence of DW1 Tom Batoraine, a
longtime resident of Humurwa Town Council, that of DW2 Richard
10 Apollo Rutaro, a District Staff Surveyor, and that of DW3 Tugume
Robina established that the 1st appellant had been in possession of
the old market land since 1953 and had developed it with a market
shed in 1975 and a water house in 2008, and that at all times no
one claimed any interest in the suit land until the respondents filed
15 their suit in the trial Court.

Counsel for the appellants further submitted that the 1st appellant
had been in exclusive long possession of the old market land while
neither the respondent nor her predecessor in title had ever been in
possession of the old market land. Further, that the 1st appellant
20 had co-existed with the Late Ruritwa as a neighbour of the old
market land and upon his demise, the 1st appellant had constructed
a water house on the old market land without any complaint from
the respondent.

The above circumstances, according to counsel for the appellants,
25 qualified the 1st appellant as a bonafide occupant and/or lawful
owner of the suit land.

Respondent's submissions

5 In reply, counsel for the respondent submitted that the 1st appellant could not qualify as a bonafide occupant on the old market land considering the circumstances of the case. Firstly, counsel for the respondent submitted that the old market land was unregistered land and yet under **Section 29 (2)** of the **Land Act, Cap. 227**, a
10 person could only be a bonafide occupant on registered land. Secondly, counsel submitted that the status of a bonafide occupant was reserved for persons who lawfully came into possession of the land and not for persons who gained possession as tenants or licencees as the 1st appellant was for the old market land.

15 Secondly, according to counsel for the respondent, the evidence adduced by the respondent showed that the 1st appellant occupied the suit land as a tenant of the respondent, and pursuant to a tenancy agreement executed between Kabale District Local Government as a representative of the appellants and the
20 respondent. Thus, the 1st appellant could not claim that it was a bonafide occupant of the old market land and not a tenant.

Thirdly, counsel for the respondent submitted that the respondent's evidence established that the appellants were settled on the old market land by the late Ruritwa and not by Government, and that
25 as the learned trial Judge correctly held, the appellants failed to adduce evidence to prove which Government settled them on the old market land.

In light of the above submissions, counsel for the respondent supported the learned trial Judge's finding that the appellants were

5 not bonafide occupants on the old market land and prayed that ground 2 fails.

Ground 3

Appellants' submissions

10 The appellants alleged in ground 3 that the learned trial Judge erred in law and fact when he relied on his naked vision and sight to conclude that the respondent was the owner of 17 hectares of land, comprising the portion on which the market is situated without a supporting survey or expert report to confirm the boundaries of the disputed land. Counsel for the appellants made
15 two points in his submissions in support of ground 3. First, counsel for the appellants submitted that the learned trial Judge, in arriving at his decision, wrongly overlooked evidence of Cadastral Sheet No. 93/2/4/SW/4 without any reasonable basis. The Cadastral Sheet indicated that the Late Ruritwa's land which the respondent had
20 inherited was comprised in Plot No. 6 Block 117 and did not include the old market land.

Secondly, counsel for the appellants submitted that the learned trial Judge improperly appraised the evidence of DW2 which showed that the respondents' surveyors produced a survey report
25 that fraudulently indicated that the old market land was part of the larger parcel of land. Counsel for the appellants referred to the evidence of DW2 who testified that he had notified the respondent's surveyors about the wrongful inclusion of the old market land as part of the larger parcel of land but they had not taken any action,



5 and that instead the respondents had chosen not to tender their surveyor's report in evidence.

According to counsel for the appellants, considering the circumstances of the respondent concealing their surveyor's report, the learned trial Judge's decision to reject the Cadastral Sheet
10 facilitated the respondent's fraudulent strategy not to produce the report made by their surveyors and avoid the trial Court from reaching the inevitable conclusion that the attempt to survey the old market land which was in possession of the 1st appellant was an illegality.

15 **Respondent's submissions**

Counsel for the respondent made no submissions in relation to ground 3.

Ground 4

Appellants' submissions

20 Ground 4 faults the learned trial Judge's handling of a cadastral map for Block 117 Plot 6, that the appellants sought to tender in evidence, in support of their case that the old market land was not part of the larger parcel of land owned by the respondent. Counsel for the appellants submitted that, according to the cadastral map,
25 the larger parcel of land was comprised in Block 117 Plot 6 and that the boundaries of that land did not encompass the old market land. Yet, according to counsel, the learned trial Judge prevented the



5 appellants from tendering the cadastral map as an exhibit without giving any reasons for doing so.

Furthermore, counsel for the appellants submitted that while the learned trial Judge in one breath prevented the admission of the cadastral map in evidence, in the other breath, he based part of his
10 judgment on the cadastral map. The learned trial Judge stated, for example, that the Late Ruritwa excluded the old market land from the survey for Block 117 Plot 6. Counsel faulted this finding by the learned trial Judge as not having been backed by any evidence and also as having been based on a cadastral map that the learned trial
15 Judge did not allow in evidence.

Counsel for the appellants also submitted that the trial Judge, in refusing to admit the cadastral map in evidence, denied the appellants their right to lay cogent evidence in support of their case and was an error.

20 **Respondent's submissions**

In reply, counsel for the respondent denied that the learned trial Judge prevented the appellants from tendering the cadastral map in evidence as alleged in the appellants' submissions. He submitted that according to the record of the trial proceedings, the appellants
25 made no attempt to have the said cadastral map tendered in evidence and therefore cannot argue that the learned trial Judge unreasonably stifled their right to tender the said map in evidence. Counsel for the respondent prayed that ground 4 also fails.

5 **Ground 7**

Counsel for the appellants made no submissions on ground 7.

Decision on grounds 2, 3, 4 and 7

I have carefully considered the respective counsel's submissions in relation to grounds 2, 3, 4 and 7, which I shall consider together, as
10 the four grounds are concerned with the question of whether the learned trial Judge erred when he found that the respondent was the lawful owner of the old market land, and that that land formed part of the larger parcel of land belonging to the estate of the Late Ruritwa.

15 I wish to observe at the outset that, as counsel for the respondent rightly submitted, the question of the lawful owner of the old market land could appropriately be addressed under issue two, as framed by the trial Court, namely:

20 **"Whether the land measuring approximately one acre at Hamurwa Town Council on which the "old market" is situate belongs to the plaintiff or the defendant (sic)"**

The respondent and her co-administrators averred, in their plaint, that the old market land belonged to them. They pleaded at paragraph 4 (b) of their plaint that:

25 ***"In their capacity and as the only surviving beneficiaries of the estate of the said late Simeo Ruritwa, the plaintiffs have at all material times been the beneficial owners and occupants of a parcel of land measuring about 17 hectares situate at Karukara LC1, Hamurwa Parish, Hamurwa Sub-County, Kabale District, said***

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5 **land now within the boundaries of Hamurwa Town Council, the 2nd defendant, following the creation and establishment of the said Town Council, the said plaintiffs own developments on the land, including five (5) houses.”**

The respondent and her co-administrators further pleaded at
10 paragraph 4 (d) and (e) of their plaint as follows:

15 **“d) At the time, upon request of Kigezi/Kabale District Administration, the corporate predecessor of the 1st defendant and in his public-spirited nature, the deceased had allowed to be operated on a part of his land measuring 1.284 acres (0.520 hectares) a general merchandise public market, upon the understanding that should the District Administration be interested in maintaining the said market, the proprietors of the land would let out the portion being used for that purpose on such terms as to rent, nature of structures to be erected, actual user or otherwise as would be agreed from time to time.**

20 **e) Upon inheriting the land, the plaintiffs indicated to the concerned local authorities that they were willing to continue to avail the said portion for the same purpose and on the same terms. It was never at any one time suggested that the deceased and/or his successors in title had surrendered ownership of the portion on which the said market was situate.”**

25 The case for the respondent was therefore that the old market land, approximately 1 acre, was part of the larger parcel of land measuring 17 hectares which she and her co-administrators had inherited from their late father Simeo Ruritwa, who owned the land

5 prior to his demise. It was further the case for the respondent and
her co-administrators that the Late Ruritwa had permitted the local
authorities represented by the Kigezi/Kabale District
Administration to set up and operate a market on his land, but only
as his tenants.

10 On the other hand, the appellants denied that the old market land
was part of the land belonging to the estate of the Late Ruritwa, and
averred that the land was Government land. The appellants pleaded
at para 4 of their written statement of defence as follows:

15 **“4. In alternative, but without prejudice to the foregoing denials,
the defendants shall aver and contend as follows;**

a) **The land measuring approximately one acre situated at
Karukara, Hamurwa Sub County, Hamurwa Town
Council, about 17 kilometres along Kabale-Kisoro Road
is Government land.**

20 b) **The defendants have been exclusively occupying the
said land as a market area/Government land since
1953.**

25 c) **The lease offer granted to late Simeo Ruritwa (father of
the plaintiffs) on the 22nd June, 1973 vide Ref.
KB/76/2/11 authorised by the District Land Board
Kabale District under Ref. LWK/349F AD I/S NO.
C/1/0292 did not include the market area/ Government
land.**

30 d) **The late Simeo Rutirwa (father of the plaintiffs)
proceeded to Register his interest under Plot 6, Block
117 which does not include the market**

5 As can be seen from the above passage, the respondent's evidence
was that her father the late Ruritwa told her that he owned the
larger parcel of land which included the old market land. The
respondent also acknowledged that the local authorities,
represented by the 1st appellant, were in possession of the old
10 market land at the time of the filing of the administrators' suit, but
she stated that the local authorities were occupying the old market
land owing to the decision of their father to let it to the local
authorities upon an "understanding" that the latter would
compensate the former in cash/or kind for utilizing the old market
15 land.

In my view, the respondent's evidence that her father had let the old
market land to the local authorities was difficult to verify in the
absence of contemporaneous documentary evidence supporting that
assertions brought out in that evidence. Moreover, the respondent
20 alleged to have received the communication from her father during
her "school life" and thus the evidence is hearsay and not
admissible unless it falls under any of the prescribed exceptions.
Further, the reliability of her recollection may have been affected
considering the substantial period of time that had passed between
25 then and the time of her testimony in the trial Court. Lastly, letting
out a market to local authorities is not like letting out one's shirt to
a neighbour. There are established bureaucratic processes through
which such a transaction goes before being concluded and the
agreements executed. I would therefore find that the respondent's

5 claim that their father let the old market land to the local authorities was not proven.

I have also considered the submission of counsel for the respondent that the local authority's seeming acknowledgement of the administrators' ownership of the old market land proved that the
10 said land belonged to the estate of the late Ruritwa. It appears that in 2010, the local authorities represented by Kabale District Local Government appeared to have accepted that the old market land was part of the land owned by the administrators, and this was communicated in an agreement 25th June, 2010 at page 155 of the
15 record. But the circumstances of the making of the agreement, as the analysis of the evidence will show, indicate that the local authorities were driven to that acceptance by the administrators' narrative that the old market land belonged to the estate of the late Ruritwa and not the local authorities' own independent
20 investigation of the ownership of the suit land.

In her examination in chief, the respondent confirmed pushing this narrative, testifying that the administrators were, in 2009, approached by Kanyeihamba Jones, the Sub County Chief who sought to rent more land from them to expand the market, and her
25 response was that:

“From our discussion, I asked him to first accept that the land on the old market is ours.”

Subsequently, when Mr. Balaba the PAS, Kabale District, approached the administrators seeking to rent additional land from

5 the respondent for expansion of the market, the respondent continued to assert ownership of the old market land. Her testimony was that:

10 ***“After sometime on, Mr. Balaba (PAS, Kabale District) came to Kampala and I discussed with him. We said we had no objection but they must first acknowledge that even the then existing market is our land before we give more so that they rent it as one piece. He said they knew it was our land. We said the land committee at the Sub-County can verify this.***

15 ***We agreed to enter an agreement with the District so that they rent the land for market.***

I was approached by the District (Kabale) not Hamurwa Town Council.

We concluded the agreement Annexure H1.”

20 It is clear that the local authorities’ seeming acceptance that the administrators were the owners of the old market land was based on the assertions made by the respondent and not on any informed and independent investigation of ownership by the local authorities. I therefore do not consider, as counsel for the respondent asserts, that that acceptance was conclusive to establish the respondent’s
25 ownership of the old market land. The question of the ownership of the old market land can only be determined by considering all the available evidence.

I now move on to an overview of the evidence given for the appellants in relation to when the local authorities had gone into
30 possession of the old market land. DW1 Baturaine Tom testified

5 that he had lived at Karukara for a very long time, and was therefore familiar with the history surrounding the ownership of the old market land. He stated that old market was started in 1953. It will be noted that DW1 was aged 75 years when he testified in 2018, meaning that he was just 10 years old in 1953 when the
10 market was opened.

The appellants also sought to establish that the old market land was distinct from the land that was owned by the late Ruritwa. They pleaded in their written statement of defence as follows:

15 **“c) The lease offer granted to late Simeo Ruritwa (father of the plaintiffs) on the 22nd June, 1973 vide Ref. KB/76/2/11 authorised by the District Land Board Kabale District under Ref. LWK/349F AD I/S NO. C/1/0292 did not include the market area/ Government land.**

20 **d) The late Simeo Rutirwa (father of the plaintiffs) proceeded to Register his interest under Plot 6, Block 117 which does not include the market area/Government land. (An extract from the mapping registry cadastral sheet No. 93/2/14/SW/4 is hereto attached as annexure ‘A’).”**

I must observe that the appellants attached a cadastral map to
25 their pleadings, and based on it to claim that the late Ruritwa’s land was comprised in Plot 6, Block 117, and that the said land did not include the old market land. However, I also observe that the cadastral map was not formeraly tendered in evidence as an exhibit. The only witness who spoke of the survey for Block 117 Plot
30 6 was DW2 Richard Apollo Rutaro and yet there was no attempt by

5 counsel for the appellants to tender the cadastral map through this
witness. Therefore, it is surprising that appellants alleged in ground
4 that the learned trial Judge prevented the appellants from
tendering the cadastral map in evidence yet their trial counsel made
no effort to tender the map in evidence. Counsel for the respondent
10 was therefore right when he submitted that the appellants made no
attempt to tender the cadastral map in evidence and thus cannot in
this appeal shift responsibility for their failure on the learned trial
Judge. I would accordingly reject the allegations set out in ground
4.

15 I would equally reject the appellants' assertion in ground 2 that the
local authorities were bonafide occupants on the old market land.
Counsel for the appellants submitted that the local authorities were
bonafide occupants of the old market land within the meaning of
Sections 29 (2) (a) and/or (b) of the Land Act, Cap. 227. The
20 provisions are reproduced below:

***“(2) “Bona fide occupant” means a person who before the coming
into force of the Constitution—***

***(a) had occupied and utilised or developed any land unchallenged
by the registered owner or agent of the registered owner for twelve
years or more; or***

***(b) had been settled on land by the Government or an agent of the
Government, which may include a local authority.”***

I agree with the submission of counsel for the respondent that one
can only talk of being a bonafide occupant, under Section 29 (2) (a),

5 if he/she is occupying registered land, which is not the case for the old market land, which is situated on an unregistered parcel of land.

The appellants cannot also successfully claim to be bonafide occupants pursuant to Section 29 (2) (c) as that provision states
10 that one is a bonafide occupant if he/she was settled on land by Government or an agent of Government, which may include a local authority. Section 29 (3) also indicates that Section 29 (2) (b) applies to registered land, and also appears to limit the persons who can be settled on land under Section 29 (2) (c) to natural
15 persons pursuant to a formal resettlement scheme. Section 29 (3) provides as follows:

“(3) In the case of subsection (2)(b)—

(a) the Government shall compensate the registered owner whose land has been occupied by persons resettled by the Government or an agent of the Government under the resettlement scheme;
20

(b) persons resettled on registered land may be enabled to acquire registrable interest in the land on which they are settled; and

(c) the Government shall pay compensation to the registered owner within five years after the coming into force of this Act.”

25 However, the above analysis does not conclusively rule out the local authorities as lawful owners of the old market land as the ensuing analysis will show. It will be noted that the appellants pleaded that the old market land was Government land, and in their submissions and evidence made the following contentions: first,

5 that the old market land is Government land on which the local
authorities had set up and operated a market since 1953; second,
that the old market land is Government land because the local
authorities owned the land as bonafide occupants; and thirdly, that
the old market land is Government land as the local authorities
10 have been in possession of the land for a long period of time, that
is, since 1953.

I have in my earlier analysis, ruled out the first and second
contentions and only the third contention need to be considered. In
relation to the third contention, counsel for the appellants, in their
15 submissions on ground 2, contended that the appellants were
lawful owners of the old market land because they had been in
unchallenged long possession of the old market land since 1953,
which was about 60 years at the time the administrators filed their
suit in 2013. However, I earlier found that the assertion that the
20 market on the old market land was established in 1953 could not
be verified and I therefore did not believe it. I therefore consider the
appellants to have gone into possession of the old market land in
1953. The late Ruritwa had obtained a lease for land which
allegedly included the old market land in 1973.

25 In addressing counsel for the appellants' submission on the local
authorities' long possession of the old market land, I will begin by
observing that under the Limitation Act, Cap. 80, a person can
become the lawful owner of land because of his/her long possession
of the land, despite the person having initially settled on the land as

5 a trespasser or squatter while the person lawfully belonged to someone else.

Section 5 of the Limitation Act, Cap. 80 provides as follows:

“5. Limitation of actions to recover land.

10 ***No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”***

Section 6 of the Limitation Act, Cap. 80 explains when the right of action accrues to the person seeking to recover the land, and
15 relevant to this case, Section 6 (1) provides as follows:

“6. Accrual of right of action in case of present interests in land.

20 ***(1) Where the person bringing an action to recover land, or some person through whom he or she claims, has been in possession of the land, and has while entitled to it been dispossessed or discontinued his or her possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.”***

The effect of Sections 5 and 6 (1) is therefore as follows. An action for recovery of land by A, a person claiming as the previous lawful
25 owner of the disputed land now in possession of another person B cannot be sustained after 12 or more years have passed from the date on which A’s cause of action accrued. A’s cause of action is deemed to have accrued, if A was previously in possession, on the day which A was dispossessed as owner of the land or when A

5 discontinued possession of the land. Once it is proved that B, whether he/she originally came into possession as a squatter or trespasser, has been in possession of the land for more than 12 years, B will be deemed to have obtained ownership of the land by possession under the Limitation Act, Cap. 80.

10 The UK House of Lords (UKHL) in the case of **JA Pye (Oxford) Ltd and Others vs. Graham and Another [2002] 3 All ER 865**, discussed the meaning of provisions of the UK Limitation Act, 1980 that are identical to Sections 5 and 6 (1) of the Uganda Act. The UKHL (per Lord Browne-Wilkinson, who delivered the lead
15 judgment) began by stating that:

***“It is to be noted that the right of action to recover the land is barred whenever 12 years have elapsed from the time when any right of action accrued: it does not have to be a period immediately before action brought. In the case of unregistered land, on the
20 expiration of the limitation period regulating the recovery of the land, the title of the paper owner is extinguished.”***

The UKHL then went on to further observe that in giving effect to the statutory provisions:

***“the question is simply whether the defendant squatter has
25 dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner.”***

I must clarify that the term “paper owner” is used^d to refer to the person who had a legitimate claim to the land before the squatter went into possession thereof. The paper owner is therefore the

5 person vested with the right to institute a claim for recovery of land under the Limitation Act.

The UKHL further stated that a squatter or trespasser will obtain ownership of land belonging to the paper owner if the former has been in possession of that land for a requisite period of time. For
10 definition of possession, the UKHL cited with approval a statement from the case of **Powell v McFarlane (1977) 38 P&CR 452** where Slade J stated that:

15 ***“(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prime facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he***
20 ***must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”***

In the present case, the administrators of the estate of the late Ruritwa conceded in their pleadings that the local authorities were in possession of the old market land at the time the administrators
25 filed the suit in 2013. Assuming that the old market land was part of the land for which the late Ruritwa obtained a lease in 1973, and that the local authorities went into possession of the old market land in the same year, it would mean that the local authorities were in possession of the old market land mostly unchallenged for a
30 period of 40 years. I say mostly unchallenged because from 2009,

5 the administrators of the estate of the late Ruritwa had started claiming ownership of the old market land. But even making allowance for the 4-year period between 2009 to 2013, the local authorities had already been in possession of the old market land for about 36 years.

10 The fact of the local authorities' possession of the old market land for 36 years meant that the administrators of the estate of the late Ruritwa were under Sections 5 and 6 (1) of the Limitation Act, Cap.80 barred from bringing an action for recovery of the old market land from the local authorities. It also means that
15 consequently, and as counsel for the appellants rightly submitted, the local authorities, or more precisely, the 1st appellant, had obtained ownership of the old market land by long possession and the respondent was barred from claiming the land.

In view of the above analysis, I am unable to agree with the learned
20 trial Judge's finding that the respondent proved on a balance of probabilities that the suit land belonged to the estate of the late Ruritwa. I would instead find for the appellants and uphold their pleading that the old market land was Government land by virtue of the long possession of the land by the area local authorities who
25 had set up and developed a market thereon for more than 30 years by 2009 when the administrators of the estate of the late Ruritwa first laid claim to the land.

Grounds 2, 3, 4 and 7 are therefore resolved in accordance with the above analysis.

Grounds 1 and 6

Grounds 1 and 6 relate to the appellants' counter-claim against the respondent. In ground 1, the appellants alleged that the learned trial Judge erred in law and fact when he failed to make a decision/finding in respect of the counterclaim as against the respondent. In ground 6, the appellants alleged that the learned trial Judge erred in law and fact in holding that the falsehoods and misrepresentations occasioned by the 1st-3rd respondents did not amount to fraud. According to the appellants' written statement of defence and counter-claim, the administrators of the estate of the late Ruritwa acted fraudulently while they tried to obtain a certificate of title for the large parcel of land.

I do not have to decide grounds 1 and 6 as my earlier finding that the old market land is Government land and does not belong to the estate of the late Ruritwa, resolves the underlying dispute in this matter.

For the reasons given above, I would allow the appeal, set aside the judgment and orders of the trial Court and substitute the following declarations and orders:

- a) The old Karukara Market Land is Government land and does not form part of the larger parcel of land belonging to the estate of the late Ruritwa.

- 5 b) The 3rd appellant may process a certificate of title for the large parcel of land belonging to the respondent as the administrator of the estate of the late Ruritwa but the Old Karukara Market Land shall **not** be included in that certificate of title.
- 10 c) The respondent is ordered pay the costs of the appeal and those in the Court below.

Dated at Kampala this 1st day of November 2023.


Christopher Gashirabake

15

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Muzamiru M. Kibeedi, Christopher Gashirabake & Oscar John Kihika, JJA]

CIVIL APPEAL NO. 191 OF 2020

1. HAMURWA TOWN COUNCIL]
2. KABALE DISTRICT LAND BOARD]
3. RUBANDA DISTRICT LAND BOARD] ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

SANYU ROMINA MARY ::::::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA

I have had the advantage of reading in draft the judgment prepared by my Learned brother, Hon. Justice Christopher Gashirabake, JA. I concur that this appeal should be resolved in the terms proposed.

As Hon. Justice Oscar John Kihika, JA likewise agrees, the above appeal is allowed in the terms set out in the judgment of Hon. Justice Christopher Gashirabake, JA.

It is so ordered.

Dated at Kampala this ^{1st} day of *November* 2023

Muzamiru Kibeedi

Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO 191 OF 2020

(Coram: Kibeedi, Gashirabake and Kihika, JJA)

1. HAMURWA TOWN COUNCIL
2. KABALE DISTRICT LAND BOARD
3. RUBANDA DISTRICT LAND BOARD:.....APPELLANTS

VERUS

SANYU ROMINA MARY:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kabale before Kaibwe - Kawumi, J in Civil Suit No. 16 of 2013 date 25th July 2019)

JUDGMENT OF OSCAR JOHN KIHKA

I have had the benefit of reading in draft the judgement of my brother Justice Christohper Gashirabake J.A. I agree with the reasoning and conclusions therein and having nothing useful to add.

The appeal succeeds and judgment of the High Court is hereby set aside. I also agree with the declarations and orders proposed by my learned brother.

Costs of the of the appeal and those in the court below are to be paid by the respondent.

Dated at Kampala this^{1st}.....day of^{November}.....2023


OSCAR JOHN KIHKA
Justice of Appeal