

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO. 84 OF 2003

1. MARIAM NANTEZA
2. ROSEMARY NALUMANSI
3. MARIA MIREMBE NAKKU } PLAINTIFFS

VERSUS

1. NASANI RWAMUNONO } DEFENDANTS
2. LUSI NAMUBIRU }

AND

1. NASANI RWAMUNONO } PLAINTIFFS
2. LUSI NAMUBIRU }

VERSUS

1. MARIAM NANTEZA
2. ROSEMARY NALUMANSI
3. MARIA MIREMBE NAKKU
4. ERIC KARAMBASAIZI
5. ABUDU KASIBANTE } DEFENDANTS
(By Counter Claim)

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The original Plaintiff in the suit was George William Tezirawa. He was the son of the Late Erisa B. Mukasa Nkolobojo. Tezirawa brought this suit as administrator of the estate of his late father Erisa B. Mukasa Nkolobojo,

challenging the registration of the 1st and 2nd Defendants on the Certificate of title for the suit land known as **Bulemezi Block 591 Plot 1** contending that the above two had acquired such registration unlawfully. The contentions of the Plaintiffs are that their late father Erisa Mukasa Nkolobojo was the registered proprietor of that suit land between 6/10/1927 and 18/7/1996. However after sometime the beneficiaries of the estate of the late Erisa discovered that the land had been transferred into the names of other people.

In 1994 a one **EIASI BAKIBINGE** acquired Letters of Administration from Nakasongola Court as the administrator of the estate of the Late Erisa Mukasa Nkolobojo. After getting Letters of Administration, Bakibinge got registered on the title. Basing on the said Letters of Administration the said Bakibinge sold the suit land to the Defendant. After registering himself as the administrator of the estate of the late Mukasa, Bakibinge transferred the suit land on the same day to the Defendants.

The Plaintiffs denied any knowledge of the said Bakibinge and contended that he was not related to them in any way. They contended that after discovering the fraud they appointed **George William Tezirawa Mpanga** to represent them as the administrator who as indicated earlier passed on before the hearing of this suit commenced.

The Defendants on their part contended inter alia that they purchased the suit land from EIASI BAKIBINGE who was by then a holder of the grant of Letters of Administration of the estate of Erisa Mukasa Nkolobojo. That eventually the suit property was transferred in the names of EIASI BAKIBINGE as the administrator who in turn transferred the same to the names of the Defendants. Lastly they averred that there was no encumbrance on the title at all.

The Defendant made a counterclaim stating that they were the registered proprietors and in lawful occupation of the land at Budoma comprised in Bulemezi Block 591 Plot 1. That the Defendants in the counterclaim had no right to file a caveat on the land since they had no interest in the land. That at the peak of the dispute over the property the predecessor of the Defendants in the counterclaim procured the cancellation from the Land Registry. However upon realising his mistake the Registrar of Titles cancelled the erroneous entries made in favour of the predecessor and the Plaintiff in the counterclaim was restored on the Register. Subsequently after tampering with the land register they tried to dispose of the suit land to the 4th Defendant in the counterclaim.

During the Scheduling Conference the parties agreed as follows:-

FACTS:

- (1) The late Erisa B. Mukasa Nkolobojo was the registered proprietor of the suit land until 18/7/1996.
- (2) On that date his name was cancelled from the Certificate of Title and replaced with that of Eliasi Bakibinge.
- (3) On the same date Eliasi Bakibinge's name was cancelled from the Certificate of title and replaced with those of Nasani Rwamunono and Lusi Namubiru.
- (4) On the 1/11/02 the names of Nasani Rwamunono and Lusi Namubiru were cancelled from the Certificate of Title and the names of Erisa Mukasa Nkolobojo was reinstated on the Certificate of title.
- (5) On the same day the name of Erisa Mukasa Nkolobojo was cancelled and replaced with that of George William Tezirawa Mpanga.

- (6) Subsequently the names of George William Tezirawa Mpanga was cancelled and replaced with that of Nasani Rwamunono and Lusi Namubiru and they are still registered as proprietors.
- (7) On the 9/11/1995 Eliasi Bakibinge sold the suit land to Nasani Rwamunono and Lusi Namubiru and since then the two have been in possession thereof.
- (8) The caveats were lodged on the Certificate of title one by Abdu Kasibante on 23/4/1998 and the 2nd by Eric Karambasaizi on 6/2/2003.
- (9) On 20/11/02 George William Tezirawa Mpanga sold the land to Eric Karambasaizi.

ISSUES

- (1) Whether the acquisition of the suit land by the Defendants from Eliasi Bakibinge was valid.*
- (2) Whether the two caveators have any valid interest in the suit land.*
- (3) Whether the arrest and detention of the Defendant was justified.*
- (4) Whether the parties are entitled to the remedies sought.*

SUMMARY OF EVIDENCE:

Pw₁ Luwangula Ronald, Clerical Officer attached to Nakasongola Magistrates Court, testified inter alia that during the month of February 2003 he received correspondence from Bitangaro & Co. Advocates addressed to Magistrate Grade I Nakasongola requesting for a clarification about the estate of the late

Erisa Nkolobojo. The clarification was about Letters of Administration which was said to have been granted by Nakasongola Court in 1994 for that estate.

He handed the letter (**Exhibit P₃**) to the Magistrate Esther Nambayo. The letter was dated 4/2/2003. The said Magistrate instructed him to carry out a search for the records of the said Letters of Administration. The record from Bitangaro was quoting the Cause Number as No. 15 of 1994. He looked for the Register Book of 1994 and established that only 10 (ten) Causes were registered that year and the above was not one of them. Basing on the above Magistrate Nambayo replied to Bitangaro's letter stating that the record did not indicate the existence of the above administration case.

Pw₂ Mariam Nanteza testified that she knew Eriasi Nkolobojo as her paternal grandfather. That her father was called George William Mpanga Tezirawa. She stated that Nkolobojo had a home at Kabimba in Zirowe Sub-county in Bamunanika County and another home in Nansana, Wakiso District. Apart from the above Nkolobojo had no other home elsewhere. She stated that Nkolobojo left land at Kabimba in Bamunanika, Luweero District and another one at Budoma in Nakaseke County. The land in Budoma had a title in the names of George William Mpanga Tezirawa (**exhibit P₆**). She testified that Nkolobojo had no property in Nakasongola. She stated that she did not know someone called Eliasi Bakibinge and that her Ffumbe Clan does not have such a name in Buganda. She stated that she knew Eric Karambasaizi to whom her father Mpanga had sold land at Budoma.

During cross-examination she conceded that in Bukalasa Land Office the suit land is in the names of the Defendants (Namubiru and Rwamunono).

Dw₁ Nasani Rwamunono, Resident of Budoma village, Kiteyongera Parish, Ngoma Sub-county, Nakaseke District. He testified that he has land in Budoma where he keeps cattle. That land has a title registered in his name and that of Lusi Namubiru. The land is block 591 Plot 1 (**exhibit D₄**). He stated that he was the one in occupation of the said land together with Lusi Namubiru. Before purchasing the suit land he used to rent land belonging to the late Kigundu Erifazi who was also a resident of Budoma and that he rented the same for about two years before requesting Kigundu to help him locate land to buy for himself. Kigundu told him that Eliasi Bakibinge was selling about 400 acres of land in the same area. He went to Bakibinge who showed him the land. Bakibinge showed him the title deed to the land. He went to Bukalasa Land Office where he further proved the existence of the said land. He got further confirmation from George Mugenyi who was working in Bukalasa Land Registry who confirmed that the title was in the names of Mukasa Nkolobojo whose estate was being administered by Bakibinge. From there he decided to buy the land from Bakibinge and they agreed at the price of Shs.3,000,000/= (Shillings three million). He paid the purchase price and a sale agreement (**exhibit D₂**) was entered into on 9/11/1995. The same was witnessed by Sulaiman Lutaya and Samson Karamani.

Immediately thereafter, he took possession of the suit land. Then sometime in December 2002 he got communication from a one Jombwe who was a Registrar Land office from Bukalasa Land Office ordering him to return the title to the suit land claiming that it has been obtained illegally. The letter alleged that the suit land belonged to Mpanga Tezirawa. He later learnt that the said Jombwe had cancelled his title in November 2002 replacing it with that of Mpanga. Later his lawyers complained to the Commissioner Land Registration a one Tibisasa, who directed that his name be reinstated on the title and that of Mpanga cancelled.

On 30/1/2003 the Police arrested him at the instance of Paulo Salabwa and Mr. Kasibante. They arrested him on the allegations that he had entered the land fraudulently. Subsequently the said Kasibante and a one Karambasaizi put a caveat on the suit land without any reasonable cause.

During cross-examination, he testified that Eliasi Bakibinge was not settled on the suit land. He stated that when he went to Bukalasa Land Office together with Bakibinge, the land was in the names of Mukasa Nkolobojo.

Dw₂ George Mungyenyi, testified that in 1995 he was working in Bukalasa Land Office. As he was there he got in touch with Rwamunono Dw₁ because he wanted some information about the suit land. He went with a certain lady whose name he did not know. That lady had Letters of administration granting her the estate of the late Nkolobojo. The lady and Rwamunono wanted information about Nkolobojo land at Budoma comprised in Block 591 Plot 1. He ascertained ownership of that land which was in the names of the late Nkolobojo and the lady had Letters of Administration granted from Nakasongola Court. After the verification he did not see those people until the following year in 1996 when they came to register their land transaction - one as administratrix and the other as a purchaser. He did the registration of the same personally as the Registrar (**exhibit D₃**). He stated that in the White Page he featured as Registrar of Titles. In the White Page he registered the grant of Bakibinge and also registered transfer instrument in favour of Rwamunono and Lusi Namubiru. He concluded that at the time of their registration there was no encumbrance.

In cross-examination he stated that before Rwamunono and Bakibinge approached his office he did not know them. That he told Bakibinge that his Letters of Administration needed to be registered and he registered it in 1996.

Dw₃ Samson Karwani, Resident of Luweero Town Council and Pastor with Luweero Full Gospel Church testified that he knew both Defendants who were his relatives. He testified that he came to know Bakibinge on 8/11/1995 when Rwamunono and Namubiru went to his home and told him that they were going to buy land from him. That was on 8/11/1999. The two spent the night at his place in Luweero Trading Centre. The following day they went together to Bukalasa Land Office where they met Eliasi Bakibinge. From there Eliasi Bakibinge, Rwamunono and Namubiru agreed on purchase price of Shs.3,000,000/= (Shillings three million) and they signed an agreement for the Budoma land. The agreement was made by a one Lutaya and he (witness) was the 2nd witness.

In cross-examination he stated that the land in question is where Rwamunono was living and is living there up to now. He stated that he did not participate in the negotiation of the price. He stated that he did not inspect the documents from Bukalasa. That after buying the land he went to the site and found that Rwamunono had fenced off the land and was preparing to put there a well for watering cattle. He stated that in 2002 he was not aware that someone called Eric Karambasaizi had paid Shs. 30,000,000/= (Shillings thirty million) for the same land. He stated that Bakibinge was from a place called Kanabulemu in Masaka and that she got Letters of Administration from Court to prove his ownership before he transferred that land from Nkolobojo into his names. That the above grant was registered on 18/7/1996.

Pw₃ – Eric Karambasaizi, the Defendant in the counterclaim testified as follows. He knew the late George William Tezirawa Mpanga as a person who had sold him land. He went to Mpanga's home in Zirobwe in 2002. He was taken there by Paul Salaba because he was looking for land to graze his cattle. Salaba had told him that Mzee Mpanga had land at Kirangazi in Ngoma,

Nakaseke. Mzee Mpanga showed them the land title and other documents relating to the land belonging to his late father Nkolobojo. He saw the title (**exhibit D₄**). He also saw Letters of Administration granted by Luwero Court. Mzee then gave them his son Mr. Kasibante to go and visit the land at Karangazi. They visited the land and then travelled to Bukalasa with Mr. Kasibante, and Salabwa. They went to Bukalasa Land Office where they found that the land was in the names of Mpanga. The land in question was the same land Block 591 Plot 1. Mpanga's name was as administrator of Nkolobojo. They were satisfied with the search because they were accompanied with their lawyers Mr. Ntwali from Bitangaro & Co. Advocates who advised them to go ahead with the purchase. From Bukalasa they made an appointment with Mr. Mpanga through Mr. Kasibante to goto Ziobwe to pay for the land. On 20/11/2002 he travelled to Ziobwe together with Paul Salaba to the home of Mpanga.

Mr. Mpanga invited Area Local Council members before whom they made a Sale agreement. The Sale agreement was made one week after inspecting the land. They found that the land had a temporary structure for a herdsman. Mr. Kasibante told them that that house belonged to Mr. Rwamunono who was grazing there temporarily. That Mr. Kasibante told them that Mr. Rwamunono was also trying to buy the same land but that his offer was very little. He told Mr. Kasibante to sort the issue of Rwamunono and inform him accordingly. It was on 20/11/2002 that he got a feed back and went and made the above Sale agreement (**exhibit P11**). The said agreement was witnessed by Paul Salaba; Kansiime Harriet; Kasibante Abdu and LC I Chairman of Masunkwe in Ziobwe where the old Mzee was living. He paid Shs.30,000,000/= (Shilling thirty million) cash and was given the title in the seller's names. The seller signed transfer forms and they left for Kampala. They travelled to Bukalasa Land Office after one week to effect the transfer from Mpanga to his names.

While at Bukalasa Land Office they were informed by the Registrar that the Head Office- Kampala had instructed them to cancel Mpanga's names from the title. The Registrar did not give reasons for the said cancellations. His lawyers then advised him to put a caveat on the title to protect his interest; which he did in 2003. Subsequently Mpanga sent Kasibante to him telling him that they were taking the matter to the Courts of law.

During cross-examination he stated that Rwamunono was registered on the title on 18/5/1996 before Mpanga.

Resolution of the Issues:

ISSUE NO. I: Whether the acquisition of the suit land by the Defendants from Eliasi Bakibinge was valid.

It was the contention of the Plaintiffs that the Letters of Administration purported to have been obtained by the said Eliasi Bakibinge upon which he sold the suit land to the Defendants were null and void and could not therefore validly create any interest in the land.

It was the contention of the Plaintiffs that the Register Book in Nakasongola where the grant was said to have originated does not confirm the existence of the alleged grant on the Register book.

It was also contended that the late Erisa Mukasa Nkolobojo whose estate was subject of the grant did not have a fixed place of abode in Nakasongola Sub-county. Therefore the alleged grant was made contrary to **Section 2 (3) (b) of the Administration of Estates (small estates) (Special Provisions) Act** which was in operation in 1994.

It was the contention of the Plaintiffs that the purported Letters of Administration did not show in what capacity Eliasi Bakibinge had applied for the grant or was granted the same. It did not show whether he was the son or brother of the deceased or any other relationship. The above was further evidence that the same could not have been issued by a competent Court. That a proper grant should have initiated in the Chief Magistrates' Court of Luweero at Nakasongola instead of in the Magistrates' Court of Nakasongola at Nakasongola.

Lastly, it was the contention of the learned Counsel for the Plaintiff that since Eliasi Bakibinge was selling the land to the 1st Defendant on the basis of an unregistered document, the 1st Defendant should have made efforts to cross-check its authenticity at Nakasongola Court.

The purpose of probate or Letters of Administration is to ensure that the estate of a deceased person is protected and properly managed by persons who are authorised to do so, so that the interest of the beneficiaries are well protected from intermeddlers. Before any contempt can be tagged on any transaction basing on the grant of Letters of Administration background facts relating to the transaction should first be investigated.

In the instant case the evidence from the 1st Defendant showed that he lived in the home of the late Kiggundu and rented his land for two years in the neighbourhood of the suit land, which was not occupied by anyone. When he expressed a desire to acquire his own land, the late Kiggundu introduced Eliasi Bakibinge to him as the person responsible for the suit land. Evidence clearly showed that he trusted the said Kiggundu as a person he had dealt with for about two years. They made arrangements to go to Bukalasa Land Office where

he verified ownership of the said suit land and Eliasi Bakibinge showed him Letters of Administration of the late Mukasa Nkolobojo who was the registered proprietor of the suit land. After confirming from the Registrar in Bukalasa Dw₂ the 1st Defendant proceeded to buy the suit land. The verification at the Land Registry and the presentation of Letters of Administration by Eliasi Bakibinge was diligent enough and the 1st Defendant did not have to do more than that. It was not necessary for him to inquire how and why Eliasi got the Letters of Administration. He did not have to go to Nakasongola Court to determine the propriety of the application for Letters of Administration and the competency of the Court which issued it as long as the grant was numbered and property sealed as in the instant case.

As a matter of fact, at that stage no one showed up with adverse claim against Eliasi. Therefore he did not have reason to suspect impropriety on his part.

Under **Section 180 of the Succession Act** the executor or administrator as the case may be of a deceased person is his or her legal representative for all purposes and all the property of the deceased person vests in him or her as such.

The import of the above section is that a person who holds Letters of Administration like Eliasi, has interest on the land and held the land as such. It was the contention of the Plaintiffs that the way the Defendants acquired the land was wrong and as such he would not acquire good title. Their contention was that the land was bought basing on Letters of Administration which were not registered as provided by **Section 54 of the Succession Act** which states as follows:

“No instrument until registered in the manner herein provided shall be effectual to pass any estate or interest in any land under the operation of

this Act or to tender the land liable to any mortgage; but upon such registration the estate or interest comprised in the instrument shall pass or as the case may be shall become liable in the manner....”

Thus in **Katarikawe v Katwiremu and Another (1977) HCB 187 Sekandi J** (as he then was) held that though in a contract of sale of land an unregistered instrument of transfer is not effective to transfer title the purchaser acquires an equitable interest in the land which is enforceable against the vendor.

Like in the instant case the Defendants did acquire interest in the suit land against the interest of Eliasi which had not been challenged in any Court of law.

The case of **Souza figuernedo & Co Ltd. v Moonings Hotel Co. Ltd 1960 EA 926** gives further instructions on the issue where **sir Kenneth O’Connor P.** Stated:-

“There is nothing in the {Act} which renders such instruments ineffectual as contracts between the parties to them: There is nothing in the {Act} to say that an unregistered document purporting to be a lease of, or an agreement to lease, land which is subject to the operation of the [Registration of titles Act] for more than three years is void. In my view it can operate as a contract inter-parte and can confer on the party with the position of intending lessee a right to enforce the contract specifically and to obtain from the intending lessor a registerable lease.”

In my view, it is clear from the above authority that non-registration of a document does not render it ineffective. Thus failure to register the Letters of Administration did not render the transaction void perse. That meant that whoever was aggrieved with the grant had the option to apply to Court for its

revocation under **Section 234 of the Succession Act** by proving the above circumstances:-

(1) That the proceedings to obtain the grant were defective in substance.

(2) That the grant was obtained fraudulently by making false suggestions or by concealing from the Court something material to the case.

(3) That the grant was obtained by means of untrue allegations of facts essential in part of law justify the grant though the allegation was made in ignorance or inadvertently.

In the instant case, no one challenged the grant of Letters of Administration to Eliasi for the Court to pronounce itself on the propriety of the grant. Therefore the Defendants who were third parties to the grant could not be held liable for the negligence of the Plaintiffs who failed to go to Court to challenge the grant. For the above reasons the Defendants got an interest in the land by the fact that they bought the same basing on the said Letters of Administration under **Section 192 of the Succession Act** which provides that Letters of Administration entitles the administrator of all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his or her death. Therefore Eliasi who was holder of the grant did have the right to sell the land like the deceased had.

Lastly, **Section 54 of the Act** was not offended because Eliasi did register the grant as required by law thereby effectually passing the title to the Defendants.

Another leg of the issue was whether the Defendants could not claim to be a bona fide purchaser for value because of fraud. Fraud is defined to include

anything calculated to deceive whether by a single act or a combination or suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture: See **Fredrick Zaabwe v Orient Bank and 5 Others SCCA No. 4 of 2006.**

In **Kampala Bottlers Ltd. v Damaniko (U) Ltd. Civil Appeal No. 22 of 1952** the Supreme Court held that fraud must be attributable to the transferee either directly or by necessary implication to the transferee, that is, the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act: See also **Hannington Njuki v George William Musisi (1999) KALR 783.**

In the instant case there was no evidence to show that the Defendants were involved in any fraud. The Defendants got introduced to the vendor through another person whom he had a lot of trust. Before the Defendants executed the transaction he verified the status of the suit property from Bukalasa Land Office and the Letters of Administration of Eliasi Bakibinge who was the administrator of the estate of the late Mukasa Nkolobojo. The Defendants never had any knowledge of how Eliasi secured Letters of Administration. The Defendants purchased the same from a person who had a grant. According to the case of **Ismail & Another v Njati 2005 EA 155 (CA-T)** cited with approval and applied the passage from **Halsbury's Laws of England Vol. 17 (2) (4th Edition Reissue):**

“all conveyance of any interest in real and personal estate made to a purchaser by a person to whom probate or Letters of Administration have been granted are valid notwithstanding any subsequent revocation or variation of the probate or Letters of Administration.”

The above authorities categorically show that a bona fide purchaser without notice, taking from a person registered as proprietor by virtue of being an administrator of the estate of a deceased person is in the same position as a bona fide purchaser who acquired the interest from any registered proprietor. This is regardless of whether or not the administrator has fraudulently obtained their grant. However in the instant case there was no proof that Elias had obtained Letters of Administration fraudulently. In the premises I am satisfied that the criteria of a bona fide purchaser as defined in the case of **Hannington Njuki (Supra)** is that he:

- 1. Held certificate of title.*
- 2. Purchased in good faith.*
- 3. Had no knowledge of any fraud.*
- 4. Purchased for valuable consideration.*
- 5. The vendor had apparent valid title.*
- 6. Purchase was without fraud. Was not a party to the fraud.*

In conclusion therefore I find that the Plaintiffs have failed to prove any ill motive or foul play in acquisition of the suit land by the Defendants and any purported fraudulent play by the predecessors could not affect the Defendants' right.

ISSUE NO. 2: Whether the two caveators have any valid interest in the land.

From the resolution of the **1st Issue**, it is clear that the caveators did not have any interest in the suit land. In fact the 5th Defendant conceded that he did not have any interest in the land and Court removed his caveat with the greatest humility.

However the 4th Defendant attempted to justify his interest on the suit property claiming that he bought the same on 20/11/2002. However long before the 4th Defendant in counter claim had thought of purchasing the same the 1st Defendant had got registered on the title although the same was unlawfully cancelled by the Registrar at Bukalasa Land Office. Of course the said cancellation became problematic and was reversed by the Headquarters at Kampala. In my view I do not see any caveatable interest in favour of the 5th Defendant overriding that of the Defendants who were bona fide purchasers for value without any notice of fraud way back in 1996.

ISSUE NO. 3: Whether the arrest and detention of the 1st Defendant was justified.

From the evidence adduced it was very clear that the 1st counter claimant was arrested and subjected to harassment by the Police at the instance of a one Salaba who was an agent of Mpanga . The said arrest was prompted by the fact that the counterclaimant had a claim of right over the suit land. Instead of pursuing their interest on the suit land in a civilized manner, Mr. Mpanga (RIP) and his agents decided to torment the Defendants/claimant by way of arrest and detention and subsequent harassment using Police Officers. There was absolutely no justification in subjecting the 1st claimant to such an obsolete treatment. It is very obvious that Police have no powers to cancel Certificates of title. Police generally do not have authority to coerce parties in any dispute to any meaningful settlement. Although I expected the Police to have known the clear province of their jurisdiction, the Defendants in the counterclaim are more to blame because they were the ones who made the fake report to the Police to swing in illegal action. For the above reasons I find this issue in favour of the 1st counterclaimant.

ISSUE NO. 4: Whether the parties are entitled to the remedies sought.

As far as the main suit is concerned, the Plaintiffs have failed to prove fraud against the Defendants. They cannot therefore recover the suit land from the innocent Defendants through an eviction order or otherwise; it also follows that there is no tenable ground for cancelling the Defendants' Certificate of title. Corollary to all the above is that the Plaintiffs cannot be registered as proprietors of the suit land. See **Registration of Titles Act, Sections 77, 176 (c) and 177**. Exhibit P₇ is in the absence of fraud, an absolute bar and estoppel to the remedies sought by the Plaintiffs as far as **Section 176 (c) of the Registration of titles Act** is concerned.

In view of the above findings the Plaintiffs would not be entitled to general damages they claimed because they have not suffered any damages or injuries in the hands of the Defendants.

As far as remedies on the counterclaim are concerned, the Plaintiffs in the counterclaim have proved that they are bona fide purchasers for value without notice of any defects in the vendor's title. The counter claimants are accordingly entitled to the suit land and court accordingly declares that they are the rightful owners of the suit land. Consequently a permanent injunction is ordered to restrain the counter Defendants whether acclaiming personally or through their agents or workmen from interfering with the suit land or any part thereof. Certificate of title which should have been cancelled and being held by the counter Defendant is ordered to be cancelled immediately (**i.e. exhibit P₆**). The caveat lodged by the 5th Defendant be cancelled.

The counter claimants claimed for statutory compensation under **Section 142 of the Registration of titles Act** in the tune of Shs. 15,000,000/= and special

damages of Shs.1,505,000/= and General Damages in the tune of Shs.10,000,000/=.

As far as special damages is concerned, the same was specifically pleaded and proved. The counterclaimant proved that he was arrested as a result of the land dispute which forms part of the subject matter of the present suit. It took the interventions of his advocate through the CID Headquarters to secure his release on Police Bond (**exhibit D₇**). The above sum was not denied. I accordingly award the same in special damages.

As for general damages, it was the contention of the Plaintiffs in counterclaim that they suffered inconvenience pain and anguish/mental suffering due to false arrest and unlawful detention. Under **Article 23 of the Constitution** no person shall be deprived of personal liberty except as provided by law. There was no justification in the arrest and detention of the 1st counterclaimant. His arrest was based on arrogance and impunity against the Constitution and other relevant laws of the state for which he deserves compensation. I accordingly award him a sum of Shs. 10 million (Shillings ten million) as claimed.

As for statutory compensation, **section 142 of the Registration of Titles Act** enjoins the High Court to award compensation against a person who lodges any caveat without any reasonable cause.

In the instant case there was absolutely no cause for the counter-Defendants to lodge a caveat on the suit property. The 5th Defendant purported to have bought the same property and challenging the Defendants' ownership of the same even after being informed that the Defendants were the registered proprietors. The 4th Defendant realised his defiance and opted to remove his caveat because of

the 5th Defendant's impunity Court should condemn him in compensating the 1st Defendant by an amount of shs.2,000,000/= (Shillings two million only).

In conclusion, the Plaintiffs case is dismissed with costs and judgment in the counterclaim amended to the Defendants in the terms set out above. I so order with costs.

HON. MR. JUSTICE RUBY AWERI OPIO

JUDGE

17/4/2012.

18/4/2012

Tibajuka for the
Nyakana holding brief for Kusiima.

Judgment read in Chambers as in Open Court.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

18/4/2012

/gnm.