

**THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA AT MUKONO.
HCT-14-LD-CS-0086-2018
FORMERLY JINJA HCT-03-CV-0003-2014.
ARISING OUT OF ADMIN CAUSE NO. 003 OF 2014**

1. **NABAGESERA HANIFA**

2. **IDI KALIBALA ::: PLAINTIFFS**

VERSUS

ABUBAKER KAWALANA ::: DEFENDANT

BEFORE: HON. LADY JUSTICE. MARGARET MUTONYI, JHC.

J U D G M E N T :

1. Introduction:

Nabagesera Hanifah and Idi Kalibala (hereinafter referred to as the “Plaintiffs”) brought this suit against **Abubaker Kawalana** (hereinafter referred to as the “Defendant”) on the 24th day of February 2015 seeking for the following orders:

- a) An order removing the caveat lodged by the defendant against the plaintiff’s application for letters of Administration.
- b) A declaration that the plaintiffs are fit and proper persons to administer the estate of the late Ali Sekabo,
- c) An order granting letters of administration over the estate of the late Ali Sekabo to the plaintiffs,
- d) A permanent injunction restraining the defendant and his agents and servants from transferring, dealing, interfering and disposing of land comprised in Kyagwe Block 149 Plot 13,
- e) A declaration that the registration of the defendant’s name on the duplicate certificate of title as registered proprietor is tainted with fraud,
- f) An order for cancellation of the defendant’s name from the duplicate certificate of title,
- g) An order directing the Registrar of titles to register the plaintiffs as registered proprietors on the suit land,
- h) General damages and
- i) Costs of the suit.

On 25th March 2015 the defendant filed a written statement of defence with a counter claim denying all the averments of the plaintiffs. He prayed to this court to dismiss the plaintiffs' case as it did not disclose a proper cause of action against him, was misconceived, vexatious and frivolous.

2. Plaintiffs' case:

It's Important to note that, the 2nd plaintiff died before the trial.

It is trite law that where there are more plaintiffs or defendants than one, and any of them dies and where the cause of action survives, or continues to the surviving plaintiff or against the surviving defendant , the suit does not abate and continues at the instance of the surviving party.

Since the prayers sought in this case covered both parties sufficiently court ruled that the 2nd defendant's death would not affect the interest of the parties and proceedings generally, so the hearing proceeded.

Briefly, the plaintiff's case is that she is the biological daughter of the late Ali Sekabo who died testate on 29th July 2008 having bequeathed his land comprised in Kyagwe Block 149 plot 13 to his beneficiaries. That the late Ali Sekabo was survived by two daughters and a widow; the 1st plaintiff Nabagesera Hanifah, her sister Safinah Nansikombi and their mother Kamiyati Nakamya.

However, the defendant fraudulently transferred the suit land into his names and chased the plaintiffs off the land denying them and other beneficiaries a share in their late father's estate. He further lodged a caveat on the 1st plaintiff's application for letters of administration claiming that he had purchased the suit land from the late Ali Sekabo way back in May 2004 hence this suit.

3. Defence case

The defendant's case briefly is that he is the registered proprietor of land comprised in Kyagwe Block 149 plot 13 situate at Katete Kabembe, Mukono. That he was given the said land as a gift intervivos by the late Ali Sekabo in 2004 who also unconditionally consented to the transfer of the land into his names.

Further, that the plaintiffs and their accomplices fraudulently altered and tampered with the last will of the late Ali Sekabo to distort its facts.

In a counterclaim, the defendant sought a declaration from this court to the effect that he is the duly and legally registered proprietor of the suit land and an order declaring that the said land is therefore not part of the estate of the late Ali Sekabo.

4. Representation

The plaintiff was represented by Counsel Mathias Mwebya of M/s Sekaana Associated Advocates while Counsel Martin Asingwire of LMN Advocates represented the defendant.

5. ISSUES FOR RESOLUTION.

In a joint scheduling memorandum three issues were raised for court's determination;

- 1. *Whether the defendant procured registration of the suit land fraudulently?***
- 2. *Whether the suit land belongs to the estate of the late Ali Sekabo?***
- 3. *What remedies are available to the parties?***

6. Legal Principles applicable.

It is trite law that the burden of proof in civil matters rests on that person who desires any court to give judgment as to any legal right or liability dependent on the existence of facts. ***Sections 101,102,103,206 of the Evidence Act*** refers

Section 101 (1) provides that:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."

In this case, the burden of proof therefore rested on the plaintiff who is claiming the legal right of ownership over land which is currently registered in the names of the defendant.

The standard of proof in civil matters is on the balance of probabilities as laid out in the land mark case of **Miller vs. Minister of Pensions [1947] ALL ER 372** where Lord Denning held that ***"the plaintiffs evidence must carry reasonable degree of probability but not so high as required in a criminal case,"***

However, where fraud is alleged in a civil matter like in the instant case, the standard of proof is slightly higher than in ordinary civil suits but it is still not as high as in criminal matters.

In **Ratilal Gordhanbhai Patel vs. Laiji Makanji [1957] EA.314 at page 317** which has been followed in a plethora of cases, the court noted that; **“allegations of fraud must be strictly proved although the standard of proof may not be heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”**

This case raises issues of succession and inheritance in respect of the deceased Ali Ssekabo. Court has to investigate whether he distributed his property before his demise or not.

7. RESOLUTION OF ISSUES.

Having considered the legal principles applicable in this case, Court will resolve the first two issues concurrently because they are interrelated.

Issues 1&2 Whether the suit land belongs to the estate of the late Ali Sekabo and whether the defendant procured registration of the suit land fraudulently?

With regards to this issue, PW1 Nabagesera Hanifah, the Plaintiff informed Court in her witness statement dated 5th June, 2018 from paragraph 2 following inter alia; that she is the biological daughter of the late Ali Sekabo who died on 28th July 2008. That the late Ali Sekabo formerly of Katete- Kabembe, Mukono District owned a residential property and land comprised in Block 149, Plot 13 measuring 10 Acres situate at Katete- Kabembe herein after referred to as the Suitland. She also stated that her father left a Will dated 12th December 2004 which was admitted in Court and marked as PE3 and PE3(a) (these include the English and Luganda translations).

Upon the demise of her father, a family meeting was convened on the 29th day of July 2008 where the land in dispute was listed among the properties of the deceased. The defendant attended the said meeting and did not object to the property being listed as belonging to the deceased or claim that the deceased had sold it to him. He signed the attendance list of the said family meetings that were admitted in Court as PE1, PE1 (a) and PE2 and PE2 (a), (these entail the English and Luganda translations). That in the family meeting convened on 17th January 2009 which was attended by the Defendant, he agreed to transfer the title in to the names of the beneficiaries of the late Ali Sekabo after it was discovered that he had

fraudulently transferred the suit land into his names yet the late Sekabo had already bequeathed it to his beneficiaries.

PW2, Twaha Sepuuya in his witness statement dated 5th June 2018 informed Court inter alia that he is a nephew to the late Ali Sekabo and therefore cousin to the Plaintiff. He confirmed to Court that Ali Sekabo owned the Suitland and was survived by 2 daughters and a widow. He further informed Court under paragraph 6 and 7 of his witness statement that he attended meetings at the Administrator General's office where it was discovered that the Defendant had fraudulently transferred the suit land into his names yet the deceased had bequeathed it to his beneficiaries.

PW3, Yosefu Mukasa Ssalongo in his witness statement dated 5th June 2018 informed Court that he was a very good friend of the late Ali Sekabo. That he also knew that the late had a certificate of title for the suit land registered in his names. He also stated that he witnessed the Will of the late where he bequeathed his estate to the beneficiaries who were his widow and 2 daughters and the suit land was part of it. The Will was admitted in evidence and marked as PE3 and PE3 (a) (these include the English and Luganda translations).

On the other hand, DW1, Abubaker Kawalana in his witness statement dated 27th February 2019 informed Court that he is a grandson of the late Ali Sekabo who was the father to his father Mr. Abdu Salam Bwogi. That his father left him under the care of the late Ali Sekabo and his grandmother Kamiyat Nakamyia in 1958 and that he was the late Ali Sekabo's grandson. That he lived on the suit land and has never left since then and that the Plaintiffs were also living on the suit land. He further informed Court that before the late died, the plaintiff got married and left the suit land and that when the 1st Plaintiff left the suit land and settled in Kalerwe, the late Ali Sekabo gave him that land in 2004 since he was the only one taking care of him while others abandoned him. That the late therefore went ahead and signed for him transfer forms which enabled him to effect the transfer in 2004. A copy of the certificate of Title was admitted in evidence and marked as DE1.

He further informed Court that he was taken to Court on allegations of fraudulent transfer of the suit land by forgery of mutation forms under Criminal case No. MKN-00-CR-CO-116/12, UGANDA VS. KAWALANA ABUBAKER, where the Court cleared him. The judgment of the above case was admitted in evidence and marked as DE2.

While under cross-examination, the Defendant informed Court that the late Sekabo was not his biological grandfather but was a brother to his biological grandfather. He further informed court under cross examination that the late gave him 3 Acres and that the late did not give any land to his biological children. He further stated that the Late Sekabo did not put it in writing when he gave him the land nor was there a witness at the time he transferred land to him. He only informed his father DW2 about it.

Still under cross examination, the Defendant admitted that he lodged a caveat when the 1st Plaintiff applied for letters of Administration to manage the estate of the late Ali. ***In his Affidavit in support dated 25th February 2014 in paragraph 2 and 4, the defendant stated that he bought the suit land from the late Ali Sekabo on Kyaggwe Block 149 Plot 13 situated at Kabembe in 2004 and that the Plaintiffs wanted to apply for letters of Administration when he had already purchased the suit land from the late while he was still alive.***

When he was asked under cross examination to tell Court the truth on how he got the Suitland because there were two versions: One was that he bought the Suitland and the other was that he was given as a gift intervivos.

He took a deep breath and informed court that the truth was that he lied on oath in the affidavit in support of the caveat: the truth was that the late Sekabo did not sell to him the land.

He further informed Court that he instructed the surveyor to sub -divide the suit land because his intention was to give each of the beneficiaries a portion and it was to be distributed between himself the defendant, Kamiyati the widow, Kalibala, Nabagesera the plaintiff and Nansikombi. He further informed Court that the titles were to be out in his names then he would hand over the title with the transfer forms to the beneficiaries. He concluded under cross examination by stating that initially he had not done things the right way but later on he wanted to distribute the estate to the beneficiaries to avoid problems in the future.

DW2, Abdu Salam Bwogi's testimony was to the effect that he is a father to the Defendant and handed him over to the late Sekabo at the age of 4 years. He informed Court that the defendant informed him that the late Ali, his grandfather had given him the suit land and that he even has a land title. Therefore from his evidence, he did not know how the Defendant acquired the suit land which makes his evidence hearsay and hence not admissible in Court. Being a biological father to the Defendant, Court observed that he was very inclined to the defendant's case

as he first of all denied the crucial meeting that took place at his home where issues pertaining to the Suitland were discussed. Court observed his demeanor to be of a biased witness and not impartial.

DW3, Nabbamba Benedicto informed Court that he knew Ali Sekabo as a resident of Katete and he had about 10 Acres of land. The rest of his evidence was not relevant to the defendant's case as he seemed not to know how the Defendant acquired title over the suit land.

Court visited the Locus and observed that the defendant had constructed a house on this land and was using part of it for agriculture. The late Ali Ssekabo's family house was demolished.

Both counsel submitted at length on the issues before court which submissions have been put into considerations while writing this judgment. Since submissions do not constitute evidence I do not have to reproduce them verbatim.

Evaluation of evidence

From the above evidence, it is apparent that the Suitland was first registered in the names of Ali Sekabo way back in 1963 under Instrument no MKO25060. It was then transferred into the names of Abubaker Kawalana on 13-5-2004 under Instrument No MK070543. These details are contained in DE1, the certificate of title.

The area of this land was originally indicated as 10 acres and later on as 4.05 Hectares.

It is also not in dispute that the Late Ali Sekabo passed on in 2008, leaving behind two daughters and a widow; Nabagesera Hanifah, Nansikombi and Kamiyati who according to the Succession Laws are entitled to inherit his property.

Section 27 of the Succession Act looked at from the context of persons entitled to a share in the deceased's estate, mentions a spouse, children and legal heir as the immediate people to benefit from the deceased's estate unless he distributed his/her property in a Will during his life time gave it out as a gift inter vivos.

The plaintiff and other beneficiaries learnt of the transfer and registration of the suitland into the defendant's names after the death of her father in 2008.

The deliberations in the family meetings that were held after the death of the original registered proprietor revealed that the defendant did not only have the certificate of Title, but had transferred the Suitland way back in 2004. The minutes were admitted in Evidence.

Evidence from both sides revealed that the defendant was close to the deceased person.

At page 11 of the record, the defendant stated:

“The title is in my names, I have never sold any part of the land, and the way it was left by the deceased is the same way it is right now. I gave the land title to the surveyor to subdivide because my intention was to give everyone a portion. The land was to be distributed amongst myself, Kamiyati, Kalibala, Nabagesera and Nansikombi. All the titles were to come out in my names and I hand them over with the transfer form because it is already in my names. Initially I had not done things the proper way so I later on wanted to distribute to the beneficiaries of the estate to avoid problems in future.”

When asked by this court to affirm this position, his response at page 12, was that, **“it is still my position that the estate land be distributed to avoid more problems”.**

While at the locus. LW1 Nansinkombi Safina a sister to the plaintiff told court that the suit land belonged to her father however, it had been put in the defendant’s names to preserve it from being stolen by Boaz, she however had no evidence whatsoever to prove this claim other than mere hear say.

She further told this court that her father neither gave her nor her sister the plaintiff any land. That even the surviving widow did not receive anything. That her late father was cultivating on the suit land until he died as he did not have any other land.

After LW1 leading her evidence, the defendant also informed court that whatever LW1 has stated was the truth and that indeed the late Sekabo had only transferred the land into his names to preserve it.

The plaintiff insists, the Suitland forms part of the estate of her deceased father and is for the benefit of other beneficiaries.

It is trite law that real property may be acquired in one of the following ways:

1) It may be purchased

2) It may be inherited

3) It may be gifted

4) or through adverse possession which is a legal doctrine that allows a person who possesses or resides on someone else's land exclusively for some long time to claim legal title to it.

The Plaintiff whose lineage is not disputed would qualify to inherit the property of the late Ali Ssekabo, being his biological daughter.

The defendant who is not a biological son or grandson, aware of his status in this estate, claimed he was given the entire land as a gift and at the same time claimed he purchased and ended up abandoning both statements.

Land purchase can be proved by a sale land agreement if it is written or if oral, the witnesses to the transaction. Given the fact that the alleged alienation of the Suitland would affect the entire estate of the deceased, leaving his biological and immediate family landless, there ought to have been witnesses to this transaction. There was nothing.

Even if the deceased was to give his entire land as a gift, given the same fact that it would strip his immediate family members of their inheritance, it also ought to have been documented. There is nothing to that effect.

The defendant who has the certificate of title to the suit land failed completely to lead evidence that enabled him to legally acquire legal interest in the suit land before he got registered as the proprietor.

In view of the fact that the Plaintiff proved that she is the biological daughter to the deceased who was the original owner of the suit land and as one of the family members was not aware of any gift or selling of land to the defendant, she was justified to question the Defendant's transfer and registration of the title into his names.

The meetings that were conducted in respect of the deceased's estate where it was discovered that the defendant had registered himself on the suit land and was in possession of the title confirmed that they were not aware of any legal transaction over the suit land between the late Sekabo and the Defendant.

The Defendant himself while under oath before this Court admitted that he was neither given this land as a gift nor did he purchase it. He also informed Court that he desires to do things the right way by having this land distributed among the beneficiaries which is an admission that the land truly belongs to the estate of the Late Ali Sekabo.

My finding is therefore that this suit land forms part of the estate of the late Ali Sekabo.

However, since the certificate of title is registered in the names of the Defendant. Was his registration fraudulent and if so, what is the effect of it?

Section 59 of Registration of Titles Act Cap 230 is to the effect that a certificate of title is conclusive evidence of ownership of the land and such title shall not be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate.

The same Act which considers the certificate of the title as conclusive evidence of ownership that cannot be impeached provides for ejection of a registered proprietor in certain cases. ***Section 176(3)*** of the RTA provides that ***“No action of ejection or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act except in any of the following case;***

.....

(3) The case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud.”

This particular case falls under the first limb of Section 176(3) of the RTA which is affecting the interest of the beneficiaries of the estate of the original registered proprietor who are alleging fraud on the part of the Defendant.

Fraud has been defined in ***Black’s law dictionary (6th Ed) at page 660***. The same definition was adopted in the lead judgment of **Justice Katureebe JSC** as he then

was in the land mark case of ***Fredrick Jk Zaabwe V Orient Bank and 5 Others SCCA No.4 of 2006 at page 28 to mean;***

“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination or by 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... A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and includes all surprise, trick, cunning dissembling and any unfair way by which another is cheated. “Bad faith” and fraud are synonymous and also synonymous of dishonesty, infidelity, fait hlessness, perfidy, unfairness etc. ..As distinguished from negligence, it is always positive intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech, or by silence by word of mouth or by look or gesture.”

It is trite law that fraud ought not only to be proved but should also be attributed to the transferee. See ***Kampala Bottlers Limited versus Damanico (U) Limited SCCA No. 22 of 1992***

According to the evidence on record, the Defendant in this case got registered on the suit land way back in 2004 before the original registered proprietor passed away. It is also the evidence of the Plaintiffs that the late Sekabo and his family lived on this land until he passed on in 2008. It should also be noted that not a single family member of the late knew about the transfer. However, what they knew was that their late father left land with a certificate of title registered in his names.

After his death, family meetings were conducted that were attended by the Defendant, the Plaintiff and the Defendant’s father where a will was produced dated 12th December 2004. This will was admitted in evidence and marked as PE1,

PE1 (a) (Luganda and English translations respectively). In the will, the deceased described his properties as a residential house on the 10 acres of titled land plus other properties that are not under dispute. He also indicated that he had left the 10 Acres of land intact. He also went ahead to distribute the suit land amongst the beneficiaries.

In the distribution of the land in the will he clearly stated that; ***“I have given the following kibanjias to the following people;***

- a) Idi Kalibala, a kibanja from LLugomoka up to the 2 mango trees and the path going to the well.***
- b) My widow, the middle part where the residential house is situate up to where the Mukulejje tree stands***
- c) The Heir, from where the Mukulejje tree stands to the boundary that separates this kibanja from Kalebera and the Catholic Church.***
- d) To my two daughters, the remaining upper part of the kibanja to the boundary with Nakabanda.***

The clan leader shall at a future date divide the same amongst the two.

Signed by Ali Sekabo and attested to by;

- 1) Chrizestom Mukalazi***
- 2) Yozefu Mukasa Sssalongo***
- 3) Gittar Chrizestom”***

However, PW3 Yozefu Mukasa Ssalongo who appears on PE1 as a witness informed Court that he signed the will but he didn’t witness Sekabo making it. Court also observed that the will did not mention the executor and since the Defendant is disputing this will which bequeathed him some of the land and appointed him as heir, Court is treating it as invalid because the deceased did not follow the law guiding the writing of wills. Therefore Ali Sekabo is considered an intestate.

The family members including the Defendant and his father DW2 discovered that the certificate of title for the deceased’s land was registered in the names of the Defendant. The family then agreed that the Defendant returns the title and transfers the land into the names of the beneficiaries of the deceased but he did not do that.

The beneficiaries then tried to seek redress through the Criminal process by reporting the Defendant to the police for registering himself on the land title

through forgery. I must comment that this was a civil family matter that was criminalized because it involved allegations of land grabbing by the defendant. Given the fact that the standard of proof in criminal cases is beyond reasonable doubt, the Defendant was acquitted on the ground that the Plaintiffs failed to prove their case beyond reasonable doubt. The judgment in the criminal case was admitted in evidence and marked as DE2. However, that did not act as a bar for the Plaintiffs to apply for letters of administration to manage her late father's estate upon which the defendant lodged a caveat which resulted into this suit.

As mentioned earlier, the Defendant lied on oath in his affidavit in support of the caveat that he bought the suit land whereas not. He further lied before this Court that he was given the suit land as a gift whereas not because he does not have any scintilla of evidence supporting his acquisition of this land from the original registered proprietor, the late Ali Sekabo. After failing to adduce evidence of how he acquired registration on this land, he told Court that he wanted to do things the right way which in essence showed that he knew very well that he fraudulently registered himself on the suit land and could not in any way defend his transfer and registration on this land as the registered proprietor.

Much as the Court found the will of the late Sekabo invalid on technical grounds, he was very much aware of the property he had by the 12th of December, 2004 which means that he was not aware that this property had already been transferred to the Defendant in May 2004.

The Defendant boasted that the deceased trusted and loved him very much so Court is very certain that he abused that trust by procuring the title and transferring the whole land into his names without the knowledge of the deceased and his family members. The whole intention of transferring the land into his names was to deny the rightful beneficiaries to that land which conduct falls within the definition of a fraudulent transaction on this land.

With the above said, Court is satisfied that the Plaintiff proved the fraudulent transfer of this land by the Defendant because he did not purchase the land, he did not get it as a gift neither did he inherit it from the deceased. He fraudulently registered himself on the suit land.

The second issue is resolved in favor of the plaintiff.

The Defendant made a counterclaim which is equivalent to a suit by itself. It is trite law that the Defendant/ counter plaintiff must prove his counterclaim. I am afraid

that the defendant totally abandoned his counterclaim because he never adduced any specific evidence to prove it. It is therefore dismissed.

Issue 3: What remedies are available to the parties?

Having resolved the 1st and 2nd issues in affirmative, the plaintiff sought declaratory reliefs.

A legal remedy involves judicial relief to a party whose rights have been infringed. The kind of relief given depends on the nature of the wrongful act and its liability on the defendant. In the instant case, the Plaintiff prayed for several remedies listed hereunder;

- a) An order removing the caveat lodged by the defendant against the plaintiff's application for letters of Administration.
- b) A declaration that the plaintiffs are fit and proper persons to administer the estate of the late Ali Sekabo,
- c) An order granting letters of administration over the estate of the late Ali Sekabo to the plaintiffs,
- d) A permanent injunction restraining the defendant and his agents and servants from transferring, dealing, interfering and disposing of land comprised in Kyagwe Block 149 Plot 13,
- e) A declaration that the registration of the defendant's name on the duplicate certificate of title as registered proprietor is tainted with fraud,
- f) An order for cancellation of the defendant's name from the duplicate certificate of title,
- g) An order directing the Registrar of titles to register the plaintiffs as registered proprietors on the suit land,
- h) General damages and
- i) Costs of the suit.

In as far as prayers a, b and c are concerned, the Plaintiff proved that the Defendant lodged a caveat against her application for the letters of Administration of the estate of Ali Sekabo which caveat was premised on falsehood that he was a purchaser of the suit land whereas not.

She also proved to this Court that she is a biological daughter of the late Ali Sekabo with no impendent to the administration of the estate of her father. She secured the Certificate of no Objection together with the 2nd Plaintiff who is now deceased.

She had also filed her application for Letters of Administration vide Administration Cause No. 03 of 2014.

The Defendant failed completely to defend his caveat. This court has no reason to deny these first 3 prayers.

She prayed for a permanent injunction under paragraph (d) restraining the defendant and his agents and servants from transferring, dealing, interfering and disposing of land comprised in Kyagwe Block 149 Plot 13. Whereas the title was deposited in Court for safe custody, it is common for fraudulent persons to apply for duplicate certificates of title even when they know where the certificate is. So since the Defendant secured the certificate of title fraudulently, it is only fair and just that this prayer be granted.

In view of Court's finding that the Defendant's registration on the suit land is tainted with fraud, the Plaintiff is entitled to a declaration order to that effect as prayed in paragraph (e).

Registration on a certificate of title obtained by fraud can be rectified by cancellation of the entries in the Register Book that were entered into it by error, irregularities, illegalities or fraud. Correction of such entries is done by the Commissioner for Land Registration/ the Registrar. Therefore the Plaintiff is entitled to an order for the cancellation of the fraudulent entries on the title and to reinstate it in the names of the late Ali Sekabo. She is henceforth entitled to the prayers made under paragraphs (f) and (g).

The Plaintiff also prayed for general damages of the suit. General damages are awarded in monetary terms for injuries suffered by the successful litigant. In the instant case, the plaintiff being the biological daughter of the late Ali Sekabo who passed on in 2008 has failed to access and utilize her father's land for close to 12 years.

Her father's house was demolished thereby removing every memory it had and the defendant held out as the owner of this land after knowing very well that the suit land does not belong to him but to the beneficiaries of the estate of the late.

It is needless to mention that the defendant violated the plaintiff's right to inheritance of her father's property and consequently the right to own property

which is protected under **Article 26 of the 1995 Constitution of the Republic of Uganda**.

She is therefore entitled to general damages which are awarded at Court's discretion. Considering the psychological torture, pain and suffering she has gone through at the expense of the Defendant who is not a biological child of her father but was embraced by him at a certain stage in his life, and yet he still chose to abuse the trust and relationship the family accorded to him, she is therefore awarded general damages of 50,000,000/= (Fifty Million Shillings Only)

The Plaintiff also prayed for costs. It is trite law that the successful party in the suit should be awarded costs of the suit unless court in its own discretion decides otherwise. **Section 27(1) of the Civil Procedure Act** confers upon a judicial officer the discretion and full power to determine by whom or out of what property and to what extent costs incident to all suits are to be paid, and to give all necessary directions for those purpose.

This case was filed way back in 2015 from Jinja High Court. According to the current regime of Civil Procedure, parties are given an opportunity to go through the mediation process to minimize on the costs. The Defendant in this case who had no defence completely had no reason to put up a protracted trial. He decided to engage the Plaintiff up to the last minute when he confessed that he is very ready to do things the right way by having this land distributed to the beneficiaries. The Plaintiff is therefore entitled to the costs of the suit as prayed for in paragraph h.

The interest on general damages is awarded at 8% per annum till payment in full and the interest on costs is also awarded at 8% per annum from the date of judgement till payment in full.

In the premises therefore, judgement is entered in favor of the Plaintiff with all the declarations and orders as prayed and mentioned above.

Dated this 17th day of July 2020.



**MARGARET MUTONYI
JUDGE HIGH COURT**