

**THE REPUBLIC OF UGANDA**  
**IN THE HIGHCOURT OF UGANDA AT MASAKA**

**CIVIL SUIT NO. 56 OF 2020**

**MASAKA DISTRICT LOCAL GOVERNMENT:..... PLAINTIFF**

**VERSUS**

- 1. ABDU NASSER KAFEERO**
- 2. ADMINISTRATOR OF THE ESTATE OF THE LATE HAJJI HASSAN KAFEERO**
- 3. THE COMMISSIONER LAND REGISTRATION :..... DEFENDANT**

*Before; Hon Justice Victoria Nakintu Nkwanga Katamba*

**JUDGEMENT.**

**BACKGROUND**

The Plaintiff instituted this suit against the defendants jointly for a declaration that the suit land comprised in Plot 67 Elgin road in Masaka city belongs to it among other reliefs. The Plaintiff claimed that it purchased the land and got itself registered from the former registered proprietor, the Late Hajji Hassan Kafeero, and has been in possession of it since 1992.

The Plaintiff also stated that in 2019, its land officer discovered that whereas it is in possession of the suit land the register of the same property in the land officer still reflects the late Hajji Hassan Kafeero as proprietor. The Plaintiff complained to the Registrar of Titles Masaka to correct the register. The Registrar of Titles decided to put the complaint to the attention of the family members of the Late Hajji Hassan Kafeero who in turn also claimed ownership of the property.

The Plaintiff also claims that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants took advantage of the limitations on the society that the Covid -19 situation created to forcefully trespass on the suit land and takeover possession, to lock out the Plaintiff's officials and put a metallic notice on the gate with the words, "this property belongs to Hajji Hassan Kafeero." The Plaintiff further claims that since the Registrar of titles had taken a long time, over a year, without making a decision on the matter it decided to file the instant suit.

In their defence and counterclaim, the 1<sup>st</sup> and 2<sup>nd</sup> defendants stated that their Late Father Hajji Hassan Kafeero intended to sell the suit property to the Plaintiff, handed over the owner's certificate of title to the Plaintiff but was later distracted by their mother's sickness and eventual death.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants also stated that their father also died in 1998 and the transaction was never finalized. In their witness statements and oral testimony on cross examination, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, however, testified that they first got to know about the suit property when the Registrar of titles communicated to them the Plaintiff's complaint. The 2<sup>nd</sup> Defendant further testified that properties forming part of her father's estate were not disclosed in the petition for Letters of Administration because they were unknown to her. She has generally been discovering her deceased father's properties along the way, as she administers.

The hearing of this matter was closed after visiting locus and both parties were given timelines within which to prepare and file their written statements. Only the Plaintiff's Advocates filed their written submissions and I commend them for the effort.

### **ISSUES FOR TRIAL.**

At scheduling the parties agreed to the issues below for trial

1. Whether or not the plaintiff purchased the suit property comprised in plot 67 Elgin road from the late Haji Hassan Kafeero?
2. Whether or not the plaintiff fraudulently transferred the suit property in her name?
3. Whether or not the 1st and 2nd defendants and their agents are trespassers on the suit property?
4. Whether or not the plaintiff trespassed on the suit property?
5. Whether the continuing failure by the Commissioner Land Registration to render a decision regarding an application by the plaintiff to rectify the register is justifiable?
6. What are the available remedies to the parties?

### **PLAINTIFF'S SUBMISSIONS**

1. *Issue NO. 1 Whether or not the Plaintiff purchased the suit property comprised in plot 67 Elgin road from the late Haji Hassan Kafeero?*

The Plaintiff adopted the **Black's law** Dictionary 2<sup>nd</sup> edition definition of the word "*purchase*" to mean "...any other mode of acquiring real property than by the common course of inheritance...buying for a sum of money..."

The Plaintiff submitted that the Late Hajji Hassan Kafeero wrote a letter to the Town clerk dated 20<sup>th</sup> September 1992. The same was exhibited as PEXH16. The court witness Nabuuma Janat availed a certified copy of the letter and categorically stated in her testimony that it was found in the Certificate of title administration register because her office was copied in by the author.

The said letter was also copied to Matovu Kamugunda &Co. Advocates who were the vendor's advocate and the testimony of P.W.3 (Kamugunda Fred) who was a partner at Kamugunda & Co. Advocates; the advocates for the vendor at the time of sale of the suit property to the Plaintiff and a friend of late Haji Kafeero properly corroborates the contents of the said letter. During cross examination, PW3 testified that the vendor asked him to draft the said letter which he did and the vendor who knew how to read, write and speak English signed the said letter in his presence.

The Plaintiff cited **Section 78 of the Evidence Act** which provides for court's presumption of genuineness of certified copies and submitted that a certified copy of the said letter duly certified was adduced in court and should be presumed to be a genuine document.

**The Plaintiff also cited Section 90 of the Evidence Act** which provides for courts presumption of genuineness of documents produced in court that are 30 years old. The said letter from the vendor PEXh 16 is a 30-year-old document and therefore a genuine document.

The Plaintiff also referred this court to PEXH3 which is a certified copy of a letter to M/s Matovu Kamugunda & Co. Advocates from the then Plaintiff's treasurer, a one Kabondwe. The Plaintiff submits that it also provides evidence of Plaintiff's payment of the last installment under Cheque No. 111504 to the Late Hajji Hassan Kafeere.

In addition to the above, the Plaintiff also referred this court to PEXH5 which was tendered in court through PW1, Kabugo Denis Pascal Sentongo, the Plaintiff's clerk to Council in charge of custody of the Plaintiff's documents. The Plaintiff submitted that this too is evidence of payment of Cheque No. 1111517 to Hajji Hassan Kafeero as penalty and interest for late payment of the last installment worth UGX. 8,789,600/= among other pieces of evidence.

The Plaintiff invited this Honourable court to consider **PW6 Kabuye Pascal** the plaintiff's Senior Assistant Accountant's testimony on the missing purchase agreement of sale. The witness testified

that the said purchase agreement which was attached as a supporting document to the payment vouchers was destroyed during the lawful periodic destruction of old documents.

*“ That in 2005, because of the shortage of the storage space for the financial and accounting records, the vouchers and the supporting documents along with other accounting documents that were six years old and above were destroyed by Masaka District Local Government in accordance with the Provisions of the then Regulation 149 of the Local Government Financial and accounting Regulations, 1998 S.I NO. 243-15 which has since been revoked and now Regulation No. 67 of the Local Government(Financial and Accounting) Regulations of 2007(Statutory Instrument 2007. No. 25) that allowed and still allow Local Governments to periodically destroy accounting records that are 6 years and above because of the storage challenges ”.*

The Plaintiff also implored this court to consider **PW8 Namuwoya Catherine** a Senior Government Analyst from the Directorate of Government Analytical laboratory’s testimony wherein she testified that the Registrar of titles at the time, Mr. Walubiri Peter actually executed the entries on the owners copy of the Certificate of Title, currently in possession of the Plaintiff.

The plaintiff drew the attention of this court to the evidence of **CW2 Janat Nabuuma**, the Registrar of Titles Masaka who apologized in court for the omissions of her office in not concluding the transfer of the suit property into the names of the Plaintiff. She further testified that her office is currently pursuing the right procedure to have the errors in the Register rectified and that the process only awaits the final decision of the Commissioner Land Registration.

In conclusion, the Plaintiff submitted that it had proved this issue on a balance of probabilities and prayed that this court resolves the issue in the affirmative.

*Issue NO.2 Whether or not the Plaintiff fraudulently transferred the suit property in her name*

The Plaintiff submitted that in the Supreme Court case of **Ronald Kayara vs Hassan Ali Ahmed Supreme Court Civil Appeal No.1 of 1990**, It was held that the law requires a higher standard of proof of fraud than in ordinary civil cases.

That in the Supreme Court case of **Kampala Bottlers Vs Damanico (U) Ltd Supreme Court Civil Appeal No. 22/92** Wambuzi CJ held, *“Fraud must be attributable to the transferee. I must add*

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

The Plaintiff relied on the testimony of CW1 Senior Registrar of titles Janat Nabuma at Masaka Ministry of Lands Zonal Office which was to the effect that the owner’s duplicate certificate of title for the suit land comprised in Plot 67 Elgin road registered in the plaintiff’s name was a genuine title.

She further testified that that she had served 15 years as Registrar of Titles and was well conversant with the signature of Peter Walubiri Mukidi who was the Registrar of Titles then who effected entries on the said certificate of title that registered the plaintiff as registered proprietor of the suit land and that the said signatures on the said owner’s certificate of title were the proper, authentic and known signatures of the said Peter Walubiri Mukidi.

The Plaintiff also submitted that this evidence by CW1, Janat Nabuma on the signature of Walubiri Peter is relevant and admissible under **Section 45 of the Evidence Act**. CW1 testified that Haji Hassan Kafeero transferred the suit land to the plaintiff under instrument number 258161 of 7<sup>th</sup> July 1993 at 11:02am. She further testified that they found Hajji Hassan Kafeero’s letter in the land registry dated 1992 which was admitted by court as PExh16 in which he confirmed his sale of the suit property to the plaintiff and that according to the owner’s duplicate certificate of title, the process of transfer was completed.

On the issue of as to why the original registry title still had Hajji Hassan Kafeero as proprietor yet the duplicate owners certificate of title had the Plaintiffs name, CW1, clarified that she believed there was an error when the Registrar made the entry on the owner’s copy and he omitted to reflect it on the original. That over time when the ministry computerized, only registry certificates of titles were scanned and hence the reason why the name Hajji Hasan Kafeero is still reflected on the system as registered proprietor. She admitted it was an error.

The Plaintiff also submitted that, CW1 Nabuuma Janat, clarified during re - examination that although the transfer forms were missing on record, such a scenario of missing transfers forms sometimes happens in the land office. Also for court to note from the testimony of CW1 Senior Registrar Janat and CW2 the Former Registrar Peter Walubiri is the fact that CW2 was a Registrar of titles based at Ministry of Lands Headquarters in Kampala from 1987 to 1996 and at that time, land registration was still centralized in Kampala and that is how CW2 Peter Walubiri came to sign on a certificate of title for the suit land located in Masaka. That the Ministry of lands has since decentralized and created regional zonal offices including Masaka Ministry zonal office and all documents and certificates of titles for Masaka region were moved from Kampala to Masaka and this movement of documents logically explains the misplacement and loss of some documents and the transfer forms for the suit land could have been misplaced or lost as such in that process.

The Plaintiff also referred to the testimony of the handwriting expert **PW8 Namuwoya Catherine** a senior government analyst and her report which was admitted on court record as PExh 29 in which she opined that the signatures on the plaintiff's owners duplicate certificate of title for the suit land transferring the said certificate from Hajji Hassan Kafeero to the plaintiff were actually the genuine signatures of the former registrar of titles Peter Walubiri Mukidi.

This finding by the handwriting expert was properly corroborated by the testimony of CW1 senior Registrar of Titles Janat Nabuuma who testified that she was well conversant with the signatures of former Registrar Peter Walubiri Mukidi and that the signatures that appeared on the plaintiff's owners duplicate certificate of title were the genuine and proper signatures of Peter Mukidi Walubiri. The said expert evidence by PW8 comprised in her testimony and her report that was adduced in court comprised in PExh29 is relevant and admissible under **section 43 of the Evidence Act**.

In conclusion, the Plaintiff submitted that the Defendants had failed to adduce evidence directly or by necessary implication attributing any alleged fraud to the Plaintiff and prayed that this court answers the issue in the negative.

*Legal issue No.3 & 4: Whether or not the Plaintiffs are trespassers on the suit land or Whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are trespassers on the suit land*

It was submitted for the Plaintiffs that they cannot be trespassers on the suit property having legally purchased it from the Late Hajji Hasan Kafeero.

The plaintiffs cited the case of *Justine E.M.N Lutaaya versus Stirling Civil Eng, Civ .Appeal NAO.11 of 2002* in which the supreme court while defining trespass held that, “*trespass to land occurs when a person makes an unauthorized entry upon another’s land and thereby interfering with another person’s lawful possession of the land*”

The Plaintiff also testified that all witness statements of PW1, PW2, PW3, PW4, PW7, PW5, PW6 demonstrate the Plaintiff was in possession of the suit property from 1992 to March 2020 when the Plaintiff’s tenant Soweto Youth Fellowship were harassed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and left the suit property and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant without consent and permission of the plaintiff occupied the suit property.

That both DW1 and DW2, during cross examination, admitted to having entered and begun staying in the suit property starting from the Covid period. The Plaintiff adduced documentary evidence in court which can be found at page 103 and page 100 of the Plaintiffs trial bundle showing the first defendant inside the suit property and the metallic notice that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had welded on the gate of the suit property even when the plaintiffs tenant Soweto Youth fellowship were still in occupation.

In Conclusion the Plaintiff submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendant unlawfully interfered with the plaintiff’s peaceful possession of the suit property comprised in plot 67 Elgin road owned by the Plaintiff. As such, court should find that it is the defendants that trespassed on the suit land.

*Issue NO.5: Whether or not the continuing failure by the Commissioner Land Registration to render a decision regarding an application by the Plaintiff to rectify the register is justifiable.*

The Plaintiff submitted that **Section 91 of the Land Act** gives the Commissioner Land Registration the mandate to rectify the register where there are errors and omissions and to give his or her decision to the parties after hearing of the parties. In this particular case, the Commissioner was petitioned by the Plaintiff, he conducted a hearing of the parties and never rendered a decision to the detriment of Plaintiff.

The Plaintiff also submitted that the testimony of PW4, disclosed that the Plaintiff's Chief Administrative Officer on the 18<sup>th</sup> day of January 2019 wrote to the Commissioner Land Registration requesting for rectification of the land register. The said letter is at page 97 and 98 of the Plaintiff's trial bundle and was admitted on courts record as PExh 25. The testimonies of PW4, CW1, DW1 and DW2 demonstrate that the Registrar of Titles in response convened the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants for a hearing which took place on the 30th day of April 2019 and the minutes of the said hearing proceedings were tendered in court and admitted as PExh 26. In the said proceedings, the Registrar concluded the meeting promising the parties that she was going to verify issues of ownership and notify the parties on the decision.

The Plaintiff submitted that the Registrar of Titles' conduct of taking now three and a half years without rendering a decision is unreasonable and goes against the Ministry of lands clients' charter. That the impugned Commissioner's conduct has been exploited by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to trespass on the suit property and has occasioned the Plaintiff loss of both possession of the suit property and a monthly loss of rental revenues worth 1,000,000= for now three years and seven months.

*Legal Issue No.6: What are the available remedies to the parties*

The plaintiff prayed that this honorable court be pleased to grant the plaintiffs all the prayers /reliefs contained in the plaint including but not limited to;

1. A declaration that the suit land comprised in plot 67 Elgin road in Masaka City belongs to the Plaintiff.
2. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are trespassers on the suit property comprised in plot 67 Elgin road.
3. A permanent injunction restraining the defendants, their relatives, servants, employees or anybody claiming under them from trespassing, alienating, destroying or dealing with the suit land under S.38(1) of the Judicature Act.
4. An order compelling the Commissioner Land Registration to rectify and update the register to reflect the plaintiff Masaka District Administration as the registered proprietor of the suit land comprised in plot 67 Elgin road as mandated under **Section 91 of the Land Act Cap 227.**



5. An order of eviction against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their relatives, agents, servants, employees and anybody claiming under them from the suit land comprised in plot 67 Elgin road
6. Mesne profits worth UGX. 900,000 (Nine hundred thousand shillings only per month from March 2020 when the 1<sup>st</sup> and 2<sup>nd</sup> defendants took possession of the suit property until they vacate the said property and to pay an interest of 30% percent on the same until full payment. The Plaintiff submitted that **Section 2 of the Civil Procedure Act** defines mesne profits as those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.
7. **Special damages** worth 10,800,000= (Ten million eight hundred thousand shillings only) at an interest rate of 30% from August 2020 when the Plaintiff refunded the same to Twinomujuni Robert. The Plaintiff also submitted that it is trite law that special damages must not only be specifically pleaded but should be proved. (*see Borham Carter VS Hyde Park Hotel [1948] 64 TLR*). The Plaintiff submitted that its Pleat discloses special damages worth 10,800,000(ten million eight hundred thousand shillings only) that the Plaintiff had to refund to Twinomujuni Robert who had paid the same to the Plaintiff in rent and because of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawful actions of occupying the Plaintiff's suit property. The Plaintiff referred this court to the testimonies of PW7, PW4, PW6 to prove the tenancy agreement, payment and refund.
8. **Exemplary/punitive damages**  
The Plaintiff relied on the case of *Luzinda vs Ssekamate& 3 others (Civil suit n.366/2017 [2020] UGHCCD 2)* in which Court held that the rationale of an award exemplary damages should not be to enrich the plaintiff but to punish the Defendant and deter him from repeating similar conduct. The plaintiff submitted that the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> defendants were arbitrary when they harassed the Plaintiffs tenant Soweto Youth fellowship and made them vacate the house. That the Act of the Defendants of occupying the suit Plaintiffs suit property forcefully without the plaintiff's consent and knowledge demonstrate the high level of impunity and recklessness and provocation by the defendants which should be deterred.

9. **General damages** awarded at an interest rate of 30% percent from the date of judgment till full payment. The Plaintiff cited the case of *Luzinda vs Ssekamate & 3 others Civil Suit n.366/2017[2020] UGHCCD 20* in which it was held that general damages are awarded at courts discretion to compensate the aggrieved fairly for the inconveniences accrued as a result of the actions of the Defendant. The Plaintiff submitted that the testimonies of PW1 and PW4 disclose that the Plaintiffs officers were denied access and locked outside the suit premises by the 1<sup>st</sup> defendant. A picture of the 1<sup>st</sup> defendant inside the suit property laughing at the plaintiff's officer PW1 the Assistant CAO who are seen locked outside the suit property was tendered in court and can be found at page 103 of the Plaintiffs trial bundle. The testimonies of PW7, PW1, PW4 show that the 1<sup>st</sup> defendant's actions of harassing the Plaintiffs tenant in the suit property propelled the plaintiffs tenant to vacate the suit property and the 1<sup>st</sup> and 2<sup>nd</sup> defendants immediately took possession of the Plaintiffs suit property without consent from the Plaintiff. That these unlawful actions by the defendants which occasioned a serious inconvenience to the plaintiff makes this a deserving case for the honourable court to exercise her discretion and award appropriate general damages to fairly compensate the Plaintiff as held in the case above.

10. **Costs of the suit with interest at courts rate**

The Plaintiffs submitted that under **Section 27 of the Civil Procedure Act**, courts are mandated to grant costs with interest and that costs shall follow the event. That the plaintiffs incurred tremendous costs in facilitating Counsel to do research, draft court documents, prepare witnesses and their statements and attendance to court, counsel's travels night allowance and per diem from Mbarara regional office to Masaka for all the court sessions among others and hence therefor is only fair that the plaintiff be awarded costs to recover the said expenses which were incurred as a result of the Defendants unlawful actions

***DETERMINATION OF THE SUIT.***

I have carefully considered the pleadings, the evidence and the submissions and below are the findings of this court on the issues.

**1. Whether or not the plaintiff purchased the suit property comprised in plot 67 Elgin road from the late Haji Hassan Kafeero?**

Evidence was led by a number of Plaintiff's witnesses to the effect that the Late Hajji Hassan Kafeero executed a purchase agreement for the suit land with the Plaintiff which is unfortunately lost or destroyed. CW1, Nabuuma Janat tendered in court PEXH 16 which is a certified copy of a letter addressed to the Plaintiff and copied in to the land office and M/s Matovu Kamugunda, then legal representatives of the Late Hajji Hassan Kafeero. According to the letter the Late Hassan Kafeero acknowledged having sold the suit property to the Plaintiff and that the process to transfer the same was ongoing.

Mr. Kamugunda Fred an Advocate of this court, testified in this court acknowledging that indeed his former client and friend, the Late Hassan Kafeero, executed a sale agreement over the suit property with the Plaintiff. He further stated that he represented the Late Hassan Kafeero in the transaction that unfortunately, his office copy of the sale agreement is either lost or stolen.

***S.64(1)b of the Evidence Act Cap. 6 provides that documents must be proved by primary evidence except when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his/her representative in interest.***

***S.64(1)c creates another exception when the original has been destroyed or lost.***

According to the evidence before this court, the sale agreement for the suit property falls squarely within the exceptions of proof created by the Evidence Act above. The Plaintiff has not only proved that the Late Hassan Kafeero, the registered proprietor, admitted existence of a sale of the suit property in writing but also his then legal representative in interest admitted the same in his testimony adduced in this court.

The Plaintiff's witnesses also testified on the contents of the sale agreement and that the same was attached to a voucher that was destroyed for being a document older than six years as required by the law.

All the above evidence was unchallenged by the Defendants in cross examination or otherwise.

The Defendants pleaded that the Late Hassan Kafeero intended to sell the suit property to the Plaintiff but was distracted by their mother's illness and eventual death thus abandoned the idea altogether but left the custody of the title in the hands of the Plaintiff. In their witness statements,

however, they testified that they only got to know about the property recently when the Registrar of titles wrote to them in 2019 about the Plaintiff's complaint to rectify the register.

This court wonders how the Defendants who only got to know about the property in 2019 could at the same time have known that their Late father abandoned the sale to the Plaintiff. This is inconsistent with their testimony that they got to know about the property in 2019 when they were summoned by the Registrar of Titles. It is therefore not surprising that their allegation that their father abandoned the sale was not proved by the defendants and was instead abandoned altogether.

The court also noted that the Administrator of the estate was very cagey with information to extent that she informed court that in her petition for Letters of Administration, properties of the estate of the Late Hassan Kafeero were never disclosed. She stated that she has been discovering them along the way as she administers. It would be a mistake for any court, worse still, for the High court to issue Letters of Administration to a petitioner to administer an estate of unknown properties. This court is disinclined to believe the unproved narrative of the defendants that their late father, Hassan Kafeero abandoned the intended sale.

This court is convinced that the Plaintiff has proved on a balance of probabilities that it purchased the suit property from the Late Hassan Kafeero.

This issue is answered in the affirmative.

## **2. Whether or not the plaintiff fraudulently transferred the suit property in her name?**

I agree with the Plaintiff that fraud is a very serious allegation that has to be attributed to the person against whom it is claimed and proved at a standard beyond the normal balance of probabilities required in civil suits.

CW1, Nabuuma Janat, testified that she is a Registrar of titles with 15 years of experience and that she is familiar with the signature of Mr. Walubiri Peter Mukidi the then Registrar of titles who entered the entries for deregistration of the Late Hassan Kafeero and registration of the Plaintiff on the owner's duplicate certificate of title. She testified that the signature on the entries is attributable to Mr. Walubiri Peter Mukidi.

PW8, Namuwooya Catherine, a handwriting expert, also testified in support of her findings in the opinion in PEXH 29, that the signatures on the above entries are attributable to Mr. Walubiri Peter Mukidi.

Whereas Mr. Walubiri Peter Mukidi disowned the entries, he also testified that he could not remember working on the title on the stated date because he handled hundreds of documents each day during the period in which he was a Registrar of Titles.

This court will treat Mr. Walubiri Peter Mukidi's denial of the entries as a case of forgetfulness and a personal desire to avoid liability for negligence since Registrars of Titles, unlike Judicial officers, have no immunity for errors and omissions done in the exercise of their functions.

CW1, testified that the case of the missing transfers is common in the land office and that the non-registration of the Plaintiff on the original white page in the land registry was an error of the Registrar of titles for which the 3<sup>rd</sup> defendant should be pardoned.

In conclusion, this court finds no positive evidence of fraud that is attributable to the Plaintiff.

The issue is answered in the negative.

**3. Whether or not the 1st and 2nd defendants and their agents are trespassers on the suit property?**

Trespass to land occurs when a person makes an un authorized entry to another person's land as was defined in the Justine EMN Lutaya, supra.

The defendants testified that they did not know about the suit property until the Registrar of titles notified them of the Plaintiff's complaint in 2019. This is a period of over 20 years since they obtained Letters of Administration to their father's estate.

The Registrar of titles having heard from both parties, retired to make a decision on the matter and indeed promised to communicate the same to the parties in due course. The Defendants who had had no possession of the property made a highhanded decision to hijack and enter the property during the Covid -19 period without any lawful order from either the Registrar of titles or a court competent jurisdiction.

To allow the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' conduct to stand is only comparable to a state slipping into anarchy, that is each man or woman being the law unto themselves. The fact that the impugned conduct was executed against a local government authority, shows how far the defendants are emboldened in their highhandedness.

The Defendants who had no possession of the suit property, ought to have waited for the decision of the Registrar of Titles or instituted a suit against the Plaintiffs for a declaration that the property belongs to their late father's estate instead of entering by force and welding illegal sign posts at the gate.

This court finds that the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed on the suit land.

The issue is answered in the affirmative.

**4. Whether or not the plaintiff trespassed on the suit property?**

Having found that the Plaintiffs purchased the suit property from the Late Hajji Hassan Kafeero, it is not possible for this court to find that the Plaintiff is a trespasser.

Moreover, the Plaintiff has adduced evidence of tenancy agreements to demonstrate that it has been in possession for many years now and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants testified that they only got to know about the suit property in 2019 when the Registrar of titles notified them of the Plaintiff's complaint. This clearly demonstrates that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not had possession for over 20 years since they obtained Letters of Administration to the estate of the Late Hajji Hassan Kafeero.

In conclusion, the Plaintiffs did not trespass on the suit land.

The issue is answered in the negative.

**5. Whether the continuing failure by the Commissioner Land Registration to render a decision regarding an application by the plaintiff to rectify the register is justifiable?**

I note that the Commissioner Land Registration has taken a long time to deliver his/her decision which conduct is unjustifiable. The Commissioner should be able to make a decision within a period of three months at most. One month would be used to investigate the complaint and the last two months for deliberating on its decision.

The complaint was lodged in 2019 and it is now over two years and the decision is not yet delivered. This also created an opportunity for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to exploit the delay to oppress the Plaintiff.

This issue is answered in the negative.

**6. What are the available remedies to the parties?**

I have considered the evidence and the submissions made for the Plaintiff on Special damages, mesne profits, general damages, exemplary damages, costs and the interest sought. The reliefs sought are properly before court, befitting and have been proved except that as regards to interest which I found higher than even the commercial rate of 24% which is acceptable for money lenders. On the limbs of the reliefs sought, under which I have granted interest, it has been reduced to 15%.

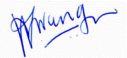
Judgment in this matter is entered in favor of the Plaintiff and against the Defendants with the following declarations, orders and awards;

- a) The suit land comprised in plot 67 Elgin road in Masaka City belongs to the Plaintiff.
- b) The 1<sup>st</sup> and 2<sup>nd</sup> defendants are trespassers on the suit property comprised in plot 67 Elgin road.
- c) A permanent injunction issues restraining the defendants, their relatives, servants, employees or anybody claiming under them from trespassing, alienating, destroying or dealing with the suit land.
- d) An order issues compelling the Commissioner Land Registration to rectify and update the register to reflect the plaintiff, Masaka District Administration, as the registered proprietor of the suit land comprised in plot 67 Elgin road.
- e) An order of eviction issues against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their relatives, agents, servants, employees and anybody claiming under them from the suit land comprised in plot 67 Elgin road.
- f) The Plaintiffs are awarded mesne profits worth UGX. 900,000 (Nine hundred thousand shillings only per month from March 2020 when the 1<sup>st</sup> and 2<sup>nd</sup> defendants took possession of the suit property until they vacate the said property and to pay an interest of 15% percent on the same until full payment.

- g) The Plaintiffs are awarded special damages worth 10,800,000= (Ten million eight hundred thousand shillings only) at an interest rate of 15% from August 2020 until payment in full.
- h) The Plaintiffs are awarded exemplary/punitive damages of UGX. 10,000,000/= (Uganda Shillings Ten Million) for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's oppressive conduct.
- i) The Plaintiffs are awarded general damages of UGX. 20,000,000/= (Uganda Shillings Twenty Million) at an interest rate of 15% percent from the date of judgment till full payment.
- j) The Plaintiffs are also awarded costs of the suit.

I so order.

Dated at Masaka this 13<sup>th</sup> day of February, 2023.

DocuSigned by:  
  
C2EFAEDFD42E...

***Victoria Nakintu Nkwanga Katamba***

***Judge.***