

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL SUIT NO. 73 OF 2018, 60 OF 2017, 42 OF 2017 AND No. 75 OF 2016

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1. MPUNGU RONALD
2. SSERUNKUMA ROBERT
3. SSENKOTO EDWARD
4. LUMU FRANCIS
5. LUTALO DOUGLAS

.....PLAINTIFFS

VERSUS

1. DDAMULIRA ABDU
2. KAKOMO PAUL
3. COMMISSIONER LAND REGISTRATION

.....DEFENDANTS

15

BEFORE: HIS LORDSHIP HON. MR. JUSTICE WILSON MASALU MUSENE

JUDGMENT

The Plaintiffs filed this suit against the Defendants jointly and severally for fraud, seeking a declaration that the Defendants actions on the suit property comprised in Block 181 Plot 21 formerly Plot 5 and Block 181 Plot 20 are fraudulent, an order for recovery of land, an order to the Commissioner of land registration to cancel out all the fraudulent titles created on the suit property and reinstating the late Nambi Susana as the registered proprietor of the suit property, Court to grant letters of Administration to the 1st and 2nd Plaintiffs on the estate, general damages, mesne profits, interests and costs of the suits. There were other pending suits and on application, court granted amalgamation. The 1st and 2nd Defendants filed their written defence. The 3rd Defendant though entered appearance, never filed a formal defence.

It is the Plaintiffs' case that the suit property belonged to the late Nambi Susana who passed on around 1991. That the late Nambi Susana died intestate and left no will distributing her property to any person. That the late Susana was married to the late Semakula Yowana and had a child one Katende Paul who also gave birth to Senkoto Edward, the 3rd Plaintiff.

5 That during the last funeral rites of Nambi Susana, Collonello Bbosa Kyaka one of the clan leaders decided that the title be given to the Late Ntabbade Mariam for safe custody until when another family meeting would be held. After some time Bbosa Paulina informed the family members that Ddamulira Abdul had come and informed him that Ntabadde Mariam had told him to call all occupants and tenants to tell them to buy their legal interest.

10 It was further submitted that an urgent meeting was called by Collonello Bbosa Kyaka where in they requested Ntabadde Mariam to return the title and she said she had given it to Ddamulira Abdul who stayed in Kampala. In that same meeting Kakomo Paul was sent to go to Ddamulira Abdu and see that the title could be brought back to the family. And when Kakomo Paul returned after meeting Ddamulira Abdu, he told the family members in another
15 meeting that was held that when he met Ddamulira Abdul he found out that he had given the title to a money lender who had request for UGX 1,000,000/= so as to return the title.

Kakomo Paul was requested to get some money to pay back the loan and in turn the person would be paid back with 20 acres of land off the 50 acres. The members in the meeting also suggested that in the alternative that if Kakomo Paul secured the title he would be given 20
20 acres of that land that was to be recovered. That Kakomo Paul later on came back and informed the family members through a meeting that the title was secured back from the money lender but he found out that it was in the names of Ddamulira.

The Plaintiffs later on heard about the land wrangles between the 1st and 2nd Defendant around 2013 and asked Ddamulira Abdu how he had acquired the land. The Plaintiffs later on
25 carried out a physical search at the land registry and requested for all documents concerning the transactions and how the title came to put in the names of Ddamulira Abdul and found out the whole process was illegal and fraudulent. That giving out land as a gift to Ddamulira Abdu which was land belonging to the estate of the late Nambi Susana and not giving it out to the beneficiaries of the Estate by Ntabadde Mariam the Administrator was fraudulent
30 intended to defeat the beneficial interests of the beneficiaries in the estate.

As for the 1st Defendant, Ddamulira Abdu, his Advocate outlined the history of the cases as they started in 2012. According to his Advocate, the 1st Defendant on 18/12/2012 filed High

Court Civil Suit No. 603 of 2012 in the Land Division at Kampala against Paulo Kakomo (the 2nd Defendant) (Mpigi High Court Civil Suit No. 73 of 2018 when it was transferred). In the said Land Division Civil Suit No. 603 of 2012 the Plaintiff sought an order against the Defendant (Paul Kakomo) for recovery of Mailo land measuring 48.50 acres comprised in
5 Gomba Block 181 Plot 21 situated at Namulaba (Katete), Kabulassoke Sub County, Gomba District. The Plaintiff averred that he acquired the said land by way of a gift “inter vivos” from his paternal grandmother Mariam Ntabadde sometime in year 1995 when a land transfer instrument was signed in his favour by Mariam Ntabadde and Amina Nabbose who were the joint Administratrixs of the estate of their younger sister Susana Nambi who formerly owned
10 the suit land. The Plaintiff discovered that the Certificates of title to the suit land were missing from his home at Kyebando in Kawempe Division, Kampala, sometime in 2010. When he carried out a search in the Land Office at Kampala he discovered that it is the 2nd Defendant who stole the Certificates for land comprised in **Gomba Block 181 Plot 20 (for 1.50 acres) and Plot 21 (for 48.50 acres)** at Namulaba (Katete), Kabulasoke Sub County.
15 After theft, **Plot 21** had been subdivided into **plots 47, 48, and 49** at the instance of the 2nd Defendant and he registered those three plots into his name. Fortunately Plot 20 was still registered in the name of Ddamulira Abdu according to the Land Registry. It was only the duplicate Certificate of title for Plot 20 which was missing. The Ddamulira Abdu then applied for and acquired a special Certificate of Title for the said Plot 20 in year 2013.
20 According to his Advocate. No one objected to the Plaintiff’s application for a special Certificate of title for the said plot 20.

According to the particulars of fraud against the Kakomo Paul, Ddamulira Abdu stated that he has never sold the suit land to Kakomo Paul, that he has never signed a mutation to authorize the resurvey and subdivision of plot 21 into plots 47, 48 and 49 and that he did not
25 sign instruments of transfer for registration of those plots in favour of Kakomo Paul. Ddamulira Abdu prayed for an order to cancel the certificates of title for plots 47, 48 and 49 which were fraudulently acquired by Kakomo Paul. He also sought against the Kakomo Paul an eviction order and a permanent injunction and other relief as set out in the plaint dated 29/11/2012. In his Written Statement of Defence filed in the said C.S No. 603 of 2012 the
30 Kakomo Paul claimed interest in the suit land in his capacity as grandson of late Susana Nambi. Also he claimed interest in the suit land on behalf of the clan.

Counsel for Ddamulira Abdu added that while the main suit was still pending, Hon. Justice Kwesiga issued a temporary injunction against Kakomo Paul on 10/12/2014 restraining him from entering upon and doing anything on the suit land. When the said suit was transferred to

the High Court at Mpigi it was given a new serial number 75 of 2016 and it was fixed for hearing before this Court. At the hearing Kakomo Paul defaulted to appear. The Ddamulira Abdu and his witness proceeded to prove the case against the Kakomo Paul . The Plaintiff's Counsel filed Written Submission against the Kakomo Paul . The Court adjourned the suit for judgment. But on the day when Court was to deliver the judgment it was not delivered. While judgment was still pending Paulo Kakomo through his Counsel applied to Court to be heard and he was allowed.

Counsel for the 1st Defendant maintained that instead of Paulo Kakomo giving evidence in defence of the said Mpigi High Court C.S No. 75 of 2016 (originally High Court Land Division C.S No. 603 of 2012) confusion was brought by Paulo Kakomo, Mpungu Ronald, Sserunkuma Robert, Ssenkooto Edward, Lumu Francis and Lutalo Douglas when they applied through their Advocates to consolidate **Mpigi High Court C.S No. 75 of 2016, Mpigi High Court C.s No. 73 of 2018, High Court Family Division C.S No. 42 of 2017 and High Court Family Division C.S No. 60 of 2017.**

He further submitted that in the said Mpigi High C.S No. 73 of 2018 Mpungu Ronald and 4 others sued Ddamulira Abdul jointly with Paulo Kakomo and the Commissioner for land Registration for recovery of the land at Gomba Block 181 Plots 20 and 21 at Namulaba (Katete), Kabulasoke Sub County in Gomba District. The Plaintiffs claimed interest in the suit land as beneficiaries of the estate of late Susana Nambi. In paragraphs 7, 8 and 9 of the complaint in C.S No. 73 of 2018, the Plaintiffs claimed that the 1st Defendant (Ddamulira Abdul) was party to the alleged fraudulent subdivision of the land title **for Gomba Block 181 plot 5 for 50.00 acres** which was originally in the name of late Susana Nambi.

Counsel also outlined in the defence filed in Mpigi Court on 23/5/2018 in C.S No. 73 of 2018, the 1st Defendant (A. Ddamulira) denied the Plaintiff's allegations. In paragraph 4 of the written statement of defence the 1st Defendant stated that the suit land was formerly owned by late Susana Nambi of Katete, Kabulassoke Sub County in Gomba District. Nambi died in the year 1991. She did not leave a will. She had no husband and children in her life time. Nambi was survived by her elder sisters Mariam Ntabadde and Amina Nabbosa who obtained from the High Court of Uganda at Kampala Letters of Administration to the estate of the late Nambi on 3/11/1995. Ntabadde and Nabbosa had earlier on 14/6/1994 acquired a Certificate of no objection from the Administrator General which introduced them to Court for the grant. The 1st Defendant stated that Ntabadde was his maternal grandmother and Nabbosa was his maternal grandaunt.

The 1st Defendant further averred that he has never been involved in any joint action or collusion with the 2nd Defendant (Kakomo Paulo) to acquire the suit land through fraud. Instead the 1st Defendant stated that in addition to the civil action against Kakomo Paulo, he had initiated criminal proceedings against the said Kakomo for the criminal actions he
5 (Kakomo) had committed in connection to the suit land. In the judgment delivered by the High Court on 26/7/2017 Kakomo was convicted of having forged and uttered false documents to acquire the suit land. He was sentenced.

Mr. Lutakoma for the 1st Defendant further stated that by turn of events and in a calculated plan to fraudulently acquire the suit land of 50.00 acres at Katete, in Kabulassoke in Gomba
10 District, Mpungu Ronald, Sserunkuuma Robert and Ssenkoto Edward (the Defendants in High Court C.S No. 42 o 2017 of the Family Division at Makindye) applied for Letters of Administration to the estate of the late Susana Nambi under Administration Cause No. 1923 of 2016. Ddamulira, the Plaintiff in the said C.S No. 42 of 2017 got knowledge of the Petitioners fraudulent plans. He caveated the petition. The caveat was followed by the said
15 C.S No. 42 of 2017. Ddamulira's grounds for opposing he petition were set out in the plaint filed in court on 22/2/2017. Copy of the plaint was attached for ease of reference.

Counsel reiterated that precisely Ddamulira's contention is that the late Susana Nambi was not a grandmother to the petitioners and they (petitioners) have no degree of relationship to the late Nambi entitling them to take out a Court grant to the said deceased's estate. That in
20 any case the late Nambi's estate had already been lawfully administered and disposed of by the late Ntabadde and late Nabbosa who were Nambi's surviving siblings.

Counsel for the 1st Defendant added that in further confusion, while HCCS No. 42 of 2017 were still pending, Ssenkoto Edward, Mpungu Ronald, and Sserunkuma Robert filed High Court (F.D) C.S No. 60 of 2017 against Ddamulira Abdul and Kakomo Paulo where the suit
25 land that formerly belonged to the late Susana Nambi is the same subject matter.

On 22/3/2017 Ddamulira filed a defence in the said C.S No. 60 of 2017 where he stated that the Plaintiffs, Ssenkoto, Mpungu Sserunkuma had no legitimate claim to the estate of the late Nambi and the suit land, and they had no right to file the suit in connection to the said deceased's estate. Ddamulira (1st Defendant) particularly pointed out that Ssenkoto Edward
30 (the 1st Plaintiff in the said C. S No. 60 of 2017) is not a grandson of the late Nambi and he (Ssenkoto) has no connection to the family of the late Nambi since she (Nambi) had no husband and children in her life time.

As for the 2nd Defendant, Kakomo Paul, his Advocates, M/s Kavuma Kabege & Co. Advocates submitted that the 1st Defendant on the 18th day of December 2012 filed HCCS No. 603 of 2012 against the 2nd Defendant seeking for cancellation of his Certificate of title for land comprised in **Gomba Block 181 Plots 47, 48 and 49 at Namulaba** at Kampala High Court land Registry. The same suit was transferred to Mpigi High Court and registered as HCCS No. 75 of 2016.

They added that the Plaintiffs herein filed HCCS No. 73 of 2018 against the Defendants jointly seeking a declaration that the Defendants actions on the suit property comprised in **Block 181 plot 21 formerly Plot 5 and Block 181 Plot 20** are fraudulent, an order for recovery of land, an order to the Commissioner of land registration to cancel out all the fraudulent titles created on the suit property and reinstating the late Nambi Susana as the registered proprietor of the suit property. And that all the suits were consolidated upon an application by the Plaintiffs to that effect.

During the scheduling, four issues were framed for Courts determination. These were;

1. Whether all the parties have a bonafide interest in the estate of the late Susana Nambi?
2. Whether the suit property constitutes part of Susana Nambi's estate and who should be entitled to the letters of administration?
3. Whether the Defendants fraudulently obtained a certificate of title on the suit property?
4. Remedies available to the parties.

A galaxy of Advocates from the firms of M/s Crimson Associated Advocates, M/s Alliance Advocates and M/s ADIL Advocates & Solicitors represented the Plaintiffs, while M/s Lutaakome & Co. Advocates represented the 1st Defendant and M/s Kavuma Kabenge & Co. Advocates represented the 2nd Defendant.

Resolution of issues:

Issue 1: Whether all the parties have a bonafide interest in the estate of the late Susana Nambi?

The advocates for the Plaintiffs submitted that it is the Plaintiffs who have a right to enjoyment of the suit property as beneficiaries of the estate of the late Nambi Susana, but for no sound reasons, that right was infringed upon by the Defendants and that the Defendants

are jointly and severally liable. The Advocates referred to the cases of **Tororo Cement Co. Ltd versus Frokina International Ltd Civil Appeal No. 21 of 2001** and **Attorney General versus General David Tinyefuza, SCCA No. 1 of 1997** which lay down the ingredients of a cause of action to wit: that the Plaintiffs had a right, the said right was breached, and the defendant is liable for the said breach. The said elements can be manifested in the instant cases in the following terms;

Their submissions were that in the pleadings of the Plaintiffs both in the plaint and witness statements of PW2, PW3, PW4 and PW5 they all state that the late Susana Nambi died intestate and that she was survived by a son called Katende Paul who later died in 1998.

10 They added that the third Plaintiff is a grandson of the late Nambi Susana, that the late Nambi Susana was married to Semakula Yowana and they lived at Kiganda Mubende. They gave birth to a son Paul Katende who gave birth to Ssenkoto Edward the third Plaintiff and that this fact was admitted by the 2nd Defendant in paragraph 3, 4, and 6 (DW3) of the witness statement.

15 Reference was made to the testimony of PW3 who testified in his examination in Chief, and at cross examination that he knows the 3rd Plaintiff as a grandson of the late Nambi Susana. He testified that Nambi Susana used to come to her father's home with her children and stated that Nambi Susana gave birth to two children a boy and a girl. PW3 is on record as stating that Nambi Susana's son gave birth to Edward Ssenkoto.

20 Further submissions were that DW1 at cross examination admitted that he first saw Nambi Susana when she was about 30 years. He further stated that any girl could get married at 18 years. When he was asked where he got the information that Nambi Susana did not give birth, he said he was just told by Mariam Ntabadde with whom they allegedly dealt in the property. Counsel added that DW1 admitted at cross examination that he was young and did not know whether Susana Nambi was married or not.

The Advocates for the Plaintiffs challenged the testimony of Nakimenye Teresa, DW2 who stated during cross examination that she first saw Nambi Susana at 50 years. They reiterated that it was not correct for DW2 to state that Nambi Susana at 50 years did not have a child because she did not see Nambi Susana during her infancy.

30 The Advocates reiterated that from the testimonies of PW2, PW3, PW4 and PW5, Nambi Susana had a child Katende Paul who gave birth to Ssenkoto Edward, the 3rd Plaintiff.

Reference was also made to Section 19 of the Succession Act which stipulates that kindred or consanguinity is the connection or relation of person from common ancestry. They therefore submitted that the 3rd Plaintiff is a very direct lineal descendant of Susana Nambi, while the other Plaintiffs are also lineal descendants. Emphasis was that Mpugu Ronald, Sserunkuma Robert, Lumu Francis, and Lutalo Douglas are all grandsons of the late Nambi Susana as seen in their pleadings and witness statements.

It was further submitted on behalf of the Plaintiffs that Mariam Ntabadde, now deceased and sister of the Late Susan Nambi was made heir and subsequently applied for letters of Administration together with her sister Nabbosa which were granted to them in 1995 with the help of the 1st Defendant.

The Advocates for the Plaintiffs concluded that the 1st Defendant together with the late Mariam Ntabadde uttered false documents and gave wrong information that Nambi Susana was not survived by any child yet they knew she had a son of the late Katende Paul and a grandson Ssenkoto Edward who is still alive.

It was also concluded that the acts of the late Mariam Ntabadde of transferring the suit land to the 1st Defendant as a gift instead of distributing the estate to all the beneficiaries was not only illegal but fraudulent as it was intended to deprive the beneficiaries well known to her of their rights and therefore making her actions actionable.

They quoted the case of **Konde Mathias Zimwa versus Byarugaba Moses and Grace Nampija, HCCS No. 66 of 207** where it was held that Courts of Justice will not allow a person to keep advantage of what he obtained in bad faith.

Finally, that since the 1st Defendant was involved in all transactions of fraudulent acquisition of the suit land, including the process of obtaining Letters of Administration and also signing the transfer forms in 1995, then the 1st Defendant does not have bonafide interest in the Estate of the late Susan Nambi.

Counsel for the 1st Defendant submitted that on the issue of whether the Plaintiffs and the 2nd Defendant (Kakomo Paul) have an interest in the estate of late Nambi the answer is that the Plaintiffs and the 2nd Defendant have no valid interest in the estate of late Nambi. They added that it is a known fact within the family of late Nambi that she died intestate and that she had no husband and children in her lifetime and that her nearest surviving blood relatives were her elder sisters Ntabadde and Nabbosa and they had the same father late Yowana Gyagenda. Counsel for 1st Defendant added that it is also an undisputed fact that Ntabadde was the

customary heir of the late Nambi and she was installed by the clan elders. According, to **Sections 201 and 202** of the Succession Act Ntabadde and Nabbosa were lawfully entitled to administer the estate of their late sister Nambi Susana.

Mr. Lutakome submitted that under **Sections 26 and 27** of the Succession Act, Ntabadde had a right to take the suit land as a successor to late Nambi's estate. That Ntabadde did not take the suit property on trust for the benefit of another person as provided in the second sentence of **Section 25** of the Succession Act. That there was no other person entitled to share the suit land apart from Ntabadde and that is why when Ntabadde took the deceased's land title and she rejected it in her name jointly with Nabbosa in year 1997 no person objected to such registration. He added that when Ntabadde and Nabbosa transferred the land to Ddamulira they were not sued by any family member.

It was also submitted by Counsel for 1st Defendant that Ssenkoto (PW2) is not a grandson of the late Nambi. He was just an impostor concocted by the rest of the Plaintiffs and the 2nd Defendant to create a false impression that Nambi was married and that as a result she had a son and a grandson. Mr. Lutakome for the 1st Defendant stated that the allegation that Nambi was married to a certain Ssemakula was an afterthought hatched by the Plaintiffs and the 2nd Defendant after nearly 30 years ever since Nambi died and over 20 years ever since Ntabadde and Nabbosa obtained a Court grant on the basis that Nambi was not married and had no issue.

Counsel for the 2nd Defendant on the 1st issue submitted that the only entitlement of the 2nd Defendant in the estate of the late Susana Nambi is in respect of 20 acres of land being his consideration for the work done to the estate to recover the land from the 1st Defendant. That the 2nd Defendant, like the 1st Defendant are not direct beneficiaries to the estate of the late Susana Nambi. Counsel concluded that the 2nd Defendant's interest is limited to 20 acres of land alienated as **Plots 47 and 48, exhibits D-12 and D-13.**

This Court has carefully considered the submissions of the Advocates for the Plaintiffs as well as Advocates for the 1st and 2nd Defendants. The issue to be determined by this Court is who of the parties has a bonafide interest in the Estate of the late Susana Nambi.

I have had the benefit of hearing witnesses on both sides in Court testifying and studied the pleadings in the other files which were consolidated alongside HCCS No. 73 of 2018. Whereas the Advocates for the Plaintiffs emphasised on the existence of cause of action against the Defendants with regard to the Estate of the late Susana Nambi, Counsel for the 1st

Defendant's submissions were to the effect that the Plaintiffs have no cause of action at all as far as the estate of Susana Nambi is concerned. In the alternative, Counsel for the 1st Defendant raised the issue of limitation with regard to the enforcement of the alleged right. Counsel for the 2nd Defendant on the other hand was asserting that the 2nd Defendant should
5 be given 20 acres out of the estate of Susana Nambi for securing the Certificates of Title in respect of Susan Nambi's estate from Ddamulira Abdu, 1st Defendant's case as against the 2nd Defendant, Kakomo Paul was that Kakomo Paul stole the said certificate of title and fraudulently registered them into his own names. It is therefore a series of accusations and counter-accusations. What is clear from the record of proceedings and from the records of
10 pleadings in various cases consolidated is that the parties claim to be the beneficiaries of the Estate of the late Susana Nambi, who died in 1999, intestate. As was held by their Lordships in the case of **Departed Asians property Custodian Board versus Jaffer Brothers LTD, Supreme Court Civil Appeal No. 9 of 1998**, the aim of joining parties and consolidating the various suits above stated was to bring on record all persons who are parties relating to the
15 subject matter so that the dispute is determined in their presence and at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

Despite the death of Susana Nambi in 1999, it was in 2012 that the first Defendant, Abdu Ddamulira filed **HCCS No. 603 o 2012 in the Land Division, Kampala** against Paul Kakomo the 2nd Defendant seeking an order against Paul Kakomo (2nd Defendant) for
20 recovery of mailo Land measuring 48.50 acres comprised in Gomba Block 181 Plot 21, situate at Namulaba (Katete), Kabulasoke Sub-County in Gomba District. That was part of the estate of the late Susana Nambi. That suit was transferred to Mpigi High Court circuit and registered as Mpigi High Court Civil Suit No. 73 of 2018. The other cases, **6 of 2017, 42 of 2017** and **75 of 2016** were all on the same subject matter relating to the estate of the late
25 Susana Nambi.

Whereas the Plaintiffs both in their pleadings and witness statements of PW2, Ssenkooto Edward, PW3, Lubega Bernard, PW4, Lutalo Douglas and PW5, Mpugu Ronald state that the late Susana Nambi died intestate and that **the late was survived by a son called Katende Paul who later died in 1998.**

30 Counsel for the 1st Defendant, Ddamulira Abdu maintains that Susana Nambi died intestate and **she had no husband and children in her lifetime.** Counsel for the 1st Defendant's case was that the nearest surviving blood relatives were her elder sisters Natabadde and Nabbose and they had the same father, Yowana Gyagenda.

And whereas the Plaintiffs' Advocates maintain that the 3rd Plaintiff, Ssenkoto Edward is a grandson of the late Susana Nambi, and that the late Susana Nambi was married to Ssemakula Yowana and they lived at Kiganda, Mubende and they gave birth to Paul Katende who also gave birth to Edward Ssenkoto. The advocate for the 1st Defendant reiterate that
5 Ssenkoto (PW2) is not a grandson of the late Nambi. They state that he is an imposter concocted by the rest of the Plaintiffs and the 2nd Defendant to create a false impression that Susana Nambi was married and had a son and a grandson.

What comes to the mind of this Court is where is the evidence that the late Susana Nambi was married. The law under **Sections 101, 102, 103, 104 and 106** of the Evidence Act is that
10 he who alleges the existence of a fact must prove. In this case, the burden of proof was upon the Plaintiffs and the 2nd Defendant, Paul Kakomo to prove that there was a marriage between Susana Nambi and Ssemakula Yowana of Kiganda, Mubende. The Plaintiffs did not adduce conclusive evidence of a marriage by exhibiting a marriage certificate as provided under **Section 33** of the Marriage Act. No birth certificate was produced by the Plaintiffs with
15 regard to Katende Paul under the Births and Deaths Registration Act. It was an obligation on the part of the Plaintiffs to produce Death Certificates of Ssemakula and his alleged son Paul Katende. Unfortunately, none was exhibited in this Court. The birth Certificate produced by Ssenkoto Edward which stated that his father was Katende Paul was not accepted by this Court because the origin of Katende Paul was doubtful and not certain. Ssenkoto Edward
20 testified as PW2. During cross examination by Mr. Lutakome. Counsel for the 1st Defendant, Ssenkoto Edward who did not have a National Identity Card testified that his father, Paul Katende died in a year he could not remember. PW2 also added that he saw Susana Nambi at Gomba, Katete but could not remember the year, and that he never sued Ntabadde Mariam and Amina Nabbossa or intermeddling in the Estate of Susana Nambi (if at
25 all), PW3, Ssenkoto Edward went on to state as follows on page 17 of the typed record:

“I was not aware that Ntabadde and Amina Nabossa took care of the estate of Susana Nambi and I do not know when Nambi Susana died. I do not know Ddamulira. I saw him here in Court. Ssemakula was husband to Susana Nambi. They were married at Bukalaki, a catholic place of worship. However, I was not there.”

30 It is the finding and holding of this Court that PW2, Ssenkoto Edward, was not a truthful and sincere witness who could not remember the year when his own father died and who saw Ddamulira for the 1st time in Court and yet he had sued Ddamulira with his fellow Plaintiffs. PW2 was not even aware that Ntabadde and Amina Nabbossa had taken care of the estate of

(his alleged grandmother, Nambi Susana). Lastly, PW2 alleged that Ssemakula and Susana Nambi got married at Bukalaki Catholic church although he was not there. He had no evidence to that effect. This is not to forget his demeanour which was questionable as he was not steady an indication that he was not a truthful witness. He appeared shaky and panicky.

5 None of the Plaintiffs and PW3 adduced sufficient evidence to prove that Nambi got married and gave birth to a child if any. If the alleged husband and child ever lived, none of the Plaintiffs and their witnesses proved **when and where they died**.

PW3 Lubega Bernard during cross examination by the 1st Defendant's Advocate could not even remember when the late Susana Nambi got married and he did not attend the said
10 alleged marriage. PW3 did not even know the name of the husband of Nambi. And yet he was an elder aged 78 years who should have remembered each and every detail.

Furthermore, and as submitted by Counsel for 1st Defendant, the 2nd Defendant (Kakomo Paul), who claimed to be a family member also did not know when and where Nambi got married. Paul Kakomo admitted in Court that he did not see the alleged husband of Nambi
15 and the alleged son Katende. It is therefore the finding and holding of this Court that the Plaintiffs and DW2 (Kakomo Paul) miserably failed to discharge the burden of proof with regard to the marriage of Nambi and production of children as required under the provisions of Evidence Act referred to before. And on the balance of probabilities also during the hearing, PW4, Lutalo Douglas, PW5, Mpungu Ronald and the 2nd Defendant (DW2) admitted
20 that they are not grandchildren of the late Nambi Susana and therefore they have no personal claims on the deceased's estate.

The other claim of PW4, PW5 and DW2 that they are laying claim on the estate on behalf of the clan cannot stand as no representative action was filed as required under **Order 1 Rule 8** of the Civil Procedure Rules.

25 Lastly, even if Ssenkoto was a grandson, which this Court greatly doubts and which was not proved, he would have no claim on the estate when Nambi's siblings, (Ntabadde and Nabbosa) were still living. And even then, that would depend on whether Ssenkoto's alleged father had a benefit in Nambi's estate. And as Counsel for the 1st Defendant submitted that if Nambi had a husband, it is not known when that alleged husband died and it is not known
30 whether the alleged husband survived Nambi. These were pertinent matters and concerns which never came out of the Plaintiffs' case. And this Court cannot just decide in their favour based on assertions and allegations which are not proved on the balance of probabilities.

And naturally if the alleged husband and alleged son were not survivors to Nambi, then the alleged grandson (Ssenkoto) would have no claim in Nambi's estate.

Counsel for the Plaintiffs did not adduce evidence to prove the survivorship of Ssenkoto Edward. It is therefore the finding and holding of this Court that the allegation that Nambi got married to Ssemakula was an afterthought hatched by the Plaintiffs and the 2nd Defendant after nearly 30 years ever since Nambi died and over 20 years since Ntabadde and Nabbose obtained Court grant of letters of Administration on the basis that Nambi was not married and had no issue.

When it comes to the grant which was issued to Ntabadde and Nabbose it was lawfully issued to them as the surviving siblings of late Nambi. No faults were committed by Ntabadde and Nabbose. If they had committed any fault the aggrieved beneficiaries (if there were any) would have sued them for revocation of the grant as provided by **Section 234 of the Succession Act** or an objection would have been filed against their petition for the grant or caveat would have been lodged by the aggrieved parties on the suit land as provided by **Section 139 of the Registration Titles Act** before they were registered on the suit land and before it was transferred to Ddamulira. But none of such actions were taken. And no reasonable and satisfactory explanation was given to this court. None.

I therefore, agree with the submissions of Counsel for the 1st Defendant that Ntabadde and Nabbose had a valid court grant under which they were registered as owners of the suit land under **Section 134 of the Registration of Titles Act**. They did not own the suit land subject to the interests of the Plaintiffs and the 2nd Defendant as they falsely claim. By the time Ntabadde and Nabbose signed a transfer instrument for the suit land in favour of Ddamulira they had power to do so because they had the Court grant of Letters of Administration. The transfer was witnessed by an Officer in the Land Office as required by **Section 147(1) (a)** of the Registration of Titles Act and it was duly registered under Section 54 of the Registration of Titles Act. upon registration of the transfer and issuing of the certificate of title for **Plots 20 and 21 Gomba Block 181 Katete** to Ddamulira he became the absolute owner of the suit land as provided by **Sections 59, 64(1), 92(2), 136 and 176** of the Registration of Titles Act. For avoidance of doubt, I reproduce Section 59 of the Registration of Titles Act

“No Certificate of title issued upon an application to bring land under this Act shall 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, and every Certificate of title issued under this Act shall be received in all

Courts as evidence of the particulars set forth in the Certificate and of the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person name in the Certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power”

A number of decided cases have considered and applied the above provisions. In the case of *John Katarikawe versus Katwiremu & another [1977] HCB 187*. It was held inter alia that provisions of Section 61 (now 59) of the Registration of titles Act, Cap 230 are clear that once a person is registered as proprietor of land, his title is indefeasible except for fraud. A similar position was taken in the case of *Olinda De souza versus Kasamali Manji [1962] E.A 756* that in absence of fraud, possession of a Certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the Registered proprietor has indefeasible title against the whole world.

Section 176 (c) of the Registration of titles Act, Cap 230 protects a registered proprietor of land against ejectment except on ground of fraud. The relevant part provides as follows:

“No action of ejectment 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 cases- © 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.....”

As far as this case is concerned, the moment Abdu Ddamulira, 1st Defendant got registered on the Certificates of title in respect of the suit land, that was conclusive evidence of ownership.

The Advocates for the Plaintiffs in their written submissions in rejoinder to the 1st Defendant’s submissions stated that in Civil Suit No. 60 of 2017 and No. 42 of 2017, Ssenkoto Edward, Mpugu Ronald and Sserunkuma Robert, were granted consent by the family to get letters of administration for the estate of the late Nambi Susana as a way of ensuring that the estate is properly managed and distributed to the rightful beneficiaries, than the earlier administrators Maria Ntabadde who gave away the suit property to Ddamulira

Abdu as a gift and claiming that she had full authority over the estate since she was a customary heir, which was a total abuse of the duties and responsibilities of an administrator.

However, and as I have already alluded to, neither the Plaintiffs nor anyone challenged the alleged misuse and abuse of powers of Administrators by Ntabadde and Nabbosa till they
5 died. The question is why did the Plaintiffs wait till Ntabadde and Nabbosa have died and then 20 years later come up with the present cases. The Plaintiffs have not come to this Court with clean hands and Court holds that they have no bonafide interest in the estate of the late Susana Nambi. If at all they had any issue of Maria Ntabadde and Nabbosa over the estate of Susan Nambi then they slept on their rights. Courts assist the vigilant and not the
10 dormant and insolent.

And since the 2nd Defendant, Kakoma Paul in away colluded and/or connived with the Plaintiffs as the evidence on record clearly shows, then he too has no bonafide interest in the estate of the late Susana Nambi. In fact the position of Paul Kakomo is worse as he was involved in theft of the certificate of titles from the 1st Defendant, Ddamulira Abdu and
15 fraudulent transfer of the same into his names. That will be discussed under issue No. 3. That therefore leaves the 1st Defendant, Ddamulira Abdu as the one who has a lawful and bona fide interest in the estate of the late Susana Nambi. The 1st issue is accordingly resolved in favour of Ddamulira Abdu, the 1st Defendant.

**Issue 2: Whether the suit property constitutes part of Susana Nambi's estate and who
20 should be entitled to the letters of administration?**

Counsel for the Plaintiffs submitted that the suit property was at all material times owned and registered in the names of the late Susana Nambi. That the late Amina Nabbosa and Mariam Ntabadde applied for and obtained letters of administration to the estate of the late Susana Nambi and subsequently got registered on the suit property as administrators.

25 They added that the said administrators fraudulently transferred the suit property to the 1st Defendant and so the suit property should revert back to the estate of the late Susana Nambi and distributed to the rightful beneficiaries.

The 1st and even the 2nd Defendants do not oppose the fact that the suit property was at all material times owned and registered in the names of the late Susana Nambi. It is also not in
30 dispute that Amina Nabbosa and Mariam Ntabadde applied for and obtained letters of administration to the estate of Susana Nambi. As to who should get **letters of administration again** and the matter relating to cancellation of titles is to be considered under the next issue.

Issue 3: Whether the Defendants fraudulently obtained a certificate of title on the suit property?

Counsel for the Plaintiffs' gave the definition of fraud as per the case of **Fredrick J.K. Zaabwe versus Orient Bank Ltd and 5 Others, SCCA No. 4 of 2006** citing **Black's Law**

5 **Dictionary, 6th Edition at Page 660** as follows;

“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right and fraudulent means acting wilfully and with specific intent to deceive or cheat, ordinarily for purposes of either causing some financial gain to oneself.”

10 He added that fraud should be specifically pleaded and strictly proved as per the case of G.M. Combined Limited versus A.K. Detergents Uganda Limited (Civil Appeal No. 7 of 1998) [2000] UGSC9 (14 February 2000). And went ahead and broke the issue into five more sub issues to wit;

- a. Whether the Administrators had power and or authority to give out the suit property to
15 Ddamulira Abdu who was not a beneficiary to the estate?
- b. Whether the donation of the suit property by Mariam Ntabadde a gift inter **vivos** to Ddamulira Abdu was lawful?
- c. Whether the purported transfer executed by the Administrators of the estate of the late Susana Nambi in favour of Damulira Abdu the 1st Defendant was valid?
- 20 d. Whether Ddamulira Abdu is a bonafide purchaser for value of the property without any notice of fraud?
- e. Whether Kakomo Paul obtained the suit property lawfully?

Issue a: Whether the Administrators had power and or authority to give out the suit property to Ddamulira Abdu who was not a beneficiary to the estate?

25 Counsel for the Plaintiffs submitted that the suit land was owned by Nambi Susana and was registered proprietor at all times and it was given out in total disregard of the presence of other beneficiaries since Nambi died intestate. They added that DW1 Ddamulira told Court that there was no documentation that gave Mariam Ntabadde the land in dispute, that it was the elders that gave her authorisation. Thus, Mariam Ntabadde cannot claim the suit as hers
30 since the people who allegedly allocated her the suit land did not have Letters of Administration and nor did she receive it as a gift inter vivos. That the law on a gift inter vivo is that the donor must intend to give the gift, the donor must deliver the property, and the

donee must accept the gift as per the case of **Joy Mukobe versus Willy Wambuwi, HCCA No. 55 of 2005, cited in the Registered Trustees of Kampala Archdiocese versus Nabitete Nnume Mixed Co-operative Farm Limited Civil Suit No. 1559 of 2000.**

Advocates for the Plaintiffs added that PW3 testified that Nambi Susana was married and left a son in the names of Paul Katende who gave birth to Ssenkoto Edward the 3rd Plaintiff. That the Plaintiffs have all stated that they are grandchildren of Nambi Susana indicating that the estate had other beneficiaries. That at the time of Nambi's death she also had other siblings other than the Administrators who are beneficiaries of the estate and Mariam Ntabadde abused her power as an administrator contrary to **Section 25** of the Succession Act.

10 **Issue b: Whether the donation of the suit property by Mariam Ntabadde a gift inter vivos to Ddamulira Abdu was lawful?**

Counsel for the Plaintiffs submitted that Mariam Ntabadde donated the suit property which belonged to the estate of the late Nambi Susana as a gift inter vivos to Ddamulira Abdu as evidenced by Exhibit PE6 showing a gift deed dated 12th May 1997. Thus, the donation was
15 unlawful.

He added that Mariam Ntabadde claimed that she inherited the suit property from Nambi Susana and it is trite law that, being a customary heir does not make one an automatic inheritor or absolute owner of the estate of the deceased. That PE6 has only the signature of Mariam Ntabadde and lacks that of her co-administrator Amina Nabossa. That this indicates
20 that Mariam Ntabadde and Ddamulira Abdu intended to deny the rightful beneficiaries their interest in the estate and intended transfer the property into the names of Ddamulira Abdu by creating a gift deed as authority giving out the property to the first Defendant. And during cross examination Ddamulira admitted that Amina Nabossa did not sign or witness the gift deed. Thus, Mariam Ntabadde had no authority to give out the property of the late Nambi
25 Susana to Ddamulira Abdu as a gift inter vivos.

Issue c: Whether the purported transfer executed by the Administrators of the estate of the late Susana Nambi in favour of Damulira Abdu the 1st Defendant was valid?

Counsel for the Plaintiffs submitted that the transfer form in favour of Ddamulira Abdu was invalid, null and void **ab initio** and could not pass any lawful title to the 1st Defendant. That
30 the said transfer was signed by an illiterate person and was not attesting witness as required by law and there was no certification of attestation proved in contravention of **Section 2** of the Illiterate Protections Act.

Secondly, that the transfer form was purportedly signed in favour of the 1st Defendant on the 22nd December 1995 before the signing of the gift deed Exhibit PE6 on the 12th day of May 1997 that gave DW1 the property. That this was signed for transfer in favour of DW1 in 1995 even before it was officially given to him through a gift deed in 1997. DW1 confirms in his
5 witness statement paragraph 7 that Mariam Ntabadde and Amina Nabossa signed a transfer of the suit land into his names in 1995. He also confirmed at cross examination that he got the suit property through a gift deed and that the gift deed was dated 12th May 1997.

Issue d: Whether Ddamulira Abdu is a bonafide purchaser for value of the property without any notice of fraud?

10 Counsel for the Plaintiffs submitted that the only way the 1st Defendant would have protected his interest was for him to prove that he is a bona fide purchaser for value without notice under Section 176 of the Registration of Titles Act.

Issue e: Whether Kakomo Paul obtained the suit property lawfully?

Counsel for the Plaintiffs submitted that it was the testimony PW2, PW4, PW5, that Kakomo
15 Paul was sent to recover the title from Ddamulira Abdu who had taken it fraudulently. That Kakomo Paul recovered the property, however, he had no powers to distribute the property between himself and Ddamulira Abdu who registered it into his names on **Block 181 Plot 47, 48, and 49, measuring 48.5 acres** beyond even that he would have got. That he also did not report to the family that he had recovered the title and went ahead to transfer the title into his
20 name. That he transferred into his name more than the 20 acres that he was promised and to date has 48.5 acres registered under his name. Thus, the 1st and 2nd Defendants obtained the Certificates of title on the suit land unlawfully.

This court will deal with sub-issues (a) (b) and (c) together as they touch on the transfer of the suit land to Ddamulira Abdu (1st defendant).

25 The sub-issue of (d), whether Ddamulira is a bonafide purchaser for value does not arise as Ddamulira Abdu did not plead it in his pleadings and neither did he raise it in his witness statement. There is no need of wasting time on matters not pleaded. Then court will finally handle the sub-issue of whether Paulo Kakomo obtained the suit property lawfully.

Since I have already held under issue (1) that the plaintiffs miserably failed to prove that
30 Nambi Susana ever got married and left a son allegedly called Paul Katende who also gave

birth to Ssenkoto Edward, the 3rd Plaintiff, then I shall now proceed from the side of Nambi's siblings, notably Mariam Ntabadde and Amina Nabbosa.

Advocates for the plaintiffs submitted that Mariam Ntabadde abused her power as an Administrator contrary to section 25 of the succession Act, and that her donation of the suit property to Ddamulira Abdu as evidenced by exhibit PE6 was unlawful. This court's finding is to the contrary because a close analysis of the evidence of PW1, Ssekitto Moses, is as follows;

He confirmed that the land at **Gomba block 181 Plot 5 measuring 50,00 acres** at Katete was formerly registered in the names of Suzana Nambi. That sometime in year 1962 it was subdivided into two Plots, Plot 20 at 1.5 of acres and plot 21 of 48.5 acres were derived from the said original Plot 5. Therefore, PW1 who was a witness for the Plaintiffs in HCCS No. 73 of 2018 dispelled the plaintiffs' allegation that the suit land was fraudulently subdivided by Ddamulira Abdu in collusion with late Ntabadde and late Nabbosa. PW1 confirmed that in year 1962 a lease in favour of UEB was registered on Plot 20. PW1 further confirmed that Plots 20 and 21 which were formerly owned by Suzana Nambi were transferred in the names of Mariam Ntabadde and Amiina Nabbosa in their capacity as Administratrixes of the estate of late Nambi. Later the two signed a land transfer instrument in favour of Ddamulira Abdu's name in year 1997.

This court therefore found nothing in the testimony of PW1 which was suggestive of fraud or any fraudulent dealing as far as the transfer of the suit land from Mariam Ntabadde to Abdul Ddamulira was concerned. And for avoidance of doubt, I shall also refer to the evidence of DW1, (Ddamulira Abdul) who clearly stated that he acquired the suit land as donation from his paternal grandmother Mariam Ntabadde who lived at Ndeese (Kimbejja) in Butambala. He said that Susana Nambi, Mariam Ntabadde and Amina Nabbosa were siblings and all of them were daughters of late Yoana Gyagenda who passed away in the early 1950s. Nambi was the youngest of the said three ladies. Nambi died in year 1991 at the age of about 40 years. Nabbosa died in year 2007 and Ntabadde died in February 2016. DW1 stated that Nambi lived at Katete (Namulana) in Kabulasoke in Gomba District, and that did not leave a will. She had no husband and children in her lifetime. Upon Nambi's death the elders of the "Ndiga" (sheep) clan to which she belonged selected her elder sister Ntabadde to be the heir. As she did not have a husband and children the family members unanimously agreed that Ntabadde takes Nambi's properties including the suit land. It was DWI's evidence that no family member raised objection to this decision. **DW1 added that when Nambi's siblings**

were still living no person ever came out with an allegation that Nambi was ever married to a man called Ssemakula and that Nambi had a grandson called Ssenkoto. That no person came out to say that he or she ever saw Ssemakula and Katende and that such persons had died. He further testified that when Nambi's parents and siblings
5 were still living no person came out with an allegation that there was a man called Ssenkoto and he was a grandson of Nambi.

DW1's further testimony was that when it came to formal administration of Nambi's estate the family members agreed that Mariam Ntabadde and Amiina Nabbosa take up the administration of the estate. Under a letter dated 22/4/1994 the clan elder called Kakomo
10 Mpungu recommended Ntabadde and Nabbosa to the authorities. As a result of that recommendation the Administrator General issued to Ntabadde and Nabbosa a Certificate of No. objection dated 14/6/1994. A petition dated 30/6/1995 was filled in Court. The petition stated that Nambi had no husband and children. It was advertised in the press as required by law. No person (including the plaintiffs and the 2nd defendant Kakomo Paulo) objected to the
15 petition.

DW1 concluded that the court grant was issued to Ntabadde and Nabbosa on 3/11/1995. That no person filed a suit against Ntabadde and Nabbosa for revocation of the grant until both of them passed away. Ntabadde and Nabbosa signed a land transfer instrument for the suit land in favour of Ddamulira on 22/12/1995 and it was registered in the name of Ddamulira in year
20 1997. No person sued Ntabadde and Nabbosa to cancel the titles to the suit land on allegation that the transfer was through fraud. Also since year 1997 when Ddamulira was registered as owner of the suit land no person filed a suit against him for cancellation of the titles on ground of fraud.

The Advocates for the Plaintiffs submitted that the clan leaders had no right to pass on the estate of Susana Nambi who had died intestate without Letters of Administration. Unfortunately, for the Plaintiff's case, they did not produce any evidence to show that the Plaintiffs or anyone objected to the decision of the elders to give the suit property to Mariam Ntabadde at the time it happened.
25

So apart from the fact that no one challenged Mariam Ntabadde's powers, the same
30 Advocates for the Plaintiffs further in their submissions in rejoinder stated that Mariam Ntabade as an Administrator of the estate could not pass on the property to Ddamulira Abdu as a gift *inter vivos*.

However, Counsel for the 1st Defendant referred to paragraph 9 of the witness statement of Ddamulira Abdu dated 4/10/2018, where Ddamulira Abdu stressed there was a clan meeting o 19/3/2016 which was attended by Sserunkuma Robert he 2nd Plaintiff, Mpungu Ronald the 1st Plaintiff, Bbosa Paulino the father of the 5th Plaintiff and PW4, Kiwanuka Ssalongo, 5 Kafumbe Bruno and Kibuuka Ben among others. In the said clam meeting of 19/3/2016, the members who attended revisited and agreed to the fact that the suit land which formerly belonged to the late Nambi was lawfully taken by Ntabadde and that Ntabadde had given it to her grandson Ddamulira Abdul . That no family member expressed discontent that Ntabadde had no right to donate the suit land to the 1st Defendant (Ddamulira Abdul).

10 It was further submitted that the heading of the clan minutes of 19/3/2016 indicated that the purpose of the clan meeting was to discuss the celebration of the last customary funeral rites of late Ntabadde and to review the properties she left. Counsel emphasised that the clan members conceded that the suit land had been lawfully acquired by Ntabadde and she properly passed it on to Ddamulira Abdul . In that meeting it never surfaced for consideration 15 by the clan members that the late Nambi ever had a husband, a son and grandson as it is now being falsely alleged by the Plaintiffs.

Further submissions were that at trial in the criminal case against Kakomo Paul for the theft and forgery he committed in respect of the suit land, **Ntabadde was still living. That she gave evidence against Kakomo Paul that he had no right to take the suit land. Ntabadde 20 informed Court that Nambi had no husband and children. No family members refuted Ntabadde's testimony and no family member including the Plaintiffs and Kakomo Paul the 2nd Defendant filed action against Ntabadde to challenge her statement.**

It was further submitted that Ddamulira Abdu stressed that on 26/7/2017 Kakomo Paul was convicted by the High Court of Criminal Offences he committed in respect of the suit land 25 and on 18/5/2018 the Court passed sentence against him after he had been hiding for more than a year. Ddamulira Abdul pointed out that the Power of Attorney which Ssenkoto (PW2) gave to Kakomo Paul on 8/8/2012 in respect of the suit land was evidence that PW2 was in collusion with Kakomo Paul to defraud the suit land and so there was no logic for PW2 to sue Kakomo Paul (PW2's agent) or to join Ddamulira Abdu and Kakomo Paul as the 1st and 2nd 30 Defendants respectively in the same suit over the suit land.

I entirely agree with the submissions of Counsel for the 1st Defendant that the Plaintiffs slept on their rights and cannot wake up to challenge the Administration of the estate of Susana Nambi and Nabbosa over 20 years since Susana Nambi died. Their actions are time barred.

And to make matters worse, the Administrators who passed on title to the 1st Defendant, Ddamulira Abdu are also dead. And since they were the ones who allegedly committed fraud with the 1st Defendant, the suit should have been filed when they were still alive. **They are now dead and gone and cannot come back from death to defend their actions.**

5 As Counsel for the 1st Defendant has correctly submitted, it is on record that Ntabadde and Nabbosa obtained a court grant to the late Nambi's estate in the year 1995. It is now 24 years since the grant was issued. The Plaintiffs did not sue Ntabadde and Nabbosa to revoke the grant. Ntabadde and Nabbosa signed a transfer of the suit land in favour of Ddamulira Abdu in the year 1997. The Plaintiffs did not sue Ntabadde, Nabbosa and Ddamulira Abdu for
10 recovery of the suit land if they had a valid claim on it. The Plaintiffs filed actions against Ddamulira Abdu after 20 years. It is now over 20 years since the grant was issued and land transferred to Ddamulira Abdu. All actions filed by the Plaintiffs in the years 2017 and 2018 in respect of Nambi's estate and the suit are barred by limitation law. **(See: Section 7 and 20 of the Limitation Act and the cases of Iga versus Makerere University (1972) E.A No.**
15 **65).**

And the pleadings of the Plaintiff do not contain any provision as to why the suits were not filed within the time prescribed by the law.

As regards Paul Kakomo the 2nd Defendant, Counsel for the Plaintiffs submitted that as seen in the testimony of PW2, PW3, PW4 and PW5, Kakomo Paul was sent to recover the title
20 from Ddamulira Abdu who had taken it fraudulently. This was after asking Maraim Ntabadde where she had taken the title and she said that it was given to Ddamulira Abdu. They added that however, Kakomo Paul was told to pay UGX 1,000,000/= that Ddamulira Abdu had received from the money lender to recover the property and in return he would be given 20 acres off the suit property.

25 They went on to state that indeed Kakomo Paul recovered the property, however, he had no powers to distribute the property between himself and Ddamulira Abdu. That he has currently registered part of the suit property into his names on **Block 181 Plot 47, 48, and 49 measuring 48.5 acres** beyond even that he would have got.

They concluded that Kakomo Paul is fraudulent since he did not report to the family that he
30 had recovered the title and he went ahead to transfer the suit property into his names for over 20 acres beyond that which was promised and has held onto the titles of up to 48.5 acres up to

date, instead of declaring the same to the family and it is distributed to the rightful beneficiaries considering his efforts to recover the same.

I entirely agree with the above submissions of the Plaintiffs that Kakomo Paul is fraudulent and that is how he was convicted in the High Court in Criminal Appeal No. 310 of 2016 at
5 Kampala with the offence of theft and forgery. And in that case, Kakomo Paul did not exhibit any transfer signed for him by Ddamulira Abdu to acquire the suit land.

From the evidence of DW1 (Ddamulira Abdu), the Police handwriting expert report and the Court confirmed that the mutation to subdivide Plot **21 into Plots 47,48 and 49** was a forgery. Therefore there is no way how Kakomo Paul can claim that Ddamulira Abdu
10 allowed him to take the suit land or any part thereof.

It is therefore the finding and holding of this Court that it was Kakomo Paul, the 2nd Defendant who fraudulently and unlawfully obtained the Certificate of title to parts of the suit property. And the fraud by Kakomo Paul was committed against Ddamulira Abdu whom I
15 have already held lawfully acquired the suit land from Mariam Ntabadde as a gift involves.

The Plaintiffs have therefore proved that the 2nd Defendant, Kakomo Paul fraudulently obtained a Certificate of title in respect of part of the suit property which rightly belonged to Ddamulira Abdu, the 1st Defendant. Otherwise in view of what has been outlined, the Plaintiffs have totally failed to prove any allegations of fraud against the 1st Defendant,
20 Ddamulira Abdu, who is the legal and lawful owner of the suit property. Issue No. 3 is accordingly resolved in the negative as against the 1st Defendant, Ddamulira Abdu.

As for the 2nd Defendant Kakomo Paul, issue No 3 is resolved in the positive for stealing Ddamulira Abdu's Certificates of titles and fraudulently Registering the one of them in his
25 names and unlawfully sub-dividing the same in respect of part of the suit land, measuring 48.5 acres.

4. Remedies available to the parties.

Section 177 of the Registration of titles Act empowers this Court to direct the cancellation of
30 the Certificate of title or any entries thereof which have been fraudulently or unlawfully

obtained in the present case, I do hereby order the cancellation of the 2nd Defendant, Kakomo Paul on all the Certificates of title in respect of the suit land, and instead, the same be registered in the names of the 1st Defendant, Ddamulira Abdu.

5 Furthermore, and having found and held in favour of Ddamulira Abdu in respect of the suit land, I do hereby declare him the owner of the suit land formerly comprised in **Block 181 plot 20 and Block 181 Plot 21 formerly Plot 5.**

I shall not award general damages to the Plaintiffs as prayed since they have lost the case. However, I shall award costs of this suit to Ddamulira Abdu, 1st Defendant, to be paid by the
10 Plaintiffs and the 2nd Defendant Kakomo Paul.

In conclusion therefore, Judgment is entered in favour of the 1st Defendant, Ddamulira Abdu and against the plaintiffs, Mpungu Ronald, Sserunkuma Robert, Ssenkoto Edward, Lumu Francis and Lutalo Douglas, and also against the 2nd Defendant, Kakomo Paul.

15

Having ruled in favour of the 1st Defendant, (Ddamulira Abdu), I summarise the orders in respect of all the consolidated cases as follows:-

- 1) That Nambi died intestate and she had no husband, children and grandchildren and all
20 her parents had died.
- 2) That Nambi was survived by her siblings Ntabadde and Nabbose and they lawfully obtained letters of Administration to the estate of late Nambi and that they were lawfully registered as owners of the suit land which formerly belonged to late Nambi.
- 3) That Ntabadde and Nabbose did not commit any fraud in acquiring the Court grant to
25 the estate of late Nambi and that they did not commit fraud in registering themselves as owners of the suit land.
- 4) That Ntabadde and Nabbose lawfully transferred the suit land to Ddamulira (the 1st Defendant) and that there was no fraud in such transfer and that Ddamulira Abdu was lawfully registered as owner thereof.
- 30 5) That upon registration of the suit land in favour of Ddamulira it ceased to be Ntabadde and Nabbose's property and it ceased to be part of late Nambi's estate.

- 6) That there is no property of late Nambi that requires appointment of new administrators since all late Nambi's properties were given to late Ntabadde as the heir and they were fully disposed off.
- 7) That the plaintiff's and the 2nd Defendant's claims to the estate of late Nambi and the suit land are tie barred in light of the **Law of Limitation**.
- 8) That the Plaintiffs and the 2nd Defendant failed to prove fraud against the 1st Defendant that would justify cancellation of his certificates title to the suit land and that **Sections 77, 176 (a) and 177 of the Registration of Titles Act** are not applicable to Ddamulira Abdu.
- 9) That Kakomo Paul (the 2nd Defendant) acquired the Certificates of title for **Plots 47,48 and 49 Gomba Block 181** through fraud and that such certificates be cancelled as provided by Section 177 of the Registration of titles act and that Plot 21 be reinstated in favour of Ddamulira Abdu.
- 10) That all suits against Ddamulira Abdu be dismissed with costs to him.
- 11) That Ddamulira Abdu's suit against Kakomo Paul be allowed with costs and all reliefs sought against Kakomo Paul be granted.
- 12) That the plaintiffs' petition for Letters of Administration to the estate of late Nambi be dismissed.
- 13) That Ddamulira Abdu's suit against the Plaintiffs be allowed.
- 14) That all the Plaintiffs and the 2nd Defendant, Kakomo Paul pay costs of the consolidated cases to the 1st Defendant, Ddamulira Abdu.

.....
25 **Wilson Masalu Musene**

Judge

14/06/2019