

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 207 OF 2014**

- 5 1. MR. GEOFFREY KITAKULE
2. MR. PAUL BAGYENDA
3. MR. MUWANGA GEORGE
4. MR. MUHANGUZI SAMUEL
5. MR. WILLINGTON NABWANA
10 6. MR. MOSES ATWINE
7. MR. MOSES NDEGE BBOSA
8. MR. DUNCAN MUHUMUZA
9. MR. FERDINAND MUGISHA
10. MR. RONNIE BABIGUMIRA
15 11. MR. HAKEEM MULINDWA
12. MRS. SUSAN BABIGUMIRA
13. MRS. EVAS ATWINE
14. MS. ANNE OCHWO RWEGO
15. MS. SOPHY NANTONGO
20 16. MS. AGNES BABIRYE NAMUBIRU
17. WATOTO CHURCH
18. TURACO LIMITED
19. INCAFEX LIMITED

..... PLAINTIFFS

VERSUS

- 25
30 1. MS. GETRUDE NAKIYIMBA
2. FARIDAH NAMIREMBE NAMUSISI
ALIAS PRINCESS BWANGA
3. MR. JOSEPH KANAABO
4. THE ATTORNEY GENERAL

..... DEFENDANTS

35 **BEFORE: HON. MR. JUSTICE BASHAJA K. ANDREW**

J U D G M E N T:

any final and binding pronouncements, orders, or findings on the ownership of the suit land or making any final binding determination on any matter concerning the ownership of suit land
80 without such matter being adjudicated and finally determined by a court of competent jurisdiction, and from issuing threats of eviction against the plaintiffs; general and special damages; and costs of the suit.

Background:

85 Each of the plaintiffs is the registered proprietor of his or her respective plot of land as indicated against their respective names shown in *Annexure 'A'* to the plaint. They essentially aver that they are in lawful possession of their respective plots of land and each of them holds a certificate(s) of title for his or her respective plot as
90 reflected in *Annexure "B1-B15"* to the plaint. Titles in *Annexure "B1-B14"* are all located on Busiro Block 453 land at Tende while titles in *Annexure "B15"* are all located on Busiro Block 452 land at Ntabo, and all arise from subdivisions on the mentioned respective Blocks.

95 The plaintiffs allege that sometime in 2013, the 1st and 3rd defendants started claiming ownership on all of the plaintiffs' land

The 19 plaintiffs herein brought this suit against the 4 defendants herein jointly and severally seeking a declaration that each of the plaintiffs is the duly registered proprietor of his or her respective plot of land as indicated in *Annex A* to the plaint, and also as indicated against his or her name (*hereinafter all the plots jointly referred to as the "suit land"*) that each of the plaintiffs is a bonafide purchaser for value without notice in respect of each of the plots of land indicated against their respective names in *Annexure A* (supra) that their respective titles are valid and cannot be impeached; that the actions of the officers of the Uganda Police Force, Land Protection Unit, who are servants and /or agents of the 4th defendant, to the extent that such actions interfere with the rights of the plaintiffs as registered proprietors to exclusive possession, ownership, and peaceful quiet enjoyment of their respective plots of land, are in excess of the powers of the Police, are illegal and arbitrary; a declaration that no finding or investigative report of the Uganda Police Force, Land Protection Unit, on the ownership of land registered under the Registration of Title Act Cap. 230 can be binding against a registered proprietor until the matter has been heard and finally determined by a court of competent

jurisdiction; an order directing the 1st, 2nd and 3rd defendants to deliver up to the Commissioner for Land Registration for cancellation the duplicate certificate of title described as Busiro
60 MRV 152 Folio 12 or in the alternative; an order directing the Commissioner for Land Registration to recall and cancel the said duplicate of certificate title; a permanent in junction restraining the 1st - 3rd defendants, their servants, agents (directly or indirectly) from entering upon any part of the plaintiffs' land, trespassing or
65 performing any activity thereon, including but not limited to mining of sand, quarrying of stones, planting of any crops or agricultural activity, felling of trees, fishing, or any such activity that may constitute an interference with the plaintiffs' right of ownership, exclusive possession, quiet and peaceful enjoyment; a permanent
70 injunction restraining the officers of the Uganda Police Force, Land Protection Unit, the Uganda Peoples' Defence Forces, who are all servants and or agents of the 4th defendant, from interfering with the plaintiffs' right of ownership, exclusive possession and peaceful quiet enjoyment of their respective plots of land; a permanent
75 injunction restraining the all the said servants/agents of the 4th defendant from acting as a court adjudicating and thereby making

maintaining that since 1926 to date the suit land is and continues to be part of the estate of the 1st defendant's father, the late Daudi Kasimbazi. Further, that the 1st defendant claims to hold the duplicate certificate of title in respect of the suit land described and known as MRV 152 Folio 12, but that the particular title is not a valid title and ought to be cancelled.

The plaintiffs also aver that in late 2013 and early 2014, the 1st - 3rd defendants with the assistance of the 4th defendant's agents, entered unto the suit land and committed acts of trespass and damage to the plaintiffs' property. The acts complained of include excavation of sand and stones, cutting down trees and fences, destroying crops and threatening violence against the plaintiffs. The plaintiffs aver that the 1st - 3rd defendants continue to threaten and intend to trespass upon the plaintiffs' land and to take possession of it, unless restrained by court. Further, that the officers of the Land Protection Unit of the Police continue to support the 1st - 3rd defendants by providing them with armed security, media interviews, and issuing threats to the plaintiffs. That these acts were severally reported to Kisubi Police Station under *Reference SD 10/01/2013* and *SD 22/3/3/2014*. That as a result of the actions,

the plaintiffs have suffered loss and damage for which they hold defendants jointly and severally liable.

The plaintiffs further aver that the Land Protection Unit of the
120 Police and AIGP Andrew Felix Kaweesi (now deceased) illegally constituted themselves into a court of law and under the guise of conducting investigations went ahead to summon meetings at which they made pronouncements as to the ownership of the suit land; all of which are at variance with the register of titles. The
125 plaintiffs contend that such pronouncements are in excess of the Police powers and are illegal. That the defendants and the Police have without the consent of the plaintiffs trespassed on the suit land, commissioned surveys thereon, and threatened the plaintiffs with eviction and cancellation of their titles.

130 That on 08/04/2014, AIGP Andrew Felix Kaweesi (now deceased) directed the plaintiffs to submit all their title deeds to the Land Protection Unit of Police for verification by 08/05/2014; failure of which he would declare the title deeds invalid. Again the plaintiffs contend that such directives are illegal and in violation of their
135 rights to property. Further, that on the same date at Tende, the said AIGP Andrew Felix Kaweesi (now deceased) addressed a press

conference whereat he asserted that the plaintiffs' titles had been obtained by fraud and therefore are invalid. The plaintiffs aver that this depicted them as fraudsters and that such words were
140 injurious to their reputation and caused them to be held up to ridicule and contempt for which the plaintiffs hold the 4th defendant is liable to them in damages. The plaintiffs maintain that the stated actions of the 4th defendant's agents/servants are biased, in excess of the powers of the Police, illegal and arbitrary. Further, that the
145 actions have no basis in law and are injurious to the plaintiffs' interests as registered proprietors.

The plaintiffs maintain that the continued dispute over their titles is occasioning them significant diminution in the value of their land and that the defendants should be jointly and severally held liable
150 in damages for loss occasioned as a consequence of such diminution. The plaintiffs insist that they are all registered proprietors and bonafide purchasers for value without notice in respect to each of their respective plots of land and that the 1st - 3rd defendants have no legal interest whatsoever in the suit land.

155 The 1st - 3rd defendants filed a joint defence and denied all the allegations leveled against them and the entire claim of the

plaintiffs. The said defendants also set up a counterclaim. They aver that the late Daudi Kasimbazi is the rightful owner and registered proprietor of all the suit land comprised in MRV 52 Folio 2 F.C 15230 also described as Busiro Block 453 and part of Busiro Block 452 under F.C 15229 land at Ntabo and Ntende Busiro respectively. Further, that the 1st defendant, as the only surviving child and Administratrix of the estate, has beneficial, legal, and equitable interest in the suit land. For the 3rd defendant, he contends that he is a grandchild of late Daudi Kasimbazi; which confers on him a beneficial, legal, and equitable interest in the suit land.

The 1st - 3rd defendants aver that they have at all material times been in possession and use of the suit land on which is situate the defendants' cultural and worshiping centers to wit; Ntende (site for omweso), Embuga ya Nalwoga, Omwalo Lukwago, Jajja Ndawula, Kawumpuli, Kinene, Omuwaju Nalukwago, Ntude Ntende, where the defendants, among others persons, exercise their right to religion. In particular, that the 2nd defendant is a traditionalist and grandchild of the late Daudi Kasimbazi and also the Protector of the cultural heritage and royal tombs of the Kingdom of Buganda and on that account has an interest in the suit land.

The defendants also aver that as lawful owners of the suit land, they have all the right to enter and use it and hence they deny any allegations of trespass against them. They also contend that the
120 plaintiffs have no legal interest in the suit land and that the purported certificates of title in *Annexure "B1- B15"* (supra) were all procured illegally and or fraudulently; for which the defendants seek orders of cancellation by way of counterclaim.

The defendants contend that it is the plaintiffs who moved the
185 Uganda Police to do investigations having alleged that the defendants had trespassed upon the suit land. That when the Police established that the suit land belongs to the late Daudi Kasimbazi and that the plaintiffs' titles were fraudulently and illegally acquired, the plaintiffs turned against the Police and are now
190 determined to paralyze any further investigations. The defendants pray that the plaintiffs' suit be dismissed with costs and their counterclaim be allowed with a declaration that the late Daudi Kasimbazi is the only lawful owner of the suit land; that the plaintiffs are trespassers on all suit land comprised in Busiro Block
195 452 and 453 at Ntabo and Ntende respectively also known as MRV 152 Folio 12 F.C 15230; that the title deeds in the possession of the

plaintiffs were obtained illegally and or fraudulently; that the 1st -
3rd defendants are beneficiaries and lawful owners of all the suit
land which forms part of the estate of the late Daudi Kasimbazi; a
consequential order directing the Commissioner for Land
Registration to cancel plaintiffs' respective title deeds in respect of
the suit land for having all been fraudulently obtained; further
consequential order directing the Commissioner for Land
Registration to issue the 1st defendant with a title deed in her
names as beneficiary of the estate of the late Daudi Kasimbazi;
general damages; and costs of this suit.

The 4th defendant filed a defence but did not attend trial or bring
any witness to support their pleadings. As such the 4th defendant
put itself out of the trial. In its defence, the 4th defendant generally
denies all allegations and claim of the plaintiffs. It averred that its
agents, the Uganda Police, embarked on investigations into the
matter with the full knowledge and support of the plaintiffs. That
the Police have never, without the consent of the plaintiffs,
wrongfully entered the suit land as their involvement was sparked
off by a complaint lodged by the plaintiffs. That Police was
approached by a group of residents in Garuga, known under their

name Ntende Peninsula Residents Association, to investigate
allegations of criminal trespass on their land comprised in Busiro
Block 453 land at Ntende and in Block 452 land at Ntabo. That
220 after the plaintiffs, who are members of the said Association, lodged
the complaint; a file was opened under CIID HQTRS GEF 17/2014.
That the Land Protection Unit of the Uganda Police Force together
with the Wakiso District surveyor embarked on investigating the
claims with full knowledge and support of the plaintiffs. That the
225 boundary opening was done and the findings were read to all the
concerned on 08/04/2014 by late AIGP Felix Kaweesi, the then
Director Kampala Metropolitan Police, in the presence of Mr.
William Kasozi of *M/s. AF Mpanga Advocates*.

That at the presentation of the report, it was unanimously agreed
230 the that all the people who had certificates of title arising out of the
two blocks appear at Police Land Protection Unit and record
statements within one month stating on how they acquired land on
the disputed blocks. That it is because of the above actions of Police
in trying to investigate allegations of criminal trespass, fraud, and
235 breach of peace, in accordance with the Constitution of Uganda and
Police Act, among others laws, that this suit has been brought

against the 4th defendant. The 4th defendant concedes that indeed the Uganda Police Force has no powers to cancel any certificate of title and has not in any way threatened to do the same in respect to
240 the suit land. That as such the 4th defendant has not, through its servants or agents, trespassed on the plaintiffs' land and/or caused any damage to the plaintiffs' properties.

The 1st -7th, 9th - 15th, 17th and 18th plaintiffs were represented by *M/s. AF Mpanga Advocates, M/s. Kwesigabo, Bamwine & Walubiri*
245 *Advocates, M/s. Tumusiime, Kabega & Co. Advocates, and M/s. Arcadia Advocates.* The said lawyers filed joint written submissions to argue the case. The 1st and 3rd defendants were jointly represented by *M/s. Bakkidde & Hannan Advocates* and *M/s. Kusiima & Co. Advocates* who also jointly filed written submissions.
250 The 2nd defendant was represented *M/s. Mbidde & Co. Advocates* who also filed written submissions. The written submissions are on court record and I need not to reproduce them in detail but I have considered them in this judgment.

In the joint scheduling memorandum five issues were agreed and
255 framed as follows;

1. *Whether each of the plaintiffs is a bona fide purchaser for value for each of the property for which he or she is registered as proprietor on the respective certificates of title.*

260 2. *Whether the certificate of title known as Mailo Register Volume 152 Folio 12 is valid and legal.*

3. *Whether the actions of the Uganda Police Land Protection Unit are in excess of its powers, illegal and arbitrary.*

4. *Whether the defendants trespassed on the suit land.*

265 5. *Whether the plaintiffs are entitled to the remedies prayed for.*

Resolution of the issues:

Issue 1: Whether each of the plaintiffs is a bona fide purchaser for value for each of the property for which he or
270 *she is registered as proprietor on the respective certificates of title.*

It is an agreed fact in the parties' joint Scheduling Memorandum, under *Item 1* of the "Agreed facts", that each of the plaintiffs is the registered proprietor of his or her respective plot of land on the suit
275 land. The main contention of the plaintiffs is that each of them is a

bonafide purchaser for value without notice in respect of his or her
respective the plot of land; of which each is registered as proprietor
on the certificates of title as indicated against their respective
names in the "Agreed facts" Item 1 (a) – (q).

280 A "bonafide purchaser" was defined in ***Hajji Abdu Nasser Katende
vs. Vathalidas Haridas & Co. Ltd, CACA No.84 of 2003***, as a
person who honestly intends to purchase the property offered for
sale and does not intend to acquire it wrongly. Citing with approval
the case of ***Hannington Njuki vs. William Nyanzi HCCS No.434***
285 ***of 1996***, the Court of Appeal went on to hold that for a purchaser
to successfully rely on the bonafide doctrine, he must prove that he
holds a certificate of title; he purchases the property in good faith;
he has no knowledge of the fraud; he purchases for valuable
consideration; the vendor has apparent title; he purchases without
290 notice of any fraud; and he was not party to the fraud.

Black's Law Dictionary 8th Edition at page 1291 also defines
"bonafide purchaser" as;

295 ***"...one who buys something for value without notice of
another claim to the property and without actual or
constructive notice of any defects in or infirmities, claims***

or equities against the seller's title, one who has in good faith paid valuable consideration for property without notice or prior adverse claims."

Section 176(c) of the Registration of Titles Act (supra) accords protection to a registered proprietor of land except in case of registration through fraud, as follows;

"No action of ejectment or other actions for the recovery of any land shall lie or be sustained against the persons registered as proprietor under this Act, except in any of the following cases.

- (c) ***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 bona fide for value from or through a person so registered through fraud; [Underlined for emphasis].***

Also, Section 181 (supra) makes provisions specifically protecting a bonafide purchaser for value without notice of fraud in the following terms;

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"Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for the recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he or she is registered as proprietor any purchaser bonafide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under who he or she claims was registered as proprietor through fraud or error or has derived from or through a person registered as proprietor through fraud of error..."

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[Underlined for emphasis].

In addition, Section 59 (supra) embeds the principle of indefeasibility of title, which is the bedrock of the Torrens System as one obtaining in Uganda. It provides to the effect that a certificate of title is conclusive evidence of ownership and that the
330 person named in the title is the proprietor of that land.

The totality of these restated principles is that except in the case of proven fraud attributable to him or her at the time of the registration, a registered proprietor's title cannot be impeached, and possession of a certificate of title is conclusive evidence of

335 ownership of the land described in the particular title. The other
important import of the principles is it is possible for a purchaser to
acquire good title from a person(s) so registered through fraud
provided the purchaser is not privy in any way to the fraud.

What constitutes fraud in land transactions and under what
340 circumstances fraud affects a title of a registered owner is a settled
matter. In the case of **David Seajjaka Nalima vs. Rebecca
Musoke, SCCA No. 12 of 1985**, the Supreme Court held as follows;

345 ***"...It is well stated that fraud means actual or some act
of dishonesty. Where there are a series of subsequent
transfers, for the title of the incumbent registered
proprietor to be impeachable, the fraud of the previous
proprietors must be brought home to him... A fraud by
persons from whom he claims does not affect him unless
knowledge of it is brought home to him or his agent. The
mere fact that he might have found out the fraud had he
been more vigilant and made further inquiries which he
omitted to make does not itself prove fraud on his part.
But if it is shown that his suspicions were aroused and
that he abstained from making inquiries for fear of***

***learning the truth, the case is very different and fraud
may be ascribed to him..."***

In bid to prove their claim as bonafide purchasers for value without notice, the plaintiffs, in the instant case, adduced evidence the 1st plaintiff, Geoffrey Kitakule (PW1). He testified that he owns a certificate of title for Block 453 Plot103 having purchased the same on 04/09/2012 from the 3rd defendant, Joseph Kanaabo. According to the sale agreement, *Exhibit P2*, the purchase price was Shs. 25,000,000/=; of which PW1 testified that he fully paid as per *Exhibit P3* - the payment receipts. This evidence was corroborated by 3rd defendant, Joseph Kanaabo (DW3) who confirmed having sold the particular plot of land to the 1st plaintiff and having received the full purchase price upon which he executed the sale agreement, *Exhibit P2*.

PW1 further testified that he is the registered proprietor of land in Block 453 Plot 94; as per certificate of title, *Exhibit P4*, of which he is also in possession. PW1 stated that he purchased the same from the 1st defendant, Gertrude Nakiyimba (DW1). The sale agreement, *Exhibit P5*, shows that the purchase price of Shs. 465,000,000/= fully paid and acknowledged receipt of by the vendor. PW1 adduced

in court receipts of the transaction as *Exhibit P6*. The 1st defendant
375 admitted having sold Plot 94 to the 1st plaintiff and receiving full
payment thereof.

PW1 further adduced in evidence as *Exhibit P7*, a certificate of title
for Block 453 Plot 7. He testified that he purchased the same on
26/09/2007 from one Jack Wavamunno. PW1 also tendered in
380 court *Exhibit P8* - a sale agreement as proof that he fully paid the
purchase price of Shs. 169,000,000= as per the payment receipts,
Exhibit P9.

PW1 stated that upon purchase of the said plots of land, he
subdivided them into several other plots to wit; Plot 80 - 89. That of
385 these he sold Plot 84 to the 2nd plaintiff, Mr. Paul Bagyenda, and
Plot 80 and Plot 88 to the 10th and 12th plaintiffs, Mr. Ronnie and
Ms. Susan Babigumira respectively. PW1 stated that he retained
Plots 81, 83, 85, 87 and 89. He adduced in evidence copies of the
certificates of title as *Exhibits P10, P11, and P12* respectively for the
390 retained plots; all of which invariably show, on their ownership
pages, that he is the registered proprietor thereof.

The 5th plaintiff, Willington Nabwana (PW2) testified that he owns
eight plots all of which are located on Block 453 to wit; Plot 9

measuring 6.07 hectares as per the certificate of title *Exhibit P17*;
395 Plot 30 measuring 2.3 hectares as per certificate of title *Exhibit P18*;
Plot 32 measuring 1.194 hectares as per the certificate of title
Exhibit P19; Plot 51 measuring 0.960 hectares as per certificate of
title in *Exhibit P20*; Plot 50 measuring 5.79 hectares as per
certificate of title *Exhibit P21*; and Plot 75 measuring 0.389
400 hectares as per certificate of title *Exhibit P22*. PW2 bought all these
plots from Mutesasira Mutyaba Isaac and was registered as
proprietor thereof on 14/07/2010. He stated that he also owns Plot
49 measuring 0.403 hectares as per certificate of title *Exhibit P23*;
which he purchased from one David Batwale, and Plot 69, as per
405 certificate of title *Exhibit P24*, which he purchased from the 1st
plaintiff.

PW2 testified that he purchased Plots 9,30,32,51 all at a price of
Shs 1,066, 000,000= and Plot 69 for Shs.82, 000,000=; all of which
he fully paid. He stated that he took possession and has since
410 developed the land for over five years uninterrupted by anyone.

The 13th plaintiff Ms. Evas Atwiine (PW3) testified that along with
her husband, Moses Atwiine, they purchased Plot 47 located on
Block 453 from Primrose C. Muwanga, and registered it in their

joint names. She adduced in evidence the certificate of title, *Exhibit*
415 *P26*. PW3 stated that they fully paid the purchase price of Shs.
65,000,000= as per the sale agreement, *Exhibit P27*. PW3 further
testified that jointly with her said husband, they also own Block
453 Plot 72 as per certificate of title *Exhibit P28*, having purchased
the same from one Dr. George William Ssamula by sale agreement
420 dated 18/09/2007 at Shs. 50,000,000=. PW3 testified they have
since developed the land.

Mr. Garuga Musinguzi, the Managing Director of the 19th plaintiff
M/s. Incafex Limited (PW4) testified that the company owns Plot 3
located on Busiro Block 452 having purchased the same in 1990
425 from one Evaristo Nyanzi & Andrew Ben Ssengooba, who were the
registered proprietors. PW4 tendered in court a certificate of title
Exhibit P30 and the sale agreement *Exhibit P31*.

The 3rd plaintiff Mr. Muwanga George (PW5) testified that he owns
land comprised in Busiro Block 453 Plot 41 as per certificate of tile
430 *Exhibit P32*. According to the sale agreement *Exhibit P33*, he
purchased the plot from one Florence Nangendo and fully
discharged the purchase price of Shs. 200,000,000=.

The 18th plaintiff M/s. Turaco Limited was represented by its Managing Director Roger Kirkby (PW6). He testified that the company purchased the land in Block 453 Plot 95 as per certificate of title *Exhibit P34*. Further, that the company paid the full purchase price of Shs. 400,000,000= to one Gordon Wavamunno who was the registered proprietor. PW6 stated that the company is in possession and has since put up major developments of three houses and solar equipment on the land.

The 17th Plaintiff Watoto Church Limited, formerly known as Kampala Pentecostal Church Ltd, was represented by Ms. Mariam Nakimera (PW7). She stated that the 17th plaintiff owns land comprised in Plot 1 as per certificate of title *Exhibit P36*, Plot 25 as per certificate of title *Exhibit P37*, and Plot 2 as per as per certificate of title *Exhibit P38*; all located on Busiro Block 453. PW7 testified that on 26/05/1995, the 17th plaintiff purchased Plots 1, 2, 25 and 26 for Shs. 90,000,000= from Dr. George William Ssamula who was the registered proprietor thereof and took possession and have since been in occupation.

The 2nd, 3rd, 4th, 7th, 8th 9th, 10th, 11th, 12th, 14th, 15th and 16th plaintiffs did not in person testify in court. However, their respective

certificates of title and sale agreements respectively were among the
455 admitted documents in the parties' joint scheduling memorandum.
They all fortify the said plaintiffs' claim of ownership of their
respective plots of land registered in their respective names. A
sample perusal of the 7th plaintiff, Moses Ndege Bbosa, easily shows
that he is the registered proprietor in respect of land comprised in
460 Block 453 Plot 4 having purchased it from one Geoffrey Ddingiro
Lwanga and fully paid for it on 02/07/2004 at a price of US\$
145,000=. Copy of the sale agreement and receipts are on court
record.

For their part, the defendants and their witnesses did not lead any
465 evidence specifically rebutting the plaintiffs' claim as bonafide
purchasers for value without notice of fraud of the respective plots
of land. In their joint counterclaim, the 1st – 3rd defendants, in
paragraph 10, alleged a singular particular of fraud against all the
plaintiffs as follows;

470 ***“Obtaining title deeds to land that already belongs to the
plaintiffs by counterclaim and yet there were no
instruments of transfer or subdivisions executed by the***

late Daudi Kasimbazi in favour of the defendants by counterclaim."

However, no evidence whatsoever was led by the counterclaimants
475 or their witnesses to prove the alleged particulars of fraud. It was
not shown in any way as to how the plaintiffs committed the alleged
fraud. It was not demonstrated how the alleged fraud is attributed
to any or all the plaintiffs at the time registration on their respective
titles. On the contrary, it is quite evident from titles *Annexure "B1 -*
480 *B15"* (supra) that the plaintiffs were registered after obtaining their
respective titles from other registered proprietors. In fact, in all the
titles the plaintiffs were registered as successors in title after several
other proprietors registered under prior issued instruments. The
persons whose registration predate the plaintiffs' on the titles
485 include Jack Wavamunno, Gertrude Nakiyimba (1st defendant)
Kanaabo Joseph (3rd defendant) Florence Nangendo, Elizabeth
Lwanga, Mutesasira Mutyaba Isaac, David Batwale, Primrose
Constella Muwanga, Godfrey Ddingiro Lwanga, Basil Tyaba, Gordon
Wavamunno, Abasi Ndege, Dr. George William Ssamula, and
490 Evaristo Nyanzi & Ben Ssengooba.

None of these persons was sued as a party as defendant by counterclaim in this case for having obtained their registration on the suit land by fraud. Since it could not be not shown by the counterclaimants that any of these earlier registered proprietors
495 from whom the plaintiffs obtained titles got registered on the suit land through fraud, it follows that the plaintiffs who are merely transferees duly qualify as bonafide purchasers for value against whom no fraud is attributable.

Even assuming that the listed persons had been registered through
500 fraud, which is not the case, for the counterclaimants to impeach the titles of the current registered proprietors they had to demonstrate that the fraud of those listed persons was brought home to the present registered proprietors. It had to be shown that the current registered owners or their agents have either
505 participated in the fraud or known about it and taken advantage of it. The mere fact that they might have found out the fraud had they been more vigilant and made further inquiries which they omitted to make does not itself prove fraud on their part.

DW4 Mr. Bogere Robert the Assistant Administrator General
510 confirmed that he did not have any evidence to contradict the claim

of the counterdefendants of having bought the suit land as bonafide purchasers for value without notice of any fraud. He categorically denied any knowledge of any fraud having been committed on the suit land for a period spurning over 22 years the office of the
515 Administrator General was administering the estate.

On the authority of *David Sejjaka Nalima vs. Rebecca Musoke case* (supra) it is clear enough that the plaintiffs' titles cannot be impeached in the circumstances of this case. It has not been proved; let alone beyond mere balance of probabilities that they
520 knew of the fraud or participated in it. Accordingly, the fraud of the plaintiffs' predecessors in title if any; is not attributable to them either directly or by necessary implication at the time of their registration. This renders all the plaintiffs bonafide purchasers for value without notice of fraud.

525 It was argued by counsel for the defendants that except for only the plaintiffs who testified, the rest not proved their case. With due respect, the position of the law under Section 133 of the Evidence Act Cap 6 is quite different. It provides as follows;

"Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact."

The fact in issue sought to be proved in the instant case is whether the plaintiffs are bonafide purchasers for value without notice. This burden was duly discharged on balance of probabilities by 535 witnesses who testified for the plaintiffs. On the other hand, the burden to prove fraud beyond mere balance of probabilities against the counterdefendants lay on the counterclaimants. They were required to discharge that burden even against the plaintiffs who did not testify. It was not discharged. This renders the argument of 540 counsel for the defendants devoid of merit. *Issue No.1* is answered in the affirmative.

Issue No.2: Whether the certificate of title known as Mailo Register Volume 152 Folio 12 is valid and legal.

This issue arises solely from the counterclaim. The 545 counterclaimants primarily contend that late Daudi Kasimbazi is the rightful owner and registered proprietor of land described as and comprised in MRV 152 Folio 2 F.C 15230 also described as Busiro Block 453 and part of Busiro Block 452 under F.C 15229

550 land at Ntabo and Ntende respectively. Further, that the title for the
land as described is valid and intact and has never been
subdivided. That they have never applied to have a conversion of
the title from the old system to the new system of Blocks and Plots.

The 1st defendant, Gertrude Nakiyimba (DW1) exhibited in court as
555 *Exhibit D1* a certificate of title for MRV 152 Folio 12. She stated that
the title has all along been kept by one Sekiboobo. Counsel for the
counterclaimants submitted that no evidence exists to show that
the late Daudi Kasimbazi, who died on 11/08/1959, made an
application to bring his land hitherto registered under the
560 Registration of Titles Ordinance, 1908 under the RTA as a result of
which he could have been registered as proprietor for Busiro Block
453 Plot 5 in February 1995.

Counsel cited Section 29 RTA which provides as follows;

565 ***“Any person in whose name any land is registered under
the Registration of Land Titles Ordinance, 1908, may
make an application in the form in the second schedule
to this Act to Registrar to bring that land under the Act”.***

Counsel further submitted the above requirements and the
procedure for bringing land under the RTA as set out under Section

570 30(supra), which is mandatory, were not followed. That the result is
that MRV 152 Folio 12, in the names of the late Daudi Kasimbazi is
valid and legal since it was never cancelled.

Counsel disputed the evidence of PW8, Bamwite Emmanuel, the
Senior Registrar of Titles that the plaintiffs were lawfully registered
575 as proprietors on the suit land. Counsel argued that the action of
the Registrar of Titles registering the plaintiffs as proprietors was
illegal, and that on the authority of ***Makula International vs. His
Eminence Cardinal Nsubuga (1982) HCB 11***, an illegality once
brought to the attention of court overrides all questions of pleadings
580 including any admissions made thereon.

To resolve this particular issue, regard must be had to the evidence
adduced in respect to conversion of titled land from MRV to Block
and Plot system. PW8 Bamwite Emmanuel, a Senior Registrar of
Titles, who appeared on behalf of the Commissioner for Land
585 Registration, testified that MRV 152 Folio 12 was on 07/02/1962
converted to Busiro Block 453. That upon conversion the MRV was
automatically cancelled. PW8 clarified that the title known as MRV
152 Folio 12 is invalid as it ceased to exist in 1962.

The evidence of PW8 finds credence in *Exhibit P16*, a letter dated 06/05/2014, authored by the Commissioner for Land Registration, who is the Chief Custodian of titles in the country. In it the issue pertaining to MRV 152 Folio 12 is clarified as follows;

"The title known as Mailo Register Volume 152 Folio 12 was converted to Busiro Block 453 Pot 5 on 7th February 1962. At that point in time, the MRV title became a closed Register and no further entries could be entered thereon.

Closing of that Register is provided for under Section 32 of the Registration of Titles Act." [Underlining mine for emphasis].

The letter also states that on 12/10/1998, the Administrator General was entered on the title Busiro Block 453 Plot 5 as the Administrator of the estate of the Late Daudi Kasimbazi vide *High Court Administration Cause No. 408 of 1005*, and that there are various subdivisions on the particular land.

Basing on the letter, PW8 stated that upon conversion, the MRV did not remain as a valid title and no entries could be entered thereon.

He furnished in court *Exhibit P 41* a certified scanned copy of a White Page, which also shows that the Administrator General was

entered onto the Title (Plot 5) on 12/10/ 1998 vide *Instrument No.*
KLA 199451.

610 Clearly, therefore, under Section 32 RTA, the title described and known as MRV 152, Folio 12 legally ceased to exist. It cannot be overemphasized that when a title is none existent, it cannot by any means be a valid title. Simply put, the MRV Register was closed and as such no entries can be made thereupon.

615 Regarding the contention by counterclaimants that MRV 152 Folio 12 is still intact and has never been subdivided, that too is unsustainable. Once a title ceases to exist, the issue whether it is intact or not does not arise. The evidence of DW4 Bogere the Assistant Administrator General removes any doubts on the issue.

620 He clarified that by the time the Administrator took over the estate, the same had already been distributed to the various beneficiaries. DW4, however, emphasized that no distribution was made to Gertrude Nakiyimba, the 1st defendant since she was not a beneficiary by the Will. DW4 further emphasized that the
625 Administrator General dealt in Block 453 Plot 5, which happens to be the current Plot 32 registered in the names of George Muwanga the 3rd plaintiff.

Section 38 (1)RTA to which reference was made by counsel on both sides, provides for closing of the 1908 register as follows;

“When land has been brought under this Act in accordance with section 30 or 31, the register kept under the Registration of Land Titles Ordinance, 1908, shall be closed so far as concerns that land, and there shall be no further registration in respect of the land in that register.” [Emphasis added].

What became of any registered land under a closed register is also provided for under sub section (2) thereof as follows;

“Land shall be deemed to have been brought under this Act as from the date on which the certificate of title with respect to the land shall have been signed by the registrar.”

The general power to convert titles is provided for and vested in the Registrar under sub section (4) (supra) and as follows;

“Whenever it shall appear expedient to the registrar, he or she may cancel the certificate of title registered in the Register Book and may register a certificate of title in any of the forms prescribed under this Act in lieu of that

***certificate, but the registrar shall not issue any such new
certificate until the duplicate of the certificate cancelled
under this subsection is in his or her hands."***

The net effect of these legal provisions is that *Exhibit D1*; the title known as MRV 152, Folio 12, is not a legal and valid certificate upon which any transaction can be done. *Issue No.2* is answered in the negative.

655 In light of the fact that the claim of the counterclaimants in their counterclaim was solely premised on their erroneous view that MRV 152, Folio 12 is valid and still intact and has never been subdivided, it follows logically that the particulars of trespass in the counterclaim which are similarly premised on the like erroneous
660 view cannot stand. The net effect is that the counterclaim fails in its entirety and it is dismissed with costs to the plaintiffs.

Issue No.3: Whether the actions of the Uganda Police Land Protection Unit are in excess of its powers, illegal and arbitrary.

665 In their pleadings and evidence, the plaintiffs contend that the Land Protection unit of the Police constituted itself as a court of law in the guise of conducting investigations. That they then summoned

meetings at which they made pronouncements regarding ownership of the suit land, which are contrary with the Registration of Titles Act (supra) and in in excess of their powers and are thus illegal.

The plaintiffs relied on letter dated 25/04/2014 from the Inspector General of Police (IGP) to the Commandant, Land Protection Unit. The letter makes reference to a "ruling" that the titles procured by members of the Tende Land Owners Association were fraudulent.

675 That the late AIGP Andrew Felix Kaweesi also told them that their titles were forgeries. The plaintiffs contend that it was not the mandate of the Police to declare that a land title was fraudulently acquired.

Joint counsel for the plaintiffs submitted that Police is a creature of the Constitution whose functions include to protect life and property, preserve law and order, prevent and detect crime; and to cooperate with the civilian authority and other security organs established by the Constitution and with the population generally. Counsel argued that neither of these duties gives Police the

685 mandate and authority to determine proprietorship of land.

The 4th defendant who was sued because of the actions of the Police only filed a defence generally denying the allegations and claims by

the plaintiffs. The 4th defendant excluded itself from the jurisdiction
680 of court by not appearing. This was in spite of being duly served
with several hearing notices. Given that no evidence was adduced to
buttress the 4th defendant's averments, the allegations leveled
against the Uganda Police Force and its specific officers remain
uncontroverted and taken as true. In the result, the prayer is
695 granted for a declaration that the actions of the Uganda Police Land
Protection Unit are excess of its powers, illegal and arbitrary.

***Issue No. 4: Whether the defendants trespassed on the suit
land.***

In ***Justine E.M.N. Lutaaya vs. Stirling Civil Engineering***
700 ***Company Civil Appeal No. 11 of 2002 (SC)*** it was held that;

***“...Trespass to land occurs when a person makes an
unauthorised entry upon land, and thereby interferes, or
portends to interfere, with another person's lawful
possession of that land. Needless to say, the tort of
705 trespass to land is committed, not against the land, but
against the person who is in actual or constructive
possession of the land. At common law, the cardinal rule***

is that only a person in possession of the land has capacity to sue in trespass..."

710 It is also settled that trespass is actionable *per se* without proof of damage, but where damage has been occasioned, the plaintiff is entitled to the award of the damages as would put him or her in the same position he or she would have been prior to the damage. See: ***Watson vs. Murrey & Co. (1955) 1 ALL ER 411.***

715 To succeed in an action in a tort of trespass, the plaintiffs had to prove that they are in lawful possession of the land, the defendants entered the land or interfered or portended to interfere with the plaintiff's possession thereof, and the defendant² did not have any lawful justification for doing so. Once these are proved, an action in
720 trespass succeeds and damages or such other appropriate remedies follow as a consequence.

The evidence on record shows that the plaintiffs each have title to their respective plots of land. The testimony led for the plaintiffs shows that some had either developed it or taken possession or
725 both. In particular PW1 Geoffrey Kitakule, PW2 Willington Nabwana, PW3 Evans Atwiine, and PW5 George Muwanga adduced evidence of

how the defendants, on numerous occasions, without the plaintiffs' consent, have entered onto their land. The said witnesses listed the acts of trespass and damage committed by the defendants to the plaintiffs' property, which include excavating of sand and stones, cutting down trees and fences, destroying crops and threatening violence against the plaintiffs, among others.

In particular, the 1st plaintiff pointed out a specific incident in late 2013 and early of 2014, when their land was invaded. He stated that the 2nd defendant, Princess Bwanga Bwamirembe, along with the Police personnel summoned a mob of stick wielding youths who invaded the suit land and destroyed property and crops, and dug sand. They were summoned to Kibuli Police Land Protection Unit and it is when the plaintiffs got to learn that the 1st, 2nd and 3rd defendants claimed ownership of the suit land.

The 6th plaintiff Ms. Evans Atwiine testified that with her husband they enjoyed quiet possession until early 2014 when she got information from the 1st plaintiff that their land had been invaded. She verified the information with her guards stationed at her plots of land. They informed her that the 1st, 2nd and 3rd defendants were laying claim to the land.

PW6, Rogers Kirkby, the MD of M/s. Turaco Limited, the 18th plaintiffs, also confirmed the acts of trespass to their land by the defendants and their agents. That in 2014, while on the suit land, a mob wielding sticks abused and threatened him. PW4, Musinguzi Garuga, the Director of M/s. Incafex Limited, the 19th plaintiff, similarly narrated of the invasion of their land by the defendants and their agents. Similarly, PW2, Willington Nabwana, the 5th plaintiff testified that his gate was stolen by the same persons.

The defendants on the other hand insisted that they were not trespassers but were on the land as beneficiaries of the estate of the late Daudi Kasimbazi. They maintained that they were in occupation and using that land in that capacity and so they cannot be called trespassers. That in any case they were in possession of the original land title which they knew and believed to be valid.

Counsel for the 1st – 3rd defendants in their submissions faulted the 1st plaintiff for having refused a resurvey to ascertain the extent of land and to determine whether the defendants trespassed on his land. That the 6th plaintiff also refused a resurvey and as such the two cannot claim that their land was trespassed upon.

Counsel for the 1st – 3rd defendants also faulted the 5th plaintiff for having failed to mention through whom he lost his gate and barbed wire. That the 5th plaintiff could not tell whether the 1st or 3rd defendants ever came to his land as he said he was only informed
770 by his workers which is hearsay evidence that should not be relied upon.

Counsel also attacked the evidence of PW4 Musinguzi Garuga as speculative as he himself did not see the 1st and 2nd defendants but was told by his manager and therefore the defendants could not be
775 held responsible. That the same applies to the 2nd plaintiff, Muwanga George, who also did not see the 1st and 3rd defendants. Further, that from the evidence of PW7 although sand could have been ferried from the land; they were not certain who did it.

After carefully evaluating the evidence as a whole on this issue, it is
780 clear enough that the 1st – 3rd defendants committed the acts and/or were privy to the acts of trespass complained of on the suit land. By their own admission, the 1st -3rd defendants conceded that on numerous occasions they entered onto the suit land. Their justification for their actions is that the land belongs to the late

785 Daudi Kasimbazi and that they are beneficiaries therein and or that
it has sites for the cultural heritage of the Kingdom of Buganda.

The 1st defendant Ms. Gertrude Nakiyimba (DW1) admitted to
having entered unto the suit land and even slept there for four
continuous days under the watch and protection of the Police and
790 army men provided by the 2nd defendant. She conceded having
caused the excavation of stones and sand thereon to earn some
money.

The 2nd defendant Ms. Faridah (DW3) Namirembe Namusisi *alias*
Princess Bwanga Bwamirembe, also admitted entering the suit land
795 on a number of occasions accompanied by army personnel. Her
justification for this is that she is the person charged with the
oversight of the sites of the cultural heritage of the Kingdom of
Buganda. The same justification features prominently in the
submissions of her counsel. She however concedes that she has no
800 interest or claim of right in the suit land.

It is noted that in all the instances above, the plaintiffs as the
registered owners of the suit land had not given their consent or
authorization to the defendants. In ***Sheik Mohammed Lubowa vs.***
Kitara Enterprises Ltd, HCCA No.4 of 1988, it was held that

805 trespass to land is constituted whereby entry onto the land by the
defendant is without the consent of the owner.

Given the evidence adduced by the plaintiffs and in view of the
admissions made by both the 1st and 2nd defendants, each of the
defendants trespassed onto the suit land. That being the case, the
810 principle in ***Justine E.M.N. Lutaaya vs. Stirling Civil
Engineering Company*** case (supra) applies *mutatis mutandis* that
trespass is actionable *per se* without proof of damage, but since
damage was occasioned in this case the plaintiffs are entitled to the
award of the damage such as will put them in the same position
815 they would have been in prior to the trespass. *Issue No.3* is
answered in the affirmative.

***Issue No. 5: Whether the plaintiffs are entitled to the remedies
prayed for.***

Having found in favour of the plaintiffs, they are entitled to the
820 remedies sought. They prayed for the award of special damages to
the tune of Shs.169, 000,000= . This was particularly pleaded in
respect to the loss they allege to have incurred on their property.
They contend that the defendants on numerous occasions without
their consent entered onto their land and caused damage to their

property, such as, excavating of sand and stones, cutting down
825 trees and fences, destroying crops and threatening violence against
the plaintiffs and thus they suffered loss from the defendants'
actions. Indeed this court under issue No.4 above has found the
defendants liable in trespass based on the plaintiffs' evidence and
admissions of the 1st and 2nd defendants.

830 While the plaintiffs adduced both oral and documentary evidence to
justify the award of special damages, there was no evidence of the
defendants specifically rebutting the prayer for special damages.
Counsel for the 1st, 2nd and 3rd defendants simply made general
submissions that the plaintiffs are not entitled to the remedies
835 prayed for.

The position of the law is generally that special damages must be
particularly pleaded and strictly proved. However, as was held in
GAPCO (U) Ltd vs. Transporters Ltd (2009) HCB 6 special
damages need to always be proved by documentary evidence. This
840 position was affirmed in **Shell (U) Ltd vs. Achillis Mukiibi CACA**
No. 69 of 2004.

In this case, the special damages though not strictly proved; given
the pleaded particulars and the oral testimonies of the plaintiffs

845 demonstrating the loss occasioned and in light of the admissions of
the 1st and 2nd defendants, the principle in *Shell (U) Ltd vs.*
Achillis Mukitibi (supra) applies and the amount of Shs.169,
000,000= is awarded to the plaintiffs as special damages.

The plaintiffs prayed for general damages of Shs. 500,000,000=.

850 Citing *Halsbury's Laws of England Vol.12, 4th Edition paragraph*
1202, joint counsel for the plaintiffs submitted that damages mean
the pecuniary compensation given by the process of law to a person
for the actionable wrong that has been done to him or her. They
argued that the plaintiffs have suffered loss and inconveniences
855 caused by the defendants' continuous actions of trespass onto their
land and as a result deserve to be compensated for that loss.

On the other hand, joint counsel for the defendants opposed the
prayer for general damages. They submitted that the plaintiffs are
not entitled to any. They argued that in almost all the plaintiffs'
860 evidence, they testified that nothing was destroyed on their land.
That for those who claim to have lost, at least none stated that it
was due to the 1st and 2nd defendants' actions. Counsel opined that
the entire plaintiffs' claim is unfounded and should be dismissed
with costs.

The settled position is that general damages are compensatory in nature for the loss suffered and the inconvenience caused to the aggrieved party so that he/she is put back in the same position as he/she would have been in.

In the instant case, PW1 testified that in early 2014, the 2nd defendant in the company of Uganda Police illegally invaded the plaintiffs land. This was corroborated by the evidence of PW2, PW3 and PW4 and PW5.

In the case of ***Fredrick Zaabwe vs. Orient Bank Ltd SCCA No. 4 of 2007***, a respondent had wrongly grabbed the appellant's house which was his home and office. Court found this as unjustifiable, illegal and oppressive and awarded the appellant Shs. 200,000,000= as general damages. In light of the circumstances of this case, court, finds that the plaintiffs are entitled to the award of general damages and awards Shs. 200,000,000= as fair and adequate recompense to the plaintiffs.

On the prayer for costs, Section 27(2) of the Civil Procedure Act Cap 71 is to the effect that costs shall be in the discretion of the court but shall follow the event unless for good reason court directs otherwise. The plaintiffs having succeeded in their claim are

385 awarded costs of the suit. In a nutshell, it is declared and ordered
as follows;

1. *Each of the plaintiffs is the duly registered proprietor of his or her respective plot of land as indicated in Annex A to the plaint, and also as indicated against his or her name.*
2. *Each of the plaintiffs is a bonafide purchaser for value without notice in respect of each of the plots of land as indicated against his or her names in Annexure A (supra) and the plaintiffs' respective titles are valid and cannot be impeached.*
3. *The actions of the officers of the Uganda Police Force, Land Protection Unit, who are servants and /or agents of the 4th defendant, to the extent that such actions interfere with the rights of the plaintiffs as registered proprietors to exclusive possession, ownership, and peaceful quiet enjoyment of their respective plots of land, are in excess of the powers of the Police, are illegal and arbitrary.*

4. *No finding or investigative report of the Uganda Police Force, Land Protection Unit, on the ownership of land registered under the Registration of Title Act Cap. 230 can be binding against the plaintiffs as registered proprietors.*

5. *The 1st, 2nd and 3rd defendants are ordered to deliver up to the Commissioner for Land Registration for cancellation the duplicate certificate of title described as Busiro MRV 152 Folio 12 within 21 days from the date of this judgment failure of which the Commissioner for Land Registration is directed to recall and cancel the said duplicate of certificate title.*

6. *A permanent in junction doth issue restraining the 1st, 2nd and 3rd and 4th defendants, their servants, agents (directly or indirectly) from entering upon any part of the plaintiffs' land, trespassing or performing any activity thereon, including but not limited to mining of sand, quarrying of stones, planting of any crops or agricultural activity, felling of trees, fishing, or any such activity that may constitute an interference with the*

plaintiffs' right of ownership, exclusive possession, quiet and peaceful enjoyment.


925 7. *A permanent injunction doth issue restraining the officers of the Uganda Police Force, Land Protection Unit, the Uganda Peoples' Defence Forces, all servants and or agents of the 4th defendant, from interfering with the plaintiffs' right of ownership, exclusive possession and*
930 *peaceful quiet enjoyment of their respective plots of land.*

8. *A permanent injunction doth issue restraining all the said servants/agents of the 4th defendant from acting as a court adjudicating and thereby making any final and*
935 *binding pronouncements, orders, or findings on the ownership of the suit land or making any final binding determination on any matter concerning the ownership of suit land and from issuing threats of eviction against the plaintiffs.*

940 9. *The plaintiffs are awarded Shs.169, 000,000= as special damages, and Shs. 200,000,000= as general damages.*

10. **Both amounts in (9) above shall attract interest at a rate of 8% per annum from the date of this judgment until payment in full.**

945 11. **The plaintiffs are awarded costs of the suit and costs of the counterclaim.**


BASHAIJA K. ANDREW
JUDGE
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26/12/2017

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Mr. William Kasozi, also holding brief for Mr. Peter Walubiri and Mr.

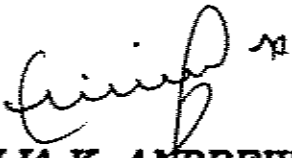
Magezi, all counsel for the plaintiffs present.

1st, 13th, and 19th plaintiffs present.

955 1st and 3rd defendants/counterclaimants present.

Mr. Godfrey Tumwikirize Court Clerk present.

Judgment read in open Court.


BASHAIJA K. ANDREW
JUDGE
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26/12/2017

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