

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO. 385 OF 2008**

**1. LAWRENCE NABAMBA  
2. JOSEPH MULIKA .....PLAINTIFFS  
3. IMELDA NANTUME KIBUUKA AS  
ADMINISTRATORS OF THE ESTATE  
OF THE LATE JOHN KIBUUKA)**

**VERSUS**

**1. HERBERT SEMAKULA MUSOKE (AS ADMINISTRATORS OF THE  
2. NANTANDWE JUSTINE KIZITO ESTATE OF THE LATE E. NAGADYA)  
3. FLORENCE MIREMBE NAGADYA  
4. ROBERT SERUWAGI.....DEFENDANTS  
5. HELLEN NASSUNA SERUWAGI  
6. ANKWASA BRIAN  
7. COMMISSIONER LAND REGISTRATION**

**BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI**

**JUDGEMENT**

This dispute arises out of a 3 acre piece of land. The Plaintiffs who are administrators of the estate of one John Kibuuka claim that the said 3 acres of land belong to the estate they administer.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are administrators of the estate of E-Nagadya who was the Registered Proprietor. The late Kibuuka John owned a kibaja interest in the said Nagadya's land. The rest of the

Defendants are sued for either having participated in the wrongful alienation of the suit land or having unlawfully purchased part thereof.

The details of the claims and the orders sought are laid out in the Plaintiff. The first 2 Defendants deny the claim and state that the property was willingly surveyed off and the same was sold to the 4<sup>th</sup> and 5<sup>th</sup> Defendants. The 3<sup>rd</sup> Defendant claims she was a beneficiary of the property of late Nagadya E. The 4<sup>th</sup> and 5<sup>th</sup> Defendants claim they bought their part from one Charles Mureeba as bonafide purchasers without notice of any defect in the title and accordingly acquired good Title to their portions of the suit land.

A Joint Scheduling Memorandum was filed and adopted by the court on 26/5/2014. Therein the parties agreed on the following facts:

- 1) That the late John Kibuuka had a kibanja on land formerly comprised in Block 192 Plot 52 Kyadondo on land owned and registered in the names of E. Nagadya.
- 2) In 2008, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were granted letters of Administration to the estate of the late E Nagadya and subdivided the land into 8 Plots namely 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1165 and 1166.
- 3) The 1<sup>st</sup> Defendants registered Plots 1158 and 1160 into his names.
- 4) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants registered Plot 1162 into the 3<sup>rd</sup> Defendants names.

- 5) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants registered Plots 1157, 1159 and 1163 into the names of John Kibuuka.
- 6) In 2008, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant sold Plot 1161 to one Charles Mureeba who also sold it to the 4<sup>th</sup> and 5<sup>th</sup> Defendants – now registered as proprietors.
- 7) In 2011, the 1<sup>st</sup> Defendant sold to the 6<sup>th</sup> Defendant land comprised in Plots 1165 and 1166 who is now registered as owner.

The Issues framed for adjudication were:

- 1) Whether the late John Kibuuka's Kibanja measured (3) acres.
- 2) Whether the Late John Kibuuka purchased the mailo interest in the said acres of land.
- 3) Whether the subsequent sub-divisions and transfers by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were lawful.
- 4) Whether the Defendants 1-6's transactions on the suit land were fraudulent.
- 5) Whether the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants are bonafide purchasers for value without Notice.
- 6) Whether the Plaintiffs are entitled to the remedies sought.

At the trial, the Plaintiffs' case was based on the evidence of one witness – Lawrence Nabamba, while the Defendants called a total of 3 witnesses.

## **Resolutions of the issues**

### **Issue No. 1**

#### **Whether the late John Kibuuka's Kibanja measured (3) acres.**

In paragraph 6(a) of the amended plaint, the Plaintiff claims the late John Kibuuka was holder of and in possession of customary tenure kibanja of 3 acres comprised in Block 192 plot 57 belonging to E Nagadya. That the 1<sup>st</sup> Defendant sold the mailo interest of the 3 acres to John Kibuuka at shs. 80,000/=.

All the statements of Defence by the Defendants have no specific denial as regards the size of the Kibanja although the 1<sup>st</sup> and 2<sup>nd</sup> Defendants admit that the late Kibuuka had a kibanja on E. Nagadya's land – Block 192 Plot 57.

#### **The evidence.**

In the evidence of Lawrence Nabbamba, the only witness for the Plaintiffs, the witness said the Kibanja was measuring approximately 3 acres. On cross-examination he stated that the land was 3 acres but John Kibuuka gave back one (1) acre to Herbert Musoke since it was the area containing burial grounds for Endiga clan. He also insisted that the kibanja was approximately 3 acres for which they used to pay Busuulu.

The other piece of evidence is PEX3- a sale agreement between Herbert Musoke Ssalongo and John Kibuka – for sale of an

unspecified size of land although it states it was for the area occupied by Salabwa and Nabaamba.

In the submissions for the Plaintiff, reference is made to sketch a map made when both parties visited the locus in quo. It was not exhibited although both parties decided to rely on it in lieu of visit to locus by the court. The said sketch map only indicates the occupants of the suit land and the 1 acre that was allegedly surrendered by John Kibuuka.

The submissions for Defendant 1 and 2 point to the fact that there was no concrete evidence that the suit land measured 3 acres. It is my conclusion therefore that the available evidence on record does not confirm or determine the specific acreage of the suit land.

## **Issue No. 2**

**Whether the late John Kibuuka purchased the mailo interest in the said 3 acres of land.**

The allegations that the late John Kibuuka purchased the Mailo interest are in paragraph 6 (c) (d) and (e) of the amended plaint. It is alleged the late John Kibuuka by an agreement of 19/10/1982, the 1<sup>st</sup> Defendant representing himself as owner of the land sold to the late Kibuuka the mailo interest at Shs. 80,000/=.

The late John Kibuuka fully complied with the terms of the sale agreement, but the 1<sup>st</sup> Defendant refused to take the necessary steps to enable him obtain the Title for the 3 acres. In 2006, John Kibuuka

instituted a suit against the 1<sup>st</sup> Defendant in Kiira Urban Executive Committee for recovery of the said land.

The above allegations are denied by the 1<sup>st</sup> Defendant in paragraph 5 of the statement of Defence. In the same paragraph, the 1<sup>st</sup> Defendant avers that the Plaintiff had and still occupies his entire Kibanja. The allegations are also denied by Defendant No. 2.

### **The Evidence**

The Evidence of PW1 Nabbamba is that his father John Kibuuka bought the suit land (Kibanja) around 1962 from Eron Nagadya. He was not there when the agreement of sale was made. When she died the land was passed on to her Nephew Herbert Musoke who continued collecting ground rent.

That around 1982, the said Herbert Musoke wrote to Jogn Kibuuka to convert his Kibanja into mailo interest. (letter not exhibited). The witness stated that Herbert Musoke acknowledged the money he received from John Kibuuka on a document which was witnessed by one Sebulu and Ssalongo Senkali (both deceased).

Court admitted the document as PEXH 3 (although the witness was not the author). The witness also testified that John Kibuuka wrote to Herbert Semakula demanding for the Title. A letter dated 2/5/1986 was admitted as PEX4. When he did not comply, John Musoke took the matter to the LCIII court of Kiira which decided the

matter against the 1<sup>st</sup> Defendant. The ruling of the LCIII court was admitted as PEX 5.

On cross examination the witness stated that there remained a balance of Sh. 10,000/= on the purchase price. Regarding the letter demanding for the Title by John Kibuuka, the witness claimed he only got a copy of the letter in 2000 from his father who had by then gone blind. He did not witness the same being written.

He went ahead to identify the sale agreement by way of his father's signature. It is submitted that the 1<sup>st</sup> Defendant is bound by the agreement and there is no way he can deny it.

For the 1<sup>st</sup> Defendant, it is submitted that he was not the administrator of the estate of Nagadya at the time since he had not obtained letters of administration. The case of **Steven Muteragaho Vs Esther Allen Natocho C/A 79/2012** was cited. Therein it was held that without letters of administration, one could not legitimately deal in the property and this contravened **Section 191** of the Secession Act.

In the instant case, the agreement PEXH 3 is to the effect that the land that was sold is the one where the son of John Kibuuka was occupying. There is evidence of demand by the late Kibuuka that the 1<sup>st</sup> Defendant should hand over the Title to him. There is uncertainty as to whether such a letter/demand was ever communicated to the

1<sup>st</sup> Defendant. This comes out of the cross examination of PW1 who from his own testimony appears to be in possession of the original letter much as he says it is a copy.

He did not witness his father write it and he cannot for sure confirm that the letter was ever served on the 1<sup>st</sup> Defendant. It is also submitted for the 1<sup>st</sup> Defendant that the Judgement of the LCIII court that the Plaintiffs rely upon was a nullity as it was not signed by the fully constituted Executive Committee under **Section 4 (i) of the Executive Committees (Judicial Powers) Act.**

The evidence on record is that at the time Herbert Musoke purported to sell the suit property, he was not authorised to do so as he had no letters of Administration for the estate of the late E. Nagadya (Ref: **Steven Mulerangalo Vs Esther Allen (Supra)**). Since he is sued in his capacity as Administrator of the estate. The twist to this matter is that there is in existence a Judgement of the LC 3 court of Kira – which said Judgment is admitted by both parties. It is questionable why the Plaintiffs then chose to institute this suit rather than seek to enforce the said Judgement. I do not agree with the 1<sup>st</sup> Defendant's arguments that the Judgment is a nullity.

It was admitted in court as an official record. It has not been set aside by an Appellate court or on Revision. This in my conclusion would then make the instant case Res Judicata under the **Limitation Act.**



It is my conclusion on this issue that there could have been no sale between John Kibuuka and Herbert Musoke, as the said Herbert Musoke had no capacity to sell for lack of Letters of Administration or Probate. Further that the instant suit is incompetent, there being an existing Judgment over the same subject matter and between the same parties or successors in Title.

I would dismiss the suit on those 2 grounds alone.

### **Issue 3, 4 and 5**

- 3. Whether the subsequent subdivisions and transfers by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were lawful**
- 4. Whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> Defendants transaction on the suit land were fraudulent**
- 5. Whether the 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> Defendants are bonafide purchasers for value washout Notice.**

It is submitted for the Plaintiffs that the Defendant's have at all material times been aware that the suit land was occupied by the plaintiffs. That the 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> defendants purchased fully aware of this fact. **Nabanoba Desiranta & Anor Vs Kayiwa Joseph HCCS.496/2005** was cited. **Kampala District Land Board Vs N11-CC SCCA 2/2004** was also cited to the effect that registration of the suit land in disregard of the occupants unregistered interest amounts to

fraud. It is also submitted that the 3<sup>rd</sup> defendant failed to demonstrate that she was a beneficiary of the estate of Nagadya.

It is submitted for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that according to the evidence of PW1, the subdivisions were conducted with the full knowledge of John Kibuuka, who was still alive.

According to the evidence of DW1, the transfer forms were even signed by John Kibuuka. By then the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had obtained letters of Administration and were registered proprietors of the suit property.

I have also looked at the plaint which alleges fraud on the part of Defendants NO.1 and 2. Apart from the plaint, there is no evidence adduced by PW1 the sole witness for the plaintiff establishing fraud on the part of the said Defendants. The evidence on record shows that John Kibuuka the Kibanja holder had full knowledge of the subdivisions. This is according to the evidence of DW1 and even PW1. It is trite law that fraud must be strictly proved and that the standard required is very high. Secondly that the transferees must be shown to be guilty of such fraud. **Ref: David Sejjaka Vs Rebecca Musoke CA 12/1985.**

It is my conclusion on the above issues that this matter is rich in submissions on the law but lacking on evidence to support the submissions. The plaintiffs have failed to prove the fraud alleged or

that the 4, 5 and 6<sup>th</sup> Defendants are not bonafide purchasers for value without Notice.

### **Issue 6**

It follows that the Plaintiffs are not entitled to the remedies they seek in this suit. I accordingly find no merits in this suit and it is dismissed accordingly with costs. It is ordered that the Plaintiffs should receive the Certificate of Title that belonged to John Kibuuka as a result of the subdivisions that took place with his full knowledge.

It is so ordered.

**GODFREY NAMUNDI**  
**JUDGE**  
**10/04/2017**