

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**AT MPIOGI**

**CIVIL APPEAL NO. 004 OF 2016**

*(Arising from Mpigi Chief Magistrate's Court Civil suit No. 108 of 2008)*

*(Formerly Nakawa HCCS NO. 104 OF 2002)*

1. HARUNA MUKIIBI
2. UMAR KATAMBA
3. MOHAMED TEBUSWEKE:::::::::::::::::::::::::APPELLANTS

10

VERSUS

UGANDA MOSLEM SUPREME COUNCIL:::::::::::::::::RESPONDENT

**BEFORE: HON. JUSTICE WILSON MASALU MUSENE**

**JUDGMENT**

The Appellants, **Haruna Mukiibi, Umar Katamba and Mohammed Tebusweke** being dissatisfied with the judgment of the Chief Magistrate Mpigi appealed to this court. The Respondent is Uganda Muslim Supreme Council.

20 The grounds of appeal were:-

- 1 The learned Trial chief magistrate erred in law and fact when she held that the suit land lawfully belongs to the respondent whose Title Deed had been cancelled by Commissioner land registration for fraud by concealment of appellants' prior customary tenancy on same land who are in physical occupation of the suit land.
- 2 The learned Trial Chief Magistrate erred in law and fact when she held that the respondent never fraudulently registered and acquired Title Deed for plot 13

Mawokota Block 40 at Bujuuko Mpigi (Exhibit P5), in total disregard of appellants' evidence of fraud adduced against Respondent on record.

3 The learned trial Chief Magistrate erred in law and fact when she heavily over relied and based her decision on oral evidence of PW3-Hajji Abubaker Ssebufu Magala without reasons, whose hearsay evidence was never corroborated at all.

4 The learned trial Chief Magistrate erred in law and fact when she failed to properly address her mind on strong defence evidence of DW4 (Nyonzima Vincent) and erroneously misconstrued it in favour of Respondent.

5 The Learned trial chief Magistrate erred in law and fact when she failed to decide  
10 from the evidence on record which of the two land titles in issue of the appellants of Plot 51 Mawokota Block 40 at Bujuuko Mpigi (Exhibit D5) and that of the Respondent of Plot 13 Mawokota Block 40 at Bujuuko Mpigi (Exhibit P5) was fraudulently procured a key factor for decision in the case before her.

6 The learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate, scrutinize and upraise the evidence on record hence hastily arriving at a wrong conclusion.

7 The Learned trial chief Magistrate erred in law and fact when she allowed the Respondents' submission that were based on issues not agreed upon at conference scheduling hence arriving at a wrong decision

20 8 The learned trial Chief Magistrate erred in law and fact when she failed or ignored to consider all written submissions of appellants on record especially on an illegality and arrived at a wrong conclusion.

The Appellants were represented by M/s Semuyaba, Iga and co. Advocates, while the Respondent was represented by M/s Ssekaana Associated Advocates and consultants.

Both sides filed written submissions. Before I go into detailed submissions, I wish to re-instate the Law as far as the duty of the first Appellate court is concerned. It is now settled law that as a first Appellate court, this Court has to re-evaluate the evidence in the lower Court and subject it to fresh and exhaustive scrutiny and draw its own inferences and conclusions. However, it has to bear in mind that it neither saw or heard witnesses testify, and due allowance has to be given in  
30 that respect. See **Banco Arabe Espanol vs Bank of Uganda, SCCA NO. 8 of 1998**.

Ground No. I

**The learned Trial chief magistrate erred in law and fact when she held that the suit land lawfully belongs to the respondent whose Title Deed had been cancelled by Commissioner land registration for fraud by concealment of appellants' prior customary tenancy on same land who are in physical occupation of the suit land.**

Counsel for the Appellants submitted that whereas **Haji Galiwango Mahmood (PW4) and Sheikh Muhamad Kibanga, Haji Musa Ssonko, and Hajj Abubaker Ssebuwufu Magala** purported to represent the **Uganda Muslim Supreme Council (U.M.S.C).**that they did not  
10 have the mandate or power of Attorney to represent U.M.S.C., and that there was no evidence to show that they were elected Muslim leaders. He challenged Hajji Galiwango Muhamood as a Muslim leader in Bujjuuko he therefore submitted that Hai Galiwango Muhamood had no locus standi, and that Uganda Muslim Supreme Council should have sued through an authorized representative.

Counsel for the appellant subtitled at length on the issue of locus standi, quoting over 10 cases and repeating that of **Auto Garage vs Motokov [1971] E.A 314** about cause of action.

Counsel for the Appellants then added that Haruna Mukiibi, Umar Katamba and Muhamud Tebusweke were born and raised on the land in dispute by their father who was a customary tenant. Counsel submitted that it was the father of Haji Asuman Mukiibi, who constructed the  
20 school and Mosque . he concluded that it was the customary tenancy of the Defendants over which Uganda Muslim supreme Council acquired their title Deed known as **Plot 13 Mawokota measuring 8.21 hectares issued on 28.1.1992** and marked exhibit DII in the lower court. Counsel for the appellant added that that **Title Mawokota Block 40 Plot 13 at Bujjuuko** was cancelled, by the commissioner for land registration as Uganda Muslim supreme Council did not disclose that there was a customary tenant with developments. Counsel also added that upon cancellation of Respondent's first certificate of title, the Respondent became a trespasser on the land in dispute up to date. He therefore prayed that issue No 1 be answered in the negative against the Respondent.

Counsel for the Respondent in reply submitted that the trial chief magistrate properly evaluated all the evidence on record after appreciating the History of the land in question, which was given to the Muslim Community in Uganda as way back as 1900. Counsel for the respondent referred to a letter dated 1939- **exhibit PI**, whereby the land in dispute was given to Muhamedans (Muslims).

He added that the Respondent, Uganda Muslim Supreme council acquired interest as a successor in title for all Muslim **property** in Uganda. Further submissions were that the evidence of PWI on pages 6-9 of the record of proceedings was clear as he was the former secretary general who was conversant with matters of Muslim land in Uganda.

- 10 Counsel added that the grandfather of the appellants (Kutta Kulimuki) was the first Imam who was not born in Bujuuko but came after the land was given to the Muslims by the Crown Government. Reference was also made to the testimony of hajji Ssebufu Magala. PW111, who confirmed that he was a cousin to the Appellants and that they are all grand children of Sulati Kutta Kulimuki. Counsel for the Respondent added that according to the testimony of Hajji Ssebufu Magala, he grew up on the land knowing that the same belonged to all Muslims (Muslim community) and that the land was never sub-divided to the beneficiaries of the late Kutta Kulimuki as it did not belong to them. Counsel for the Respondent also referred to the testimony of PWIV, whose father Hassan Mukasa was one of the founders of Bujuuko UMEA primary school and a mosque.

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He added that some of the documents under Exh P.2 include licence for Temporary occupation of land dated 6.6.1947, receipts for payment of dues dated 1961, Kabaka Government receipts dated 31/12/1961 and receipts for payment of UMEA dues dated 22.2.1963 and 4.9.1963.

Reference was also made to the letter dated 4<sup>th</sup> October, 1996 confirming that Bujuuko UMEA Primary School is a Government aided School under the Proprietorship of Uganda Muslim Supreme Council.

Counsel for the Respondent concluded that on the basis of the oral evidence on record, together with the documentary evidence, the trial Magistrate properly found and held that the suit land comprised in **Block 40 Plot 13** is owned by the Respondent for and on behalf of the Muslim community under its umbrella organization-Uganda Muslim supreme council.

I have carefully considered the submissions from both sides as far as ground one of appeal is concerned.

I have also studied the proceedings and Judgment of the lower court. My findings are the detailed submissions of counsel for the appellants about locus standi of the Respondent did not  
10 arise in the lower court and are therefore un called for. Secondly, those submissions are un called for because the dispute is not about who is the rightful person representing Uganda Muslim supreme Council, but rather who owns the land in dispute as between appellants and Respondent.

I shall refer to the evidence on record .

**PW1, Sheikh Muhama Kibanga** was a former Secretary General of the Plaintiff UMSC between 1994-1996 and gave a background of this land. He testified that Muslims (Muhamedans) were given 10 square miles of land within Buganda in the 12 counties of Buganda. That in every county in Buganda, Muslims got about 10-20 acres of land by the  
20 Crown Government to the Muslim Community in Uganda. The list of land is set out in Exh dated 13-1-1939. The land has a mosque and the school is owned by Uganda Muslim Education Association. PW1 as the secretary general was involved in processing of the Certificate of title.

When cross examined Sheikh Muhamad Kibanga stated that he was honourably retired from Uganda Muslim supreme council.

**PW11 Hajji Musa S Sonko** aged 80 years testified that he is a resident of Bujuuko and all his life time since childhood he had known this land to belong to the Muslims. On this land, there

is a mosque and school and he was among the people who started the school. He gave the history of different mosques which have been on this land from a mosque made of grass reeds, then tins and then one of mud and wattle. During the initial stages, the Imam/Mwalimu was Sulait Kutta Kulimuki Mukiibi (the Defendant's grandfather) who was not a born in the area (Bujuuko) but only came after the land was given to the Muslims by Crown government. he stated that, he knows the defendants' father Asuman Mukiibi as a farmer and later a businessman and he was an Assistant/Deputy Imam. He testified that the Imaam at the time was Sowedi Gyagenda and that Asuman Mukiibi was an uncle to Sowedi Gyagenda and all of them were working for the for Muslim Community. That during cross examination, he further  
10 stated that Kutta Kulimuki had two sons Asuman Mukiibi and Saad Katende. That Sowedi Gyagenda was not buried on this land and was returned to his ancestral land at Butambala.

**PW111 was Hajji Abubaker Ssebufu Magala** aged 70 years testified that he is a son of the late Saad Katende who was a brother to Asuman Kato Mukiibi (the Defendants' father). This witness confirmed that he was a cousin to the defendants and they are all grandchildren of sulait Kutta Kulimuki. He confirmed that his father Saad Katende used to call people for prayers (Muazin) at this mosque. He equally grew up on this land and he knows that this land belongs to all Muslims (Muslim Community). PW111 further testified that this land has never been sub-divided among all the beneficiaries of the late Kuttakulimuki because it did not belong to him. Their grandfather (Kuttakulimuki) and his sons Asuman Mukiibi and Saad  
20 katende were buried on this land but currently other members do not bury their relatives on this land. The school on the land belongs to Uganda Muslim Education Association (UMEA). he also confirmed that this land has never belonged to his family of Kuttakulimuki but the Muslim community at Bujuuko.

**PW4 Hajji Galiwango Mahmood** aged 54 a resident of Bujuuko, testified that he is a representative of Muslim of Bujuuko at Uganda Muslim supreme council and he is the Chairman of Muslims at the mosque. He testified that he has grown up on this land knowing this land to belong to the Muslims. His father Hassan Mukasa was one of the founders of the primary school (Bujuuko UMEA Primary school) and a Mosque. The documents in support of his evidence about ownership of the mosque and school were collectively tendered in court

as Exh P2. (includes letter, pay slips since 1960's) for the Appellants (Defendants in the lower court).

**DW1, Haruna Mukiibi** in his evidence in chief given in Court that he was 52 years of age and was born and raised on this suit land adding that his late father acquired the suit land in 1913 and consistently stayed on same land as customary tenant till his death.

**DW2 Sgt Katamba Umaru** gave his evidence in court on 12.2.2015 and said he was 44 years old and that he was born and raised on the suit land of his father who was a customary tenant on it and that he was born on suit land in 1970 and has ever since stayed on suit land to date.

**DW3 Tebuswekke Mohamed** gave his evidence in Court on 19.2.2015 and told court that he  
10 was born on suit land, raised and continues to stay on suit land, he added that he was born in 1959, he told court that his late father Hajj Asuman Mukiibi was a customary tenant on suit land.

My findings and holding as far as the testimonies on record are concerned is that the witnesses of the Respondent were consistent in the lower Court that the land in dispute from time immemorial, belongs to Uganda Muslim supreme council. The names could have changed over the years but the Principal ownership by Uganda Muslims or Muhamedans as the case may be is the same.

20 I found the evidence of PW4, Galiwango Muhammod very instructive and it was supported by other witnesses for the Respondent.

He testified that his father, Hassan Mukasa was one of the founders of the primary School (Bujuuko UMEA) and produced documents in the lower Court, in support of ownership of the mosque. PW4 also testified as to how they applied for a Certificate of title in the names of Uganda Muslim supreme council in 1993. He added that when the same was cancelled, investigations were carried and the title was re-instated a detailed letter **marked Exhibit PII**

by Sarah Kulata Basangwa, Commissioner, for land Registration, dated 11.2.2014 is reproduced here below to confirm the testimony of PW4 in the lower court.

**“Ministry of Lands, Housing  
and Urban Development  
P.O BOX 7096  
Kampala, Uganda**

***The Registration of titles Act (Cap ,230)  
And***

10

***The Land Act (Cap 227)***

***Lease hold Register volume 2672, Folio 3 Plot 13 Mawokota Block 40 at Bujuuko, Mpigi***

***Notice of intention to effect changes in the Register***

***TO: Mukiibi Haruna and Namakula Aisha Sarah  
Administrator and Administratrix of the estate of the late Hajj Asumani Kato  
C/O P.O BOX 10387  
Kampala***

20

***The office is in receipt of a complaint from Uganda Muslim supreme council to the effect that you unlawfully and fraudulently acquired a Certificate of title in respect of the above land which lawfully belong to the Uganda Muslim supreme council.***

***The complaints further state that the land had earlier been grabbed by your late father Hajji Asuman Mukiibi, who had even acquired a Certificate of title to the subject land. When Uganda Muslim supreme council complained, his title was subject to cancellation and the subdivision that created Plot 51 and 52 was cancelled and plot 13 reinstated, which entire plot belonged to Uganda Muslim supreme Council; to which they possess your certificate of title LRV 2672 Folio 3.***

30

***This office conducted an investigation into the complaint and confirmed from the survey and mapping Department that indeed the sub division of plot 13 that resulted into Plot 51, 52 and 53 was cancelled and thus Plot 13 reinstated. Therefore, by the time you obtained your title, there was no land available for the district land Board to allocate to you, since the sub division from which your title arises had been cancelled and the land reinstated to the complainants whose lease term is still running.***

***Hence, your title was merely superimposed on an existing title and since there cannot be double titling on land, your title is therefore subject to cancellation.***

40

***NOW THEREFORE pursuant to S. 91 of the Land Act, Cap 227 you are hereby given notice that I intend to have the Register rectified by cancelling your above mentioned Certificate as having been issued in error.***



***You should respond to this notice within 21 days from the date of service on you hereof and let me know if there are any objections to my proposed action. You are required to surrender back to this office the duplicate Certificate of title in your possession for cancellation.***

***You are also invited for a public hearing on the 4<sup>th</sup> March, 2014 at 8:30 a.m in my office where your objections, if any will be heard.***

***By copy of this notice, the complainants are required to attend the hearing with all their documents pertaining to the ownership of this land.***

10

***Dated this.....day of.....2014.***

***Sarah Kulata Basangwa  
Commissioner Land Registrar***

***c.c Uganda Muslim supreme Council  
C/O Ssekaana Associated Advocates & Consultants  
P.O BOX 70075  
Kampala”***

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And indeed the re-instated certificate of title is marked exhibit P5 , running 1<sup>st</sup> December, 1995 for 44 years. It is in respect of the land in dispute.

The other witnesses who impressed this Court and even the lower court is PW3, Sebufu Magala, a cousin of the appellants now, and also a grandson to late Kutta kulimuki. PW3 confirmed in the lower Court, contrary to what his cousins the appellants stated, that the land belonged to Uganda Muslim Supreme Council and they never shared the same as descendants of Kutta Kulimuki .

30 That evidence of PW3, Sebufu Magala therefore tore in pieces the testimonies of DW1, Haruna Mukiibi, DW2 Katamba Umar and DW3 Mohamed Tebusweke.

Furthermore, to Crown the evidence of Uganda Muslim Supreme council’s ownership of the land in dispute was the testimony of DW4 Vincent Niyonzima; a Registrar of titles. He stated on page 44 of the record of proceedings as follows:

***“On 11/11/1998 Uganda Muslim Supreme Council was Registered upon grant of afresh lease by the Uganda land commission. This followed amalgamation of Plot 51, 52 and 53 to re-instate the previous plot 13. According to the records, I have an area schedule to show how the three plots were amalgamated. Reinstatement was done by surveys and plot 13 re-instated.....”***

I find the above testimony in tandem with the letter of the commissioner for land Registration, Sarah Basangwa Kulata, which I have quoted in this Judgment.

- 10 In the circumstances, and in view of what I have outlined, I find and hold that the land in dispute was properly decreed for the Respondent; Uganda Muslim Supreme Council by the chief Magistrate.

Ground No one of appeal therefore fails.

Ground 2.

**The learned Trial Chief Magistrate erred in law and fact when she held that the respondent never fraudulently registered and acquired Title Deed for plot 13 Mawokota Block 40 at Bujuuko Mpigi (Exhibit P5), in total disregard of Appellants’ evidence of fraud adduced against Respondent on record.**

- 20 Counsel for the Appellant defined what fraud and added that according to the evidence of DW1, Haruna Mukiibi Nasser, his father’s family settled on the disputed land as customary tenants and applied for lease. He also added that the mosque was constructed by DW1’s father in 1913. Counsel therefore submitted that Uganda Muslim supreme council forcefully took over the mosque in 1996. Using a court interim order.

It was further submitted that Uganda Muslim supreme council used to form fraudulent intention to acquire the disputed land and that exhibit P5 shows that the land was divided into three

plots. Counsel also maintained that the cancellation of the title before re-instatement was a manifestation of fraud. He added that the Respondent misrepresented to the commissioner that the land in dispute had no customary tenants. Counsel further made reference to the testimony of DW4, Niyonzima Vincent, adding that Uganda Muslim supreme council cannot use an illegal title to confer upon themselves ownership of the suit land.

He referred to the case of **Active Automobile spares LTD vs Crane Bank LTD & Rajesh, SCCA NO. 21 of 2001**, it was held that Courts will not condone or enforce an illegality.

Counsel for the appellants concluded that there should be an investigation into the two titles exhibit P5. (for Respondent) and Exhibit D5( for Appellants)

10

In reply , Counsel for the Respondent submitted that the trial Chief Magistrate properly evaluated the evidence and that the registration of the Respondent on the Certificate of title arose from the fact that they owned the land in dispute.

Counsel further submitted that when the Respondent's lease was cancelled, they challenged the same as per exhibit P3. And that when the Chief Administrative Officer investigated together with the commissioner land registration, it was instead found that the land title of Hajji Asuman Kato Mukiibi be cancelled and the commissioner surveys and mapping streamlines the position of survey on the ground to avoid overlapping surveys and titles over the same piece of land. Counsel for the Respondent added that the Respondent then applied for a fresh lease of 44 years which was granted effective 1.12.1995. In addition, the Respondent acquired another Certificate of title for the said land on 11.11.1998 and it was the title **Exhibited as P5**.

20

Counsel for the Respondent reiterated that the Respondent's Certificate of title was obtained under such a transparent manner and no acts of fraud could be seen through the documentary evidence. He made reference to the record of proceedings on pages 19-20, whereby no fraud was proved as far as the acquisition of the Respondents' title which is valid for 44 years is concerned.

Counsel for the Respondent wondered why the appellants who were aware of the Respondent's certificate of title over the disputed went ahead also to acquire another Certificate when the case was still in Court in 2010.

I have again considered the submissions on the issue of alleged fraud by the Respondent is concerned. As counsel for the Respondent submitted, this Court wonders how and why the appellants were dealing or registering the land in dispute in 2010 when the case was already in Court. One wonders who infact had fraudulent intentions if not the appellants in such circumstances. The Appellants knew the case was still pending in court and they went ahead to  
10 have the same land Registered in their names, purportedly as holders of letters of administration.

In my view, those were double standards on the part of the appellants who did not go to equity with clean hands. The exercise of rejoining three plots **51,52, and 53 to go back to plot 13 Block 40** was explained by Appellants' own witness in the Lower court, DW4, Mr. Vincent Niyonzima a Registrar of titles. DW4 stated on page 42 of the proceedings:-

***“Plot 13 came first in time. It is in the names of Uganda Muslim Supreme Council , Bujuuko. It came in existence in the year 1992. On the 23<sup>rd</sup> January.”***

During cross-examination, DW4 informed Court that the title for Plot 51 which was  
20 registered in different name ceased to exist when it was found out that the department involved in the exercise misdirected the parties. He added that the Respondents lease title of 1998 was still existing when the Appellants were issued one running from 1-9-2010.

DW4, Mr. Niyonzima concluded that the Plaintiffs' (now Respondents) were the first applicants and their lease was to run for 44 years. The logical conclusion is that since Uganda Muslim Supreme Council were the first to apply, then they could not be said to have been fraudulent. Under Section 176 (c ) of the Registration of titles Act, a Certificate of title can only be impeached for fraud upon clear proof through documentary evidence and not mere unsubstantiated statements. I therefore agree with the submissions of counsel for the

Respondent that the allegations of fraud set out in written statements of defence have not been proved at all. The trial chief Magistrate properly evaluated the evidence and found no merit in the allegations of fraud.

In **Mainiha Saw Milling Co. Ltd vs Waino Timber Company LTD [1962] AC 101**, Lord Buchmaster defined fraud as some act of dishonest. In **Kampala Bottlers vs Damaniaco Uganda LTD, SCCA NO. 22 of 1992**, Wambuzi C.J. as he then was, held that fraud must be attributed to the transferee either directly or by necessary implications. His Lordship added that the transferee must be guilty of some fraudulent actions/acts or must have known of such act by somebody else and taken advantage of that act. In the present case, it has not been  
10 proved that the Uganda Muslim Supreme Council (transferee) was aware of how the land Departments of mapping and surveying registered the land in appellant's names. Those were technical people as clearly brought out in the evidence of DW4, Niyonzima and so Uganda Muslim Supreme Council could not be blamed for whatever mistakes or errors made.

I therefore agree with the trial chief Magistrate that the plaintiff (Now Respondent) were not liable for fraud in the acquisition of their title for their original land of Plot 13 Block 40.

I accordingly do hereby dismiss ground 2 of appeal.

Ground No. 3

**The learned trial Chief Magistrate erred in law and fact when she heavily over relied and  
20 based her decision on oral evidence of PW3-Hajji Abubaker Ssebufu Magala without reasons, whose hear say evidence was never corroborated at all.**

This ground has already been covered when I handled ground 1 of appeal. Counsel for the respondent submitted that the appellants did not lead any evidence to show how they acquired the land in dispute, other than all stating that they were born on the same. However, and as indeed PW3, Hajj Sebuwufu Magala testified, and being a cousin of the appellants, stated that the disputed land was not Ancestral land. PW3 added that the rest of the family /beneficiaries

of the estate of the late Sul\aiti Kuttakulimuki have not claimed ownership of the said land and that the appellants cannot claim that it belonged to their late grandfather as if it devolved onto their father only without considering other beneficiaries . PW3 emphasized that the land belonged to the Muslim community in the area.

I also agree with the submissions of counsel for the Respondent that the Appellants cannot claim ownership of the 20 acres of land given to the Muslim community by the colonial government simply because their grandfather was doing religious missionary work . On the land. And this was brought out in the testimonies of PW1, sheikh Muhamad Kibanga and PW2, Hajji  
10 Musa Ssonko who was aged 80 years. Reference was made to exhibit PI dated 13.1.1939.

So PW3, Hajji Sebuwufu Magala only corroborated the evidence of PW1, PW2 and PW4, and so, appellant's counsel cannot claim that the trial Magistrate over relied on the same.

Ground 3 of appeal is accordingly rejected.

#### **Ground No. 4**

**The learned trial Chief Magistrate erred in law and fact when she failed to properly address her mind on strong defence evidence of DW4 (Nyonzima Vincent) and erroneously misconstrued it in favour of Respondent.**

20

Some of these grounds of appeal are repetitive as the testimony of DW4 Vincent Niyonzima has been touched on as far as evaluation of evidence is concerned.

The submissions that the trial Chief Magistrate misdirected herself on the same cannot stand. On page 45 of the proceedings, DW4 stated :-

***“The Commissioner Land Registration wrote to the Ag. Commissioner mapping and surveys seeking clarification on Plot 13 land at Bujuuko. Feed back was that,***

*referring to copy of area scheduled dated 6/2/2008 that by that copy Plot 51 and 52 were forming plot 13. This statement was very unclear and ambiguous. Further clarification was sought and response was in a letter dated 16/10/2013 by Joseph Kakooza. It affirmed that sub division of plot 13 that had resulted into creation of plots 51,52, and 53 was cancelled and Plot 13 was thus re-instated.”*

From the above testimony and other evidence on record, it is clear that the certificate of title applied for and granted to Haruna Mukiibi and Namakula aisha sarah as administrators of the late Asuman Kato Mukiibi on 15.4.2011 was not done in good faith. It was done to defeat the  
10 Respondent's title issued earlier in 1998 and the appellant's had already seen that title when it was exhibited in Court. The question to be resolved here is who was fooling who? Or who was trying to defeat the earlier registered interest of who? It is clearly the appellants to blame as clarified by DW4, Niyonzima.

When the commissioner land Registration sought clarification on plot 13 and plot 51 Block 40 as per exhibit P14 A, the Commissioner Surveys replied to the letter and they confirmed that the second title of the Defendants (now appellants) was indeed placed on the Plaintiff's title (now Respondent) and that the two could not exist at the same time. Indeed they cancelled the said Title on the area schedule and the original Plot 13 was re-instated.

20 In the premises, I find no fault on the part of the trial chief Magistrate that she erroneously misconstrued the evidence of DW4, Niyonzima Vincent to favour the Respondent. Ground 4 of appeal is therefore rejected.

Ground 5

**The Learned trial chief Magistrate erred in law and fact when she failed to decide from the evidence on record which of the two land titles in issue of the appellants of Plot 51 Mawokota Block 40 at Bujuuko Mpigi (Exhibit D5 ) and that of the Respondent of Plot**

**13 Mawokota Block 40 at Bujuuko Mpigi (Exhibit P5) was fraudulently procured a key factor for decision in the case before her.**

The issue of alleged fraud has already been discussed and resolved in favour of Respondent under ground 3.

#### Ground 6

**10 The learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate, scrutinize and upraise the evidence on record hence hastily arriving at a wrong conclusion.**

This ground which is about evaluation of evidence by the trial Chief Magistrate has also been covered.

#### Ground 7

**The Learned trial chief Magistrate erred in law and fact when she allowed the Respondents' submission that were based on issues not agreed upon at conference scheduling hence arriving at a wrong decision.**

**20 First of all, on page 5 of the Judgment of the trial chief Magistrate, the issues agreed upon by both parties were stated as follows:**

- 1) Whether the disputed land belongs to the Plaintiff.
- 2) Whether the Plaintiff fraudulently acquired lease/title to the disputed land
- 3) Whether the Defendants have any legal protectable interest on the land
- 4) What are the remedies?



Then the trial Magistrate went on to state the reasons why Judgment delayed but appreciated the submission of both advocates and . In the body of the lower Court judgment, she referred to the submissions and witnesses on both sides. I therefore find no merit under this ground of appeal and the same is hereby rejected.

## **Ground 8**

**The learned trial Chief Magistrate erred in law and fact when she failed or ignored to consider all written submissions of Appellants on record especially on an illegality and arrived at a wrong conclusion**

10 This ground is more less repetitive, argumentative and not substantiated. I would have expected counsel for the appellant to state that he submitted on such and such point of law or evidence but it was ignored. One cannot under blanket cover that all his submissions were ignored and in the earlier grounds I have touched on the issue of locus standi. The Constitution of this country under Article 126 (2) (e) emphasizes substantive Justice as opposed to technicalities. The main contention in this case was whether the land in dispute is for the appellants or for Uganda Muslim Supreme Council. And that has been addressed. O. 43 r 2 of the civil procedure Rules provides that the appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal. So since there was no ground on illegality set out as a distinct ground of appeal, then  
20 ground No. 8 of appeal is misplaced and is hereby rejected.

Having rejected all the grounds of appeal, and for the reasons given, I do hereby dismiss the appeal.

Secondly, I do hereby direct the Registrar of titles to cancel the title comprised in Block 40 Plots 51,52 and 53 as it was issued when the earlier title in respect of Block 40 Plot 13 in Respondents names over the same land was and is still subsisting.

30 Thirdly, I pronounce that the land in dispute belongs to the Respondents, Uganda Muslim supreme Council.

Finally, in view of the long time this case has taken, and since the Appellants are Muslims and therefore part of the fraternity who constitute Uganda Muslim Supreme Council, then I shall exercise this Court's discretion not to condemn them in costs.

I order that each party meets their own costs.

.....

**W. Masalu Musene**

**Judge**

**06/02/2018**

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