

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**

**CIVIL SUIT NO. 575 OF 2002**

<b>1. THE ADMINISTRATOR OF THE ESTATE OF THE LATE HABIB RHEMU</b>	}	<b>===== PLAINTIFFS</b>
<b>2. THE ADMINISTRATOR OF THE ESTATE OF THE LATE SADRUDIN JETHA</b>		
<b>3. SHAHBUDIN HABIB RHEMU</b>		

**VERSUS**

<b>1. EASTER KIYINGI 2. LOUIS BACHU 3. ANWAR NAJIB 4. ADAM SHABDIN</b>	}	<b>===== DEFENDANTS/COUNTERCLAIMANTS</b>
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**JUDGMENT**

**BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA**

[1]. Initially, by the plaint dated 12<sup>th</sup> September, 2002, the **Administrator of the Estate of the late Habib Rhemu and 2 others** had sued **Easter Kiyingi** who later, on 12<sup>th</sup> November, 2003 successfully applied and obtained leave to amend her Written statement of defence by pleading a **COUNTERCLAIM** and add the **ATTORNEY GENERAL** as the legal representative of the Government as **CO-DEFENDANT** to the counterclaim. She accordingly filed the amended Written statement of defence dated 15<sup>th</sup> April, 2020 on 20<sup>th</sup> April, 2004. Later, the Commissioner Land Registration was also included as a Defendant. On 16<sup>th</sup> August, 2019, a one **Louis Bachu, Anwar Najibu and Adam Shabdin** (**Beneficiaries of the Estate of late Sadrudin Jetha, late Shahbudin**

**Habib Rhemu and late Habib Rhemu)** as Applicants also successfully obtained an order to be joined as Defendants to the suit.

- [2]. On 17<sup>th</sup> June, 2020, the 2 separate counterclaimants ie **Easter Kiyingi** on one hand and **Louis Bachu and 2 others** on the other hand, applied and successfully raised certain preliminary objections to the effect, Inter alia, that the Plaintiffs lack locus standi and did not have a cause of action against the Defendants/counterclaimants. The head suit was accordingly struck out basically because the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff's names were undisclosed and the 3<sup>rd</sup> Plaintiff was dead.
- [3]. Upon the striking out of the head suit, the remaining parties were granted leave to amend their respective pleadings accordingly. The 2 separate counterclaims were subsequently consolidated where the 1<sup>st</sup> counterclaimant **Easter Kiyingi** became the **Plaintiff** and **the 2<sup>nd</sup> counterclaimant** became the **Defendant**. This judgment is therefore in respect of these parties reflected as;

***Easter Kiyingi... Counterclaimant (as Plaintiff)***

***versus***

***Louis Bachu & 4 Ors. ... Counter defendants (Defendants)***

- [4]. In her amended counterclaim dated and filed on the 26<sup>th</sup> of June, 2020, the counterclaimant's claim against the counter defendants jointly and/or severally is for Inter alia, the following **declarations** and **orders**:-
- a. A declaration that the vendors **Habib Rhemu, Shahbudin Habib** and **Sadrudin Jetha** lawfully sold the suit property to **Samuel Muleme** under a **Memorandum of sale** dated 16<sup>th</sup> July, 1971 which sale was effected long before the **expulsion** of the vendors from Uganda.
  - b. A declaration that pursuant to the said sale, the Minister of Justice and Lands and Water Resources on behalf of the **Departed Asians Property Custodian Board** by a **TRANSFER** dated 15<sup>th</sup> November, 1976

lawfully transferred the suit property to the said purchaser, which **transfer** was duly registered on **09<sup>th</sup> March, 1977** under Instrument No. 199345.

- c. A declaration that the said purchase by a **Transfer** dated **14<sup>th</sup> November, 1977**, transferred the suit property to the **counterclaimant** which transfer was duly registered on **15<sup>th</sup> November, 1977** under **Instrument No. 201138**.
- d. A declaration that the suit property is not and has never been an **abandoned property** as the same was lawfully sold by the vendors to the said **Samuel Muleme** under the said **Memorandum of sale** dated **16<sup>th</sup> July, 1971** and that therefore, the provisions of the **Expropriated Properties Act, 1982** and the **Expropriated Properties (Repossession and Disposal Regulations) Regulations 1983 (S.I No. 6 of 1983** do not and did not apply to the suit property.
- e. A declaration that it was wrongfully and/or fraudulent for the **Chief Registrar** to cancel the counterclaimant's name from the Leasehold Register Book under the said **1982 Act** which **Act** had no application to the suit property.

[5]. The counterclaimant pleaded particulars of the wrongful and/or fraudulent cancellation of the counterclaimant's name from the Leasehold Register Book and prayed Inter alia, for orders:-

- a. Cancellation of the vendor's names from the Leasehold Register Book and **RE-INSTATE** the names of the counterclaimant thereon as the registered proprietor of the suit property comprised in Leasehold Register Volume 118 Folio 8 plot 2 Fort Road, Old Kampala.
- b. A permanent injunction restraining the vendors, their agents, legal representatives, beneficiaries or workmen from entering the suit property, taking possession and occupation thereon.

- c. Costs of the counterclaim and interest thereon at court rate.
- d. Any other relief or further orders as the court may deem fit.

In their **amended reply to amended counterclaim** dated 13<sup>th</sup> July, 2020 and filed on 14<sup>th</sup> July, 2020, the counter defendants averred and contended Inter alia that:

- a. The named deceased persons are registered on the Certificate of title as proprietors and a court action challenging their reinstatement can only lawfully lie against their legal representatives and not the counter defendants who are beneficiaries to their estate and not even against the 4<sup>th</sup> and 5<sup>th</sup> Defendants.
- b. That the entire pleadings and prayers of the counterclaimant are barred in law since she did not appeal against the decision of the **Minister** in issuing a certificate authorizing repossession as provided in **Expropriated Properties Act** and that to file a suit by plaint to cancel the deceased registered proprietors' registration on the Certificate of title is barred in law.
- c. In the alternative, the 1<sup>st</sup> – 3<sup>rd</sup> counterdefendants contended that:-
  - i. **The Memorandum of sale** was unlawful and fraudulent as it was not executed by the deceased proprietors as confirmed in the handwriting expert's opinion and that therefore, the transfer by **Custodian Board** to the counterclaimant's husband **Samuel Muleme** was based on an illegal and fraudulent purchase agreement.
  - ii. That illegality and fraud having been detected on acquisition of the suit property renders the claims void ab initio.
  - iii. That the **counterclaimant's** claim is not tenable as it is based on collision in fraud and illegality of the suit property.

- iv. The **counter defendants** discovered the fraud in 2018 and they filed their claim in the same year and therefore no exception is required.
- v. That the counterclaimant is therefore not entitled to any reliefs claimed, her registration having been cancelled, repossession certificate issued by the Minister and Departed Asian proprietors restored on the title as proprietors and no appeal having been preferred.

[6]. **At scheduling of the matter**, the following were the agreed issues:-

- 1. Whether the counterclaimant and Mr. Muleme Samuel lawfully acquired the suit property.
- 2. Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants have any interest in the suit property.
- 3. What remedies are available to the parties.

**1<sup>ST</sup> ISSUE: Whether the counterclaimant and Mr. Muleme Samuel lawfully acquired the suit property:**

[7]. I have carefully considered the submissions of Counsel for the counterclaimant and particularly the evidence of **Muleme Samuel (PW<sub>2</sub>)**, the husband of the **counterclaimant Easter Kiyingi**. The counterclaimant's case briefly is as follows:-

[8]. The counterclaimant's husband **Mr. Muleme Samuel(PW<sub>2</sub>)** claim and state that he acquired the suit property comprised in **Leasehold Register, Volume 118, folio 8 known as plot No. 2 Fort Road, Old Kampala** by way of purchase from the former registered proprietors namely; **Habib Rhemu, Shahbudin Habib Rhemu and Sadrudin Jetha** as per **Memorandum of sale** dated 16<sup>th</sup>July, 1971. The Memorandum of sale was exhibited in evidence as **P. Exh. I**. The vendors however, later left Uganda

upon expulsion by the Amin Regime in 1972 but out of the 70,000/- purchase price, he had deposited with them 55,000/- and was remaining with the balance of 15,000/-. He acquired possession and occupation of the suit property until on 19<sup>th</sup> August, 1976 when the officials of the **Departed Asians Property Custodian Board** (D. A. P. C. B), an entity that took over and managed all the properties left by the departed Asians wrote to him regarding the status of the property and, that is when he paid the balance of the purchase price so that the property is transferred into his names [**P. Exh. I - X**]. He paid the balance of 15,000/- to the Departed Asians Property Custodian Board as per the receipt dated 23<sup>rd</sup> August, 1996 (**P. Exh. XXXI**) and the suit property was accordingly transferred to him as per the **transfer** dated **15<sup>th</sup> November, 1976** (**P. Exh. XI**). Later, the said **Muleme Samuel** (PW<sub>2</sub>) transferred the suit property to his wife, the counterclaimant under transfer dated 14<sup>th</sup> November, 2017 (**D. Exh. V**) upon which she eventually secured the owner's copy of the Special certificate of title.

- [9]. On his part, Counsel for the counterclaimant submitted that in 2002, a one **Mohammed Allibhai** without instructions from the various estates of the deceased former registered owners, who by then were already dead, commenced the head suit against the counterclaimant for her eviction from the suit property. The said **Mohammed Allibhai** had caused the fraudulent cancellation of the counterclaimant's name from the Leasehold Register of the suit land. That this had resulted in the default judgment against the **Commissioner Land Registration** (4<sup>th</sup> Defendant) as well as ultimately, the striking out the head suit. That therefore, the acts of the said **Mohammed Allibhai** which led to the fraudulent issuance of a Certificate of Repossession **re-instating** the names of the deceased former registered owner unto the leasehold register of the suit property when PW<sub>2</sub> and the **counterclaimant** had already been entered thereon as registered proprietors in the year 1977,

was null and void abinitio from which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants cannot legally take benefit of good title.

[10]. **From the foregoing submission and evidence of PW<sub>2</sub>, it is clear that the counterclaimant's interest in the suit property is based and rooted in PW<sub>2</sub>'s Memorandum of sale of the suit property dated 16<sup>th</sup> July, 1971.**

[11]. On the other hand, it is the counter defendants' contention that the said **Memorandum of sale** of the suit property dated **16<sup>th</sup> July, 1971** was unlawful and fraudulent because it was not executed by the deceased proprietors. That it is a forged sale memorandum agreement which was intended to hoodwink the DAPCB officials that the property was not an abandoned property under the **Expropriated Properties (Repossession and Disposal) Regulations 1983 (S.I No. 6 of 1983).**

[12]. Under ***Sections 101 - 103 of the Evidence Act***, the burden is on the counter defendants to prove the facts constituting their claim to obtain a judgment in their favour on a balance of probabilities; ***GEORGE W. KAKOMA VS. A. G [2010] HCB VOL. 1 at p. 78.***

[13]. In their bid to prove that the Memorandum of sale was a forgery, they led the evidence of the Principal Government Analyst **Mr. Apollo Mutashwera Ntarirwa (DW<sub>1</sub>)** who in his **Witness statement dated 03<sup>rd</sup> November, 2011** stated that in addition to being a Graduate of a Bachelors Degree of Science (Chemistry and Geology) M.U.K, he was awarded a Post Graduate Certificate in **questioned documents analysis** in 1984 from the **Home Office, U.K.** He at the same time became a member of the **International Association of Forensic Sciences.** Since then, he has acquired vast experience in analyzing questioned documents and has undergone continuous education courses in the same field.

- [14]. The Memorandum of sale in question was subjected to Government analysis laboratory twice, the 1<sup>st</sup> time was in **1996** and the 2<sup>nd</sup> time was in **May 2010** as per the **Laboratory Reports dated 7<sup>th</sup> November, 1996 and 14<sup>th</sup> May, 2020** respectively. Both reports are to the effect that the signatures on the Memorandum of sale attributed to **Shahbudin Habib Rhemu, Sadrudiin RahemtullaJetha** were not the writers of the questioned signatures. The signatures were therefore forgeries (**P. Exh. VII**).
- [15]. In his submission, **Counsel Muhwezi** for the counter defendants correctly submitted that **Apollo Mutashwera (DW<sub>1</sub>)**, the Forensic expert's evidence was not challenged at all in cross examination. That the other supporting proof that **Shahbudin Habib** and **Sadrudin Jetha** never signed the impugned **Memorandum of sale** is of **PW<sub>2</sub> Mr. Muleme Samuel** himself who conceded during cross examination that he did not see either of the purported vendors sign the impugned **Memorandum of sale**.
- [16]. **Counsel Kiingif** for the counterclaimant submitted vehemently that **Mr. Apollo Mtashwera's (DW<sub>1</sub>)** Laboratory report dated **07<sup>th</sup> November, 1996** was made for the benefit of **M/s Alderbridge Real Estate and Property Management Ltd** while the 2<sup>nd</sup> one dated **14<sup>th</sup> May, 2020** was made for the benefit of **M/s Kibeedi& Co. Advocates** who are not lawyers of the 1<sup>st</sup>, 2<sup>nd</sup>& 3<sup>rd</sup> counter defendants and that for that reason, the reports have no bearing to the defence and therefore the counter defendants cannot take benefit of these reports.
- [17]. It is important to note that **Shahbudin Habib Rhemu** son of the late **Habib Rhemu** before his demise testified in this case on **12<sup>th</sup> September, 2007**. By then, he was aged 77 years. It is my belief that this court is entitled to consider Shahbudin's evidence on record because it is not an expunged record and there has been no order that the suit be heard



denovo after receipt of his evidence by Justice Opio Aweri, the trial Judge. In his evidence, he countered the Powers of attorney the initial “Plaintiff” **Mohammed Allibhai** was flashing around as authority to file the suit. The Powers of attorney given to him had only been limited to repossession of the property for which Mohammed Allibhai had accomplished and not to file a suit. The operative Powers of attorney were with a one **TajKassam**.

[18]. As regards the **Memorandum of sale dated 16<sup>th</sup> July, 1971 (P. Exh. I), Shahbudin** categorically stated that it did not bear either his signature or that of his father. He also confirmed that the 3<sup>rd</sup> signature was also not that of **Jetha Sadrudin** who was his partner and both lived in the suit property before they left Uganda as expelled Asians. He clearly denied ever selling the suit property to **Muleme Samuel (PW<sub>2</sub>)** from whom the counterclaimant derives interest. Again, Shahbudin Habib’s evidence was also not challenged at all during cross examination. This evidence is supported and further confirmed by DW<sub>1</sub>’s Laboratory report (**D. Exh. VII**) thereby giving further credence to the counter defendants’ claims that actually, the **Memorandum of sale** in question was forged for purposes of fraudulently acquiring the suit property.

[19]. The seemingly argument by the Counsel for the counterclaimant therefore, that by virtue of purchase of the suit property Muleme acquired an equitable title to the property and that upon registration, the legal title vested in him and therefore the property could not in any way fall in the ambit of “**expropriated**” or “**abandoned**” property under the **Expropriated Properties Act, 1983 and the Expropriated Properties (Repossession and Disposal) Regulation, 1983 (S.I No. 6 of 1983)** is lost. With due respect to Counsel Kiingi for the counterclaimant’s submission, it cannot be correct that the **purchase Agreement** found invalid on the grounds of forgery in the matter of **M/s Alderbridge Real**

**Estate and Property Management and M/s Kibeedi & Co. Advocates(P. Exh. VII)** would be found valid in the instant case by this court. To do so, in my view, would be an absurdity. The duty of the expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the Judge to form own independent judgment by the application of these criteria to the facts proved in evidence; *DIVIE VS. EDINBURGH MAGISTRATES (1953) SC 34 at 40.*

[20]. In this case, the purchaser **Mr. Muleme Samuel (PW<sub>2</sub>)**, failed to rebut the Handwriting expert's (DW<sub>1</sub>) opinion because in his own words, he conceded that he never saw any of the vendors of the suit property sign or endorse the **Memorandum of sale** dated 16<sup>th</sup> July, 1971 (**P. Exh. I**) which he relies on as conferring upon him ownership of the suit property.

[21]. This court is therefore, in the circumstances satisfied that the **Memorandum of sale of the suit property dated 16<sup>th</sup> July, 1971** which forms the basis and the root of the counterclaimant's claim is a forgery. Since there was a forgery, then, there was no valid sale transaction of the suit property. It follows therefore, that the suit property was property **abandoned** by the departed Asians and it was subject to the expropriation laws and regulations at the time. The 1<sup>st</sup> issue is therefore in the circumstances found in the negative. The **counterclaimant** and her husband **Muleme Samuel (PW<sub>2</sub>)** did not lawfully acquire the suit property.

**2<sup>ND</sup> ISSUE: Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants have any interest in the suit property:**

[22]. As regards the counter defendants' claims, a careful consideration of the evidence of **Louis Bachu (DW<sub>2</sub>)** and the relevant parts of the submissions

of **Counsel Muhwezi**, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants' claims are based on the following grounds:-

- a. That they are **beneficiaries** to the estate of the late **Sadrudin Jetha, Shahbudin Habib Rhemu** and **Habib Rhemu**. That they are children to the deceased proprietors of the suit property.
- b. Information from a one **Abdul Butt** who was a friend of **Shahbudin Habib Rhemu** that their parents had property in Uganda comprised in **LRV 118 Folio 8 plot 2 Fort Road, Old Kampala** and information from the area LC1 Zone IV Old Kampala where the property is situate that it belonged to their parents and that they are the lawful beneficiaries.

[23]. It is therefore in the circumstances incumbent upon the counter defendants to prove the facts constituting the above claims to obtain a judgment in their favour on a balance of probabilities; (***Sections 101 – 103 of the Evidence Act***).

[24]. In their bid to prove that they are beneficiaries of the deceased proprietors of the suit property, the counter defendants adduced evidence of the 1<sup>st</sup> counter defendant, **Louis Bachu** (DW<sub>2</sub>) whose Witness statement is as follows:-

1. That the counter defendants; **Louis Bachu, Anwar Najibu** and **Adam Shabdin** are all **beneficiaries** to their respective estates of **Sadrudin Jetha, Shahbudin Habib Rhemu** and **Habib Rhemu**.
2. That their deceased fathers, upon expulsion from Uganda, first migrated to Nairobi – Kenya where they lived for several years and met **their mothers** at the time who were business women plying between Kigali – Kampala – Nairobi.
3. That later after they were born, their deceased fathers shifted to London where they eventually died from but **their mothers** informed them of their true parentage as above stated.

4. That the **1<sup>st</sup> and 2<sup>nd</sup> counter defendants** grew up in the home of their relative, the late **Bachu Noor Mohammed** who was their **foster father**.
5. That the **3<sup>rd</sup> counter defendant** also grew up in the home of **Shabdin Noor Mohammed**, brother to **Bachu Noor Mohammed** as his **foster father**.
6. That **M/s Hawa Hamis Bachu** (his mother) who would have disapproved the counterclaimant's false allegations developed amnesia and is more of unsound mind and cannot appear before court.

[25]. On the other hand, the counterclaimant contested the purported parentage of the **1<sup>st</sup> – 3<sup>rd</sup> counter defendants**. **Kavuma Simon Peter** (PW<sub>1</sub> aged 42 years), son to **Mr. Samuel Muleme** (PW<sub>2</sub>), in his Witness statement stated that since childhood, he had grown up and lived on the suit property comprised in LRV 118 Folio 8, plot 2 Block V, Old Kampala and knew the **1<sup>st</sup> and 2<sup>nd</sup> counterdefendants** to be children to the late **Noor Bachu Mohammed** who passed away in **February 2020**. That as regards the **3<sup>rd</sup> counter defendant**, he knew him as the son of **Shabdin Noor**, brother to the late **Noor Bachu Mohammed**. That it is therefore not true that they are all children of any of the deceased registered proprietors of the suit property namely **Habib Rhemu, Shahbudin Habib Rhemu** and **Sadrudin Jetha**.

[26]. Lastly, she stated that all the information pertaining to the true identities of the counter defendants which are now public documents safely lies with the **National Identification Registration Authority (NIRA)** where they themselves availed such said information upon applying for their respective **National Identity Cards** bearing their respective **NIN (Numbers)**.

[27]. In his submissions, Counsel Kiingi for the counterclaimant while basing himself on the above, asserted that the **1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants**

were not biological children to the deceased former registered owner of the suit property. That this was confirmed by the relevant certified true copies of documents acquired from NIRA arising out of the **court order dated 23<sup>rd</sup> July, 2020**. That therefore, the **3 counter defendants** were impostors who wanted to defraud the **counterclaimant** and her husband (**PW<sub>2</sub>**) of their property which they have been in actual, interrupted possession, control and use since 1977.

[28]. I have carefully considered the relevant documents obtained from **NIRA** upon a **court order dated 23<sup>rd</sup> July, 2020**;

- a. **Louis Bachu<sup>1st</sup> counter defendant (DW<sub>2</sub>)**: While applying for a **National Identify card** from NIRA on **03<sup>rd</sup> October, 2014**, he clearly indicated **Bachu Noor Mohammed** as his father. He never indicated him as adoptive/guardian, a provision that was available for him if indeed it is true that the said **Bachu Noor Mohammed** was a **foster father**.
- b. The same applied to his brother **Anwar Najibu**. He clearly indicated his father as **Bachu Noor Mohammed**.
- c. **Adam Shabdin**, on **02<sup>nd</sup> June, 2014**, while applying for a **National Identity card** from NIRA also indicated **Noor Shabdin** as his father and not as his adoptive/guardian, an option available providing for persons not having their biological fathers.

[29]. **Counsel Muhwezi** for the counter defendants attacked the **NIRA** information regarding his clients as containing falsehoods. However, in the absence of any other evidence rebutting the above data from **NIRA**, I don't agree that the information from NIRA contained any falsehoods. I find the information credible and lending credence to Kavuma (**PW<sub>1</sub>**'s) evidence regarding the parentage of the counter defendants.

- [30]. During cross examination, the 1<sup>st</sup> counter defendant (DW<sub>2</sub>) conceded indicating **Bachu Noor Mohammed** in the **NIRA** application as his **father** but that this was because he grew up knowing him as his father until when he was of about 15 or 16 years of age that his **mother Hawa Hamis Bachu** who is now of unsound mind because of **amnesia** told him that his biological father as being **Jetha Sadrudin** (who unfortunately died in 1989).
- [31]. In this case, in view of the alarming evidence from **NIRA** regarding the parentage of the counter defendants, in absence of any rebuttal evidence, I am inclined to believe that the counter defendants are not the children of the deceased registered proprietors of the suit property. There is also no evidence to support the 1<sup>st</sup> counter defendant's (DW<sub>2</sub>) claims regarding what his mother told him or evidence that his father is **Sadrudin Jetha** and not **Bachu Mohammed** as reflected in his **NIRA** data.
- [32]. Finally, the counter defendants claim to base their claim of interest on information they obtained from a one **Abdul Butt** a U. K. friend of **Shahbudin Habib Rhemu** and the area L.C officials where the suit property is situate that the property belonged to their parents and that they are therefore the lawful beneficiaries. As already stated, there is no evidence adduced by the counter defendants that the deceased registered proprietors of the suit property are their parents. Secondly, the said **Abdul Butt** whom they claim had vital information regarding the property and their parentage did not testify in this court. The same apply to the area L.C officials, they never appeared in court to testify and confirm the counter defendants' claims.
- [33]. In the circumstances of this case, I find that the 2<sup>nd</sup> issue is also found in the negative. There is no evidence that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants have any interest in the suit property.

### 3<sup>RD</sup> ISSUE: Remedies available to the parties:

- [34]. It is now trite law that the Commissioner Land Registration had no powers, without court order, to cancel a Certificate of title on the grounds of fraud; ***HILDA NAMUSOKE & 3 ORS. VS. OWALLA'S HOME INVESTMENT TRUST (EA) LTD S. C. C. A. NO. 15 OF 2017.***
- [35]. In the instant case, it was irregular and illegal for the Commissioner Land Registration to cancel the counterclaimant's Certificate of title for he had no powers to do so. However, this court is not in position to order for reinstatement of the counterclaimant's names onto the suit property certificate of title for to do so, would amount to perpetuate **Mr. Samuel Muleme's** fraud and illegalities in the acquisition of the suit property. The fraud and illegalities overrode all the pleadings and admissions if any in this suit.
- [36]. As a result, I decline to grant the declaration that the counterclaimant's name be reinstated on the suit property. In this case, the names of the deceased proprietors ie **Sadrudin Jetha, Shahbudin Habib Rhemu** and **Habib Rhemu** have been restored on the suit property by virtue of the Repossession certificate issued by the Minister and the counter defendants having been found to be mere imposters who want to take advantage of the demise of the former registered proprietors of the suit property, it follows therefore, that none of the parties have any valid interest in the suit property. None of the parties have discharged the onus of proving any interest in or otherwise of the suit property. I therefore in the circumstances find and order as follows:-
- a. The counterclaimant **Easter Kiyingi** and her husband **Muleme Samuel** acquired the suit property fraudulently and they are therefore not entitled to any of their sought reliefs in the claim. Their claim is therefore accordingly dismissed.

- b. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants do not have any interest in the suit property. Their claim is also accordingly dismissed.
- c. In view of the fact that none of the parties have been found to have interest in the suit property, the property is declared departed Asian **abandoned property** within the meaning of *Sections 2(2)(b) of the Expropriated Properties Act, 1983 and Regulations 6 and 8 of the Expropriated Properties (Repossession and Disposal) Regulations S.I No. 87 - 8.*
- d. The suit property being an **abandoned property**, reverts to **Departed Asians Property Custodian Board** for management under the **Expropriation Laws and Regulations.**
- e. The Deputy Registrar of this court is directed to immediately serve this judgment upon the Executive Director of **Departed Asians Property Custodian Board**, the entity in charge of the properties that belonged to departed Asians for execution by way of demand for vacant possession or eviction of the unlawful occupants of the suit property.
- f. As this is a case where two competing parties have their respective claims rooted in fraud, each party is to bear his or her costs of the suit.

Order accordingly.

Dated at **Kampala** this **07<sup>th</sup>** day of **December, 2020.**

Byaruhanga Jesse Rugyema  
**JUDGE**