

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

CIVIL SUIT NO. 0234 OF 2015

- 1. NAIGA ESTHER**
- 2. MUTYABA EDWARD STARONE:::PLAINTIFFS**

(Administrators of the estate of the late

NABAWANUKA ROSEMARY)

VERSUS

- 1. KIWANUKA ABDUL**
- 2. BALOJJA ROGERS ELLY:::RESPONDENT**
t/a BALOJJA ENTERPRISES

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiffs, vide a plaint dated 6th May 2015 sued the Defendants.

The Plaintiff's cause of action against the Defendants is for;

1. An order for cancellation of the Defendant's registration on the suit land in **Kibuga block 8 plots 1148 at Mengo.**
2. An order for the transfer and registration of the suitland in the Plaintiffs names as administrators of the estate of the late *Nabawanuka Rosemary.*
3. A declaration that the transfer was fraudulent and that the land belongs to the estate of the late Rose Nabawanuka.

Though served, the Defendants did not enter appearance on the 20th day of May 2019, this Court granted the Plaintiff leave to proceed ex parte.

The Plaintiff then called three witnesses; who filed witness statements as PW1; Naiga Esther, PW2 – Godfrey Nkoligo and PW3; Mukwaya. The Plaintiff's counsel though given a time frame to file submissions, did not do so.

I therefore will decide this matter guided by the pleadings and will determine;

1. Whether the Plaintiff have cause of action against the Defendants.
2. Whether the Plaintiffs are entitled to the reliefs sought.

As regards, the 1st issue, I have gone through the pleadings as contained in paragraphs 2,4,5,6,7,8,11,12,13 and 14 of the plaint and contents of evidence of PW1, PW2 and PW3, supported by PEX1 – PEX8.

On the balance of probabilities, the evidence conclusively shows that;

PW1; Naiga Esther states that the suitland comprised in lock 8 plot 1145 – Mengo originally belonged to the late Nabawanuka Rosemary (*her mother*). That in 1990, Nabawanuka owned a kibanja on the suit land with rental buildings. In 2000, she purchased the revisionary interest of her kibanja and upon payment, was allowed to mutate the title of her land vide instrument No. KCA 220861, seen on the certificate of title herein marked PEX1.

Upon her demise in 2009, they looked for the certificate, but it went missing. A complaint was made to police under SD REF; 13/13/11/2009.

In the process, she came across documents from a bank showing that the lost title had been fraudulently transferred from her mother's names to the names of the Defendants. This transfer was done after her demise yet the Defendants were unknown to the parties. The Defendants had mortgaged the certificate of title and gave fraudulent details of locations on the ground. These matters were subject of investigations and Court proceedings under HCCS No. 380/2012; Stanbic Bank versus Balojja Rodgers Elly, t/a Balojja Enterprises.

This suit arose as a result of the above to seek cancellation of the Defendant's registration on the suitland. This evidence collaborated by the annexures thereto as A-H, also confirmed the above position.

The evidence shows that the Defendants through illegal means, obtained the transfer of their names on the certificate of title of the late Rosemary Nabawanuka. The Plaintiffs are entitled

to bring the suit as the appointed administrators of the estate of the late Rosemary Nabawanuka. There is a cause of action as against the Defendants against whom, even police investigations and other Court processes, have been initiated.

I therefore resolve the first issue in the affirmative.

Issue No. 2

Whether the Plaintiffs are entitled to the reliefs sought, the Plaintiff seeks judgment for;

- a) An order of cancellation of the Defendant's registration on the suitland in Kibuga block 8 plot 1148 – Mengo.

This relief is available. The law as set down in **Makula International versus His Eminence Cardinal Wamala; (Civil Appeal No. 4 Of 1981) [1982] UGSC 2 (8 April 1982)**; Court held that;

“An illegality once pointed out vitiates all questions even of procedure”

It cannot be ignored. This Court has been notified that the Defendants obtained registration irregularly by fraud. This is a right cause for grant of the above remedy, which I hereby grant to the Plaintiffs.

- b) An order of transfer of registration in the names of Administrators of the estate of Rosemary Nabawanuka, naturally flows from the order above and is granted.
- (c) Declaration that the suitland in the 1st Defendant's names and 2nd Defendants names was procured through fraud and connivance. This declaration flows from the evidence on record. It is also granted.

d) A declaration that the suitland belongs to the estate of the late Rose Nabawanuka, is borne out in evidence and is granted.

e) General damages.

The grant of general damages is discretionary. I was not addressed on this this prayer, given the alleged value of land at shs. 150,000,000/- (*one hundred fifty million shillings*) and the period spent out of its use, that is a period from 2012 when the Defendant's land claim which is a period of 8 years.

I assume that if they had possession, the Plaintiffs would earn not less than shs. 500,000/- (*five hundred thousand shillings*) monthly from the use of the land which even had 13 rental rooms. The amount for a year is shs. 6,00,000/- (*six million shillings*) per year.

The amount for 8 years is $(8 \times 6) =$ shs. 48,000,000/-. (The Plaintiff is entitled to shs. 48,000,000/-) as general damages.

f) Interest

The amount on general damages will carry an interest at Court rate from the date of judgment.

g) Costs:

Costs normally follow he event.

This judgment is found in the favour of the Plaintiffs and costs granted to the Plaintiffs.

I so order.

.....

Henry I. Kawesa

JUDGE.

21/01/2021

21/01/2021:

Kaasa Erich holding brief for Atulinda Magda for the Plaintiffs.

Defendants absent.

Court: Ruling delivered to the above parties.

.....

Henry I. Kawesa

JUDGE.

21/01/2021

Right of appeal explained to the parties.

.....

Henry I. Kawesa

JUDGE.

21/01/2021.