

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 94 OF 2010

1. ANNA NABATANZI LULE
2. KASULE MIKE
3. KIRINYA GERALD(Administrators of the estate
Of the Estate of the late Semakula Musoke Anselm::::::::: PLAINTIFFS
VERSUS

1. ANSELM SEMAKULA
2. ALICE KARUGABA
3. REGISTRAR OF LAND TITLES


(WAKISO LAND REGISTRY)::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

The Plaintiffs claim against the defendants is for:


- i. Cancellation of all the entries and actions made affecting the deceased's land formerly comprised in **Busiro Block 298 Plots 22 and 58 now plots 110, 111, 112, 113 and 114.**
- ii. Cancellation of all entries on the Certificates of Title issued to the 2nd defendant by the Registrar of Titles or any other authority.
- iii. Restore the name of the deceased Anselm Semakula Musoke on the Register Book in the office of the Registrar of Titles and subsequently register the administrators of the deceased's estate on all the said title deeds.


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iv. An eviction order against the 2nd defendant from the suit land.

The Plaintiff's cause of action against the defendants as stated in their plaint arose as follows:


- i. That the late Anselm Semakula Musoke (a father to the plaintiffs and the 1st defendant) died on the 12th day of September 1977.
- ii. That the deceased left a Will dated 21st April 1977, and he was survived by eight children.
- iii. That the deceased left a total of 45.2 acres of land formerly comprised in **Busiro Block 298 Plots 22 and 58 currently subdivided into plots 110, 111,112,113,and 114.**
- iv. That the deceased died without disposing off any of his land and the whole 45.2 acres were left intact which the deceased stressed in his last testamentary Will.
- v. That the 1st defendant impersonated and imposed himself as his deceased's father **Anselm Semakula Musoke** yet his actual name was **Anselm Semakula** fraudulently and without locus sold part of the suit land to **Herbert D Sekandi on Plot 112 Block 298, registered on the 20th July 2001 under Instrument No. KLA 227063** and to **Latimer Kagimu Mukasa on Block 298 Plot 110 registered on 15th June 2001 under Instrument No. KLA 225988.**
- vi. That the 1st defendant using similar tactics subsequently sold land comprised in **Busiro Block 298 Plot 113** to the 2nd defendant.
- vii. That plots 111 and 114 which were subdivided together with the said plots 110, 112 and 113 have since remained in the names of Anselm Semakula Katta Musoke because the 1st defendant was prevented from selling them having been caveated by the 1st Plaintiff.


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- viii. That the notice of the said fraud was brought to the attention of the said Latimer Kagimu Mukasa, Herbert D. Sekandi and the 2nd defendant before they bought their parcels.
- ix. That Herbert D. Sekandi happens to have actual notice as he was an officer of the lands registry at Kampala.
- x. That the 2nd defendant who was residing in the same village and a neighbour to the suit land, had knowledge of all the wrangles surrounding the suit land and she was personally warned by both Anne Nabatanzi Lule and the late David Katta but ignored their advice.
- xi. That before any transfer and or subdivision was done on **Busiro Block 298, Plot 22 and 58**(the original description of the land left by the deceased) one Executor a one Margaret Nankinga through her lawyer Kityo and Company Advocates lodged a caveat on the 28th August 1992 at 3:15 p.m under Instrument No. KLA 154623 and the Commissioner Land Registration in connivance with the 2nd defendant released the caveat on the 8th July 1994 under Instrument No. 167201 without notifying the caveator nor her lawyers.
- xii. That after the 1st defendant fraudulently and without any locus transferred the aforesaid respective plots to wit Plots 110, 112 and 113 in 2001 he fraudulently and through deceit acquired Letters of Administration vide **Mengo Administration Cause No. 110 of 2002**.
- xiii. That having complained about the said grant, the Magistrate who granted them then recalled the grant on the 3rd of April 2003.
- xiv. That in order to acquire the locus standi, the said Anna Nabatanzi Lule , David Katta and Mutyaba Tadeo went to the Administrator General to process Letters of Administration but their grant was caveated by the 1st defendant.


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- xv. That after successfully challenging the 1st defendant's caveat vide **Civil Suit No. 006 of 2008 in the Family Division of the High Court**, on the 14th day of October 2009, the above mentioned people were granted Letters of Administration by Justice Margaret Oguli Oumo.
- xvi. That before the closure of the land tribunals, Anna Nabatanzi, David Katta and Mutyaba Tadeo filed a suit against the 1st and 2nd defendants and the said Latimer Mukasa , Sekandi Herbert D and Florence Lwanga.
- xvii. That the 2nd defendant after assuring Anna Nabatanzi Lule, the late David Katta and Mutyaba Tadeo that she was well placed to battle with them at whatever forum, went ahead and bought **plots 112 and 110** registered under Instrument No. KLA 406789 on the 26th February 2009 from Herbert D. Sekandi and Latimer Kagimu Mukasa under Instrument No. KLA 393440 on the 20th October 2008 and became the registered proprietor of plots 112,110 and 113 all on Block 298 and which forms the suit land.
- xviii. The plaintiffs contend that it was irregular and erroneous to have Latimer Kagimu Mukasa registered on the 15th June 2001 and yet her transferor Anselm Semakula Musoke was registered on 11th August 2001 long after the said deceased had passed on.
- xix. The Plaintiffs aver that the subdivisions and the subsequent sales done in 2001 on **Busiro Block 298 Plots 112, 110 and 113** were never done by the said deceased as he was long dead and neither had any of his beneficiaries acquired probate or Letters of Administration.
- xx. The Plaintiffs also aver that all the purported transfers/subdivisions were made by the 1st defendant in conjunction with the 2nd defendant and a one Herbert D Sekandi the then officer of Lands Registry. That the 1st defendant imposed himself as the said deceased and transferred the suit land with actual and constructive notice of the 2nd defendant.



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- xxi. The Plaintiffs further aver that that the Registrar of Titles fraudulently and erroneously vacated the beneficiary's caveat of a one Margaret Nankinga lodged on the 28th August 1992 at 3:15P.M under Instrument No. KLA 154623 and released on the 8th July 1994 under Instrument No. KLA 167201 without neither notifying the caveator nor her lawyers.
- xxii. The Plaintiffs further contend that the 2nd defendant is not a bona fide purchaser for value as she claims because she bought with full knowledge of the fraudulent actions by the 1st defendant and others. That the 2nd defendant also perpetrated the fraudulent actions by the 1st defendant.

The Plaintiffs listed the particulars of fraud as follows:

- i. Impersonating and posing as the deceased by the 1st defendant.
- ii. Acquiring Letters of Administration fraudulently vide **Mengo Administration Cause No. 110 of 2002 on the 3rd October 2002 by the 1st defendant.**
- iii. Proceeding to buy the suit land first on Block 298 Plot 113 and later in 2008 and 2009, Plots 112 and 110 respectively in total disregard of the notice of irregularity and lack of title by the 1st defendant.
- iv. That the 2nd defendant before buying had notice of the presence thereon of the deceased's children, plantation, crops, houses, graveyards and the presence of other beneficiaries.
- v. The 2nd defendant conniving with the 1st defendant to commit series of fraudulent actions.
- vi. Vacating a beneficiary's caveat by the Registrar of Titles without giving notice to the caveator or her lawyers.


The Plaintiffs are praying that judgment be entered in their favour with the following declarations/orders.


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- a) A declaration that the suit land subdivided into **Block 298 Plots 110, 112 and 113** were transferred fraudulently and still form part of the estate of the late **Anselm Semakula Musoke**.
- b) An order cancelling the entries, actions and Certificates of Title made in favour of the 2nd defendant in respect of the deceased's land comprised in **Busiro Block 298 Plots 22 and 58**.
- c) An order to restore the name of the deceased, Anselm Semakula Musoke on the Register Book in the office of the Registrar of Titles in respect of **plots 110, 112 and 113** and subsequently register it in the names of the said deceased estate's administrators (the plaintiffs).
- d) An order to evict the 2nd defendant from the suit land.
- e) General damages.
- f) Interest on the decretal sum from the date of judgment until payment in full.
- g) Costs of the suit.
- h) Any other remedy this court deems fit.

In his written statement of defence the 1st defendant states inter alia:

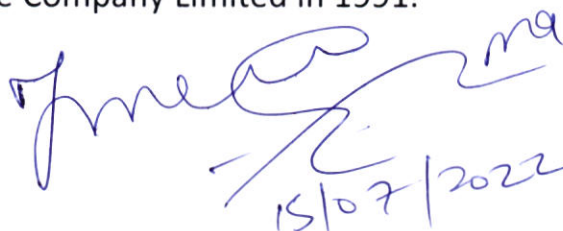
1. That the actual names of the 1st defendant are **Anselm Semakula Katta Musoke**.
2. The 1st defendant denies any impersonation since his actual names are those set herein of land known as **Busiro Block 298 Plots 22 and 58** which had been jointly owned and registered and hence denies any fraud.


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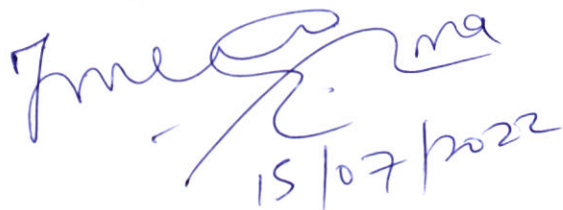
3. The 1st defendant contends that one title to the suit land had been mortgaged to a one Keera and had not been redeemed and the second one was in joint names and as such could not be bequeathed.
4. The 1st defendant contends that at his own cost he managed to redeem the Certificate of Title comprised in **Busiro Block 298 Plot 22** from the administrators of the estate of the late Allen M. Keera in 1984.
5. The 1st defendant denied all acts of fraud attributable to him by the plaintiffs and that the plaintiffs have no cause of action against him.
6. That the plaintiffs are not entitled to any of the reliefs sought in their plaint.
7. The 1st defendant prays that the suit be dismissed with costs.

In her written statement of defence the 2nd defendant contends inter alia:

1. That the Plaintiffs have no cause of action against her in so far as she purchased the suit land after conducting a diligent search both in the land office and on the ground which revealed that the 1st defendant was the registered proprietor thereof and there was no encumbrance whatsoever.
2. That the 2nd defendant is a bona fide purchaser for value without notice of the alleged plaintiffs' interests thereof having purchased a good and impeccable title and that the plaintiffs have no reasonable cause of action against her.
3. The 2nd defendant denies the allegations of fraud attributable to her in the plaint.
4. That the suit land comprised in **Busiro Block 298 Plot 22** was registered in the names of **Anselm Semakula Musoke** who had mortgaged the suit land M/S Interstate Finance Company Limited in 1991.


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5. That upon default, the said M/S Interstate Finance Company Limited in exercise of its power of sale under the mortgage advertised the suit land for sale.
6. That the 2nd defendant's predecessor's in title a one Herbert Sekandi and Latimer Kagimu Mukasa purchased the suit land from M/S Interstate Finance Company Limited through a private sale and the land was later sub divided and they got registered on both plots 110 and 112 respectively.
7. That during the process of purchase, the 1st defendant was positively identified by the General Manager of M/S Interstate Finance Company Limited a one S, Muleme as both the principle debtor and the registered proprietor of the suit land.
8. That the said 2nd defendant's predecessor in title introduced the 1st defendant to the 2nd defendant as the owner of plot 58 having known him from the previous transaction.
9. That the 2nd defendant accordingly purchased together with her sisters Mrs Pauline Bwankwosya and Florence Lwanga seven acres of land out of **Busiro Block 298 Plot 58** which was subdivided into **plots 113 and 114** and that **plot 113** was duly registered into their names without any encumbrance.
10. That later Mr. Latimer Kagimu Mukasa and Mr. Herbert Sekandi sold their respective pieces of land to the 2nd defendant after her paying the banks to whom they were each indebted namely M/S Orient Bank Limited and DFCU Bank Limited.
11. The 2nd defendant further contends that before she purchased the suit land, she took ordinary precaution required of her by carrying out a diligent search both at the land offices and on the ground which revealed that the land was free from any encumbrances or at all.



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12. The 2nd defendant contends that she is a bona fide purchaser for value without notice and her title is indefeasible and immune from the plaintiffs' claims.
13. The plaintiff contends that she had no knowledge of the alleged fraudulent actions of the 1st defendant if any or at all.
14. The 2nd defendant further contends that she has no reason to doubt that the 1st defendant was the registered owner of the suit land and that the alleged fraud is not attributable to her as the transferee of the suit land.
15. The 2nd defendant denies that she had any knowledge of the wrangles on the suit land.
16. The 2nd defendant further contends that she has not committed any wrong by occupying and developing the suit land which she lawfully acquired for a valuable consideration.
17. The 2nd defendant prays that the suit be dismissed with costs.


The 3rd defendant never filed a written statement of defence.

In reply to the 2nd defendant's written statement of defence the plaintiffs' states inter alia:


1. That the 2nd defendant's defence is full of falsehoods and that the suit land was formerly comprised in Block 298 Plot 22 and was registered in the names of Anselm Semakula Katta Musoke who died in 1977 and until the said fraudulent transfers no one had attempted to legally change the same in other names.
2. The Plaintiffs contend that the 1st defendant with the knowledge of the 2nd defendant impersonated himself as his late father and without any locus transferred the suit land to the 2nd defendant.


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3. That the alleged mortgage was procured by the 2nd defendant , a one Latimer Kagimu Mukasa and Herbert Sekandi with an intention of creating the status of bona fide purchaser for value and although their acts of fraud were sabotaged by a beneficiary caveat by a one late Margaret Nankinga but the defendants forged their way and removed the caveat illegally.
4. That the 2nd defendant presented a different version of her defence because when she was first sued in the Land tribunal of Wakiso District she presented a different version of her defence where she stated:
 - (a) That Anslem Semakula Musoke Katta the registered proprietor of the said land offered the same for sale to the 2nd defendant defendant.
 - (b) That the suit land was registered in the names of Anslem Semakula Musoke Katta who was in possession of the duplicate certificate of title.
 - (c) That the defendants conducted a search at the land registry and verified that the said land was indeed registered in those names.
 - (d) That the said defendants then purchased the said land from the registered proprietor and obtained valid registrable transfers in their favour and which transfers were duly registered in their favour.
5. The Plaintiffs contend that in light of the above, it is an abuse of court process for the 2nd defendant after a few years and after the plaintiffs instituted a fresh suit after getting full locus to sue as "administrators" to come with a different version of her defence that she did not buy from the 1st defendant directly but from M/S Interstate Finance Company Limited which is even non-existent.
6. That even critically looking at the alleged advert, of the 2nd defendant it shows that Block 298 Plot 22 Gayaza Triangle land measuring 23.30 acres which was not correct and that the plaintiff's father's will annexed to the plaint shows that the deceased left 20.2 acres, 22 acres, 2 acres and 1 acre only and never left 23.30 acres as allegedly advertised.


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7. The Plaintiffs reiterated that the 2nd defendant and her accomplices were aware of all the fraudulent sales , before, during and after the sale when they realised that may not distance themselves from fraudulent actions they advised the 1st defendant to process letters of administration which were recalled for being obtained fraudulently.
8. That the plaintiffs from their search with the land registry found out that the suit land was caveated by one of the beneficiaries the said late Nankinga Margaret but was fraudulently and illegally removed without her knowledge or that of her lawyers.
9. The Plaintiffs reiterated that the 2nd defendant went ahead to purchase part of the suit land from Latimer Kagimu Mukasa and Herbert Sekandi after a civil case filed in the land tribunal Wakiso District where the plaintiffs were challenging the 2nd defendant and the said Latimer Kagimu Mukasa and Herbert Sekandi of fraudulently purchasing their father's land.
10. That the alleged indebtedness to Orient Bank and DFCU Bank limited does not suffice because the 2nd defendant before purchasing their respective parcels from Latimer Kagimu Mukasa and Herbert Sekandi knew very well that the plaintiffs had instituted a suit against them challenging their ownership.
11. That when the 2nd defendant as she alleges conducted a search in the land registry, she discovered that there was a caveat already lodged by the late Nankinga Margaret which caveat they later illegally removed and also when the 2nd defendant was conducting a physical search, she was warned about buying the suit land and even showed the graveyard of the deceased Semakula Katta Musoke Anslem and was also given contacts of the 1st plaintiff to get more facts about the ownership of the suit land but she ignored the same and proceeded to purchase the suit land.


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12. The Plaintiffs contended that the 2nd defendant was not a bona fide purchaser for value because her conduct before, during and after the purchase of the suit land show that she was not only aware of the fraudulent acts surrounding the sale and purchase of the suit land but also participated in the same.


13. The Plaintiffs contended that the 2nd defendant's defence be disallowed for it was full of falsehoods and instead judgment be entered in favour of the plaintiffs.

The parties filed a joint scheduling memorandum and the following issues were framed for resolution.

1. **Whether the 2nd defendant was registered on the suit land fraudulently.**
2. **Whether the fraudulent dealings in the suit land can be imputed on the defendants.**
3. **Whether the 2nd defendant is a bona fide purchaser for value without notice.**
4. **Whether the land formerly comprised in Block 298 Plot 58 and now subdivided into several plots forms part of the estate of the late Anselm Semakula (not included in the JSM but raised in court).**
5. **The remedies available to the parties.**

It was an agreed fact that the suit land comprised in **Busiro Block 298 Plots 22 and 58 now described as plots 110, 111, 112, 113 and 114 land at Gayaza** measuring approximately 45.2 acres was originally registered in the names of **Anselm Semakula Musoke**.

It is also an agreed fact that the Plaintiffs are the administrators of the estate of the late Anselm Semakula Musoke and the said deceased was the biological father of the 1st defendant.


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It was also an agreed fact that the 1st and 3rd defendants caused the subdivision of the suit land and subsequently transferred it into the names of the 2nd defendant as proprietor of the same.

The parties and their witnesses filed witness statements and they were cross examined. Counsel for the plaintiffs and counsel for the 1st and 2nd defendants filed written submissions the details of which are on record and which I have considered in determining this case.

Evidence adduced by the Plaintiffs

In her evidence, Anna Nabatanzi Lule hereinafter referred to as “the 1st Plaintiff” or “PW1” stated that the late Anselm Musoke Semakula died testate on the 12th day of September 1977 and was survived by eight children. That the will dated 21st April 1977 did not indicate that the said deceased had left any debts or liabilities.

The 1st Plaintiff contended that the land originally known as Busiro Block 298 Plots 22 and 58 now described as Plots 110,111,112,113 and 114 land at Gayaza measuring 45.2 acres forms part of the estate of the late Anselm Musoke Semakula which was administered by the plaintiffs and has never been distributed among the beneficiaries.

The 1st Plaintiff stated that it was not true that the late Anselm Musoke Semakula disposed off/or transacted on the suit land and that the whole of 45.2 acres of the suit land were left intact as stipulated in the deceased’s last Will.

The 1st Plaintiff further stated that her late father left the responsibility of taking care of the family and the estate with her elder brother called Ddamulira who has since passed on. She stated that without the family consent or grant of letters of administration, the 1st defendant took advantage of the death of their said brother and held out as the customary heir and then fraudulently and unlawfully transacted /transferred the suit land to the detriment of all the beneficiaries.

The 1st Plaintiff further stated that the 1st defendant illegally and unlawfully impersonated himself as the late Andrew Musoke Semakula whereas not and fraudulently transferred and subdivided the land originally **Busiro Block 298** Plots 22 and 58 to form plots 110, 111, 112, 113, and 114 without the knowledge of the family members or the lawful beneficiaries.




PW1 contended that it is not true that the 1st defendant is known by the names of **Anselm Musoke Semakula**, but has always been known as **Anselm Semakula**. That it was only their late father who was known by the names of **Anselm Musoke Semakula**.

The 1st Plaintiff also stated that the 1st defendant singularly transferred the suit land into his names without showing the capacity in which he was holding such titles and subsequently transferred the land comprised in Busiro Block 298 Plot 112 to Herbert D. Sekandi who was subsequently registered on the title on the 20th day of July 2001, under Instrument No. KLA 227063 and Latimer Kagimu Mukasa land comprised in Busiro Block 298 Plot 110 registered on the 15th day of June 2001 under Instrument No. KLA 225988 which was fraudulent.

The 1st Plaintiff further stated that Herbert D Sekandi and Latimer Kagimu Mukasa fraudulently procured their registration on the respective titles and the 2nd defendant was put on notice of the fraud since the certificate of title for Latimer Kagimu Mukasa from who the 2nd defendant derives her title in respect of plot 110 shows that it was registered on the 15th June 2001 whereas his purported transferor Anselm Semakula Musoke was registered on the 11th August 2001 two months after Latimer Kagimu Mukasa was registered on the title and after Anselm Semakula Musoke had passed away.

The 1st Plaintiff further stated that she was aware that before any transfers were effected on the suit land, a one Sam Mukalazi , a land broker and a resident of Temangalo Buyera Gayaza warned the said Latimer Kagimu Mukasa against dealing with the 1st defendant in respect of the suit land Plot 58 as it then was on the basis that it was not due for sale and that the 1st defendant had no authority to deal with the same but the said Latimer Kagimu Mukasa went ahead and purchased seven acres of the suit land.

The 1st Plaintiff further stated that in further perpetration of fraud, Latimer Kagimu Mukasa and Herbert D. Sekandi influenced the 1st defendant to obtain Letters of Administration to the estate of the late Anselm Semakula Musoke in a bid to regularize their purchase whereupon the latter applied and was granted Letters of Administration on the 3rd October 2002 as a small estate in the Chief Magistrate's Court of Mengo vide Administration Cause No. 110 of 2002 whereas the estate did not fall under small estates. That the said letters of administration were successfully challenged and recalled vide a court order dated 3rd April 2003.


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That pursuant to the said development, she and David Katta (now deceased) and Mutyaba Tadeo applied for and were granted Letters of Administration after successfully challenging the 1st defendant's caveat against the grant vide **H.C.C.S No. 006 of 2008.**

PW1 further stated that the suit land bears the family graveyards including the grave of the late Anselm Musoke Semakula and it has always been in possession and occupation of her family as they use it to cultivate on it and her siblings reside in already existing houses on the land.

The 1st Plaintiff contended that all the subdivisions and subsequent transfers /or transactions which were undertaken in the year 2001 on the suit land described as Busiro Block 298 Plots 110, 111, 112, 113 and 114 were never conducted by the said deceased since he was long dead and neither of the beneficiaries acquired probate or letters of administration and nor had the land been distributed amongst the respective beneficiaries.


The 1st Plaintiff further stated that she was aware that all the transfers /subdivisions on the suit land were fraudulently made by the 1st defendant in conjunction with the 2nd defendant, a one Herbert D. Sekandi (then an Officer at the Lands Registry, Kampala) and Latimer Kagimu Mukasa.

That the 2nd defendant who is Latimer Kagimu Mukasa's relative ought to have known the antecedents revolving around the suit land prior to the purchase from her predecessors and had actual and /or constructive notice of the fraud.

That no physical search was ever conducted by Latimer Kagimu Mukasa, Herbert D. Sekandi, the 2nd and 3rd defendants on the suit land before they transacted /dealt in the same.

PW1 further stated that she was aware of the letter from the LC I Buyera – Temangalo LC 1 Zone Mumyuka Wakiso Sub-County Wakiso District dated 19th April 2003 addressed to the Chief Magistrate expressing ignorance about the transactions between the 1st and 2nd defendants and Herbert D Sekandi and Latimer Kagimu Mukasa.

PW1 further stated that she is aware that on the 28th August 1992 prior to any transfers and /or subdivisions on the suit land her Sister the late Margaret Nankinga through her then lawyers Kityo & Co. Advocates lodged a caveat on the suit land under Instrument No. KLA 154623 and it was without regard released by the Commissioner Land Registration in connivance with the 1st and


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2nd defendants under Instrument No. KLA 167201 without notifying the caveator or her lawyers vide their known address. That this was even a beneficiary caveat which could only be discharged by a court order.


The 1st Plaintiff further stated that M/S Interstate Finance Company Limited had notice of the fraud since the 1st defendant was referred to during the process of identification as Anselm Semakula Katta Musoke and was different and not in any way related to the then registered proprietor Anselm Semakula Musoke.

The 1st plaintiff contended that the contention by the 2nd defendant in her written statement of defence that the suit land was first registered in the names of the 1st defendant then transferred to M/S Interstate Finance Company Limited upon failure by the latter to pay a mortgage and then later to Latimer Kagimu Mukasa and Herbert D Sekandi who sold off the same to the 2nd defendant was absurd, untrue and connivance by the defendants intended to defraud the estate of the said deceased.

The 1st Plaintiff further stated that before the closure of the land tribunal courts and before the respective parcels of land had been transferred to the 2nd defendant, she is aware that the late David Katta filed **claim No. 89 of 2003** before the Land Tribunal of Wakiso at Wakiso against the 1st and 2nd defendants , Latimer Kagimu Mukasa , Sekandi Herbert and Florence Lwanga for among others an order cancelling the entries and certificates of title for the land comprised in Busiro Block 298 Plots 22 and 58 " the suit land".

The 1st Plaintiff contended that the allegations that the 1st defendant transferred the suit land to M/S Interstate Finance Company Limited upon failure by the former to pay a mortgage are novel and contrary to the 1st and 2nd defendant's and Latimer Sekandi Kagimu Mukasa , Sekandi Herbert and Florence Lwanga defence vide Claim No. 89 of 2003 before the land tribunal of Wakiso at Wakiso where they contended that the suit land was registered in the names of Anselm Semakula Katta Musoke and no mention was made of M/s Interstate Finance Company Limited whom they now allege has been registered on the suit land at the time of the purported purchase of the suit land by the 2nd defendant.

That the defendants filed a written statement of defence by which they contended that they purchased the suit land from Anselm Semakula Katta Musoke, the 1st defendant herein.


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That notwithstanding the manifest knowledge of the wrangles revolving around the suit land and after assuring her family that she is in a better position to battle with them at whatever forum because of her strong financial muscle, the 2nd defendant transferred plots 112 and 110 from the names of Herbert D. Sekandi and Latimer Kagimu Mukasa and was subsequently registered as the proprietor of the suit land comprised in Busiro Block 298 Plot 112 under Instrument No. KLA 406789 on the 26th February 2009; Busiro Block 298 Plot 110 under Instrument No. 393440 on the 20th October 2008 which she purchased from Latimer Kagimu Mukasa notwithstanding the knowledge of the Civil Suit.


The 1st plaintiff further contends that the 2nd defendant is not a bona fide purchaser for value of the suit land since she bought it with full knowledge of the fraudulent actions by her predecessors and failed to exercise due diligence.

That the registration of the 1st and 2nd defendants on the title was intended to unfairly disinherit and defeat the plaintiffs and all other beneficiaries' interest to the suit land.

In his evidence the 3rd Plaintiff Kirinya Gerald who will hereinafter be referred to as PW2 stated that he was the co- administrator of the estate of the late Semakula Musoke Anselm and came to know about this matter when the 1st defendant sold part of the suit land comprised in Busiro Block 298 Plot 22 (now plot 112) to Herbert Sekandi.

PW2 also stated that in the year 2001 while he was cultivating on the suit land comprised in Busiro Block 298 Plot 113 formerly plot 58, he saw a one Mukalazi together with other two people among them the 2nd defendant and Latimer Kagimu Mukasa. That the said people were inspecting then plot 22 and he heard the said Mukalazi advising them that the land was not for sale but was reserved for burial grounds of the family of the late Daudi Katta.

PW2 further stated that three days after, when he had gone to cultivate on the suit land, he saw a group of about five people carrying rolls of barbed wires, armed with pangas and other gadgets used to install barbed wires. That they told him that they were sent by a rich man to cordon off the land including the portion he was cultivating but he refused to do so and they left. That later on Latimer Kagimu Mukasa came together with the people he had chased and they told him that they had purchased the land from Anselm Semakula (the 1st


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defendant) and informed him that he would make sure he takes his land in whatever situation and he could not stop him.

PW2 stated that the people the said Kagimu had come with started erecting the barbed wire around the land including the land he was cultivating and they gave him 20,000/= for the crops he had on the land. He then informed the 1st Plaintiff of what had transpired.

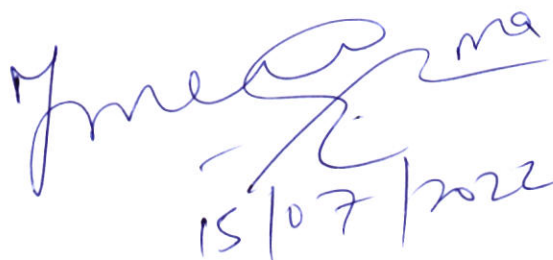
PW3 further stated that the land comprised in Busiro Block 298 Plot 22 land at Buyera Gayaza forms part of the estate of the late Anselm Semakula Katta Musoke who passed on in the year 1977. That the late Anselm Semakula Katta Musoke purchased the said land from a one Abudala Kironde on the 6th September 1935 as per the transfer instrument.

PW2 stated that he was aware that on the 20th day of July 2001 Herbert D Sekandi alleged to have purchased land comprised in Busiro Block 298 Plot 112 formerly plot 22 land at Buyera Gayaza from Anselm Semakula Katta Musoke who had passed on in the year 1977 and he could not sign transfer forms in favour of Herbert D Sekandi when he was dead.

PW2 contended that to show that the 2nd defendant perpetuated fraud, on the 20th day of October 2008 she got registered on the certificate of title on plot 110 formerly plot 22 having purchased it from Latimer Kagimu Mukasa when there were already caveats lodged by the 1st Plaintiff dated 15th May 2008 and 6th June 2005 and there was no order of court releasing or discharging the said beneficial caveats.

PW2 further stated that the 1st defendant got registered on the Certificate of Title in respect of Plot 110 formerly plot 22 Block 298 on the 11th August 2001 and he later sold to Latimer Kagimu Mukasa who got registered on 15th June 2001 and it was not possible to get registered on the certificate of title before the 1st defendant who sold to him got registered.

PW2 contended that the 1st defendant got registered on the certificate of title comprised in Busiro Block 298 Plot 112 measuring 5.26 hectares on the 20th July 2001 at 9:08 a.m and transferred the same to Herbert D Sekandi on the same date at 9:10 a.m two minutes after the 1st defendant had been registered on the certificate of title which was not possible.


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That he is also aware that the 1st Plaintiff lodged a caveat on the land comprised in Busiro Block 298, Plots 110, 111, 112 113 and 114 land at Gayaza dated 26th May 2005.

That as family members they also realised that the 1st defendant had fraudulently obtained Letters of Administration of the estate of the late Anselm Semakula Musoke from the Chief Magistrate's Court of Mengo at Mengo and it was against that background that the 1st plaintiff filed a suit in the **High Court, Family Division vide Civil Suit No. 006 of 2008** for the revocation of the said grant among other orders.

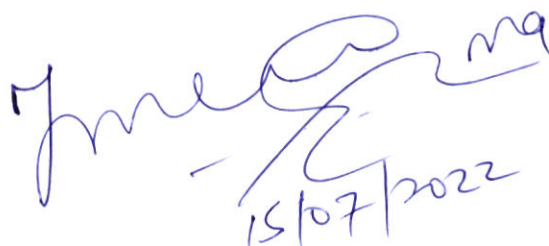
PW2 further stated that he is aware that the said letters of administration were revoked and instead granted to the 1st Plaintiff and other co-administrators.

PW2 further stated that he was aware that on the 26th February 2009 Herbert D Sekandi sold to the 2nd defendant land comprised in Plot 112 formerly plot 22 Block 298 when Civil Suit No. 006 of 2008 was ongoing. That on conducting a search from Wakiso Lands Registry, he realised that the 1st defendant acquired other names of Katta Musoke which he and other family members did not know and later knew that the 1st defendant was the one selling the family land. That he has all along known the 1st defendant as Anselm Semakula and not Anselm Semakula Katta Musoke.

PW2 further stated that all the fraud that was committed by the 1st defendant showed that the transactions were done using special certificates of titles whereas he had the original certificates. That when registering on the special certificates of title, the 1st defendant in connivance with the 3rd defendant did not show the caveats lodged on the said suit land.

PW2 further stated that to show that the 1st defendant perpetuated a fraud, at the time of getting registered on the certificate of title of land comprised in Busiro Block 298 Plot 111 formerly plot 22 on 7th June 1949 in the names of Anselm Semakula Katta Musoke he was ten years old, and he was still a minor since the 1st defendant was born on 14th August 1939.

PW2 contended that he strongly believes that the 2nd defendant is not a bona fide purchaser for value of the suit land since she bought it with the full knowledge of the fraudulent actions by her predecessors in title and failed to exercise due diligence.


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PW2 also contended that the registration of the 1st and 2nd defendants on the certificates of title of the suit land by the 3rd defendant was intended to unfairly defeat their interests and those of other beneficiaries.

In his evidence Mukasa Edward Kirwana hereinafter referred to as PW3 testified that he was the Chairperson of Buyera Temangalo L.C 1 Zone Bukasa Parish Wakiso Sub-County in Wakiso district from the year 1997 up to the time he made his witness statement. He stated that the late Anselm Semakula Musoke died testate on the 12th day of September 1977.

PW3 stated that the Plaintiffs were the Administrators of the estate of the late Anselm Musoke Semakula having been granted Letters of Administration to administer the estate as daughter and grandchildren of the deceased respectively.

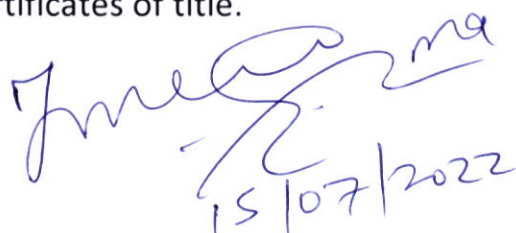
PW3 described the suit land as Busiro Block 298 Plots 110, 111, 112, 113 and 114 originally known as Block 298 Plots 22 and 58 land at Gayaza measuring approximately 45.2 acres which was owned by the late Anselm Musoke Semakula and forms part of his estate.

PW3 further stated that the said deceased did not leave behind any debts or liabilities as was clearly stipulated in his Will. That he was also aware that the properties forming part of the deceased's estate have never been distributed amongst the respective beneficiaries.

PW3 further stated that the family of the late Anselm Musoke Semakula has always been in possession of the suit land by cultivating on it and they also own houses and graveyards thereon.

PW3 further stated that it was within his knowledge that the 1st defendant fraudulently posed as his late father and held himself out as "Katta Musoke" whereas the said name was his father's name and not his and that without the consent and family or other beneficiaries of the estate of the said deceased, the first defendant sub-divided the suit land into Busiro Block 298 Plots 110, 111, 112, 113 and 114 which he fraudulently transferred without the knowledge of the beneficiaries.

PW3 further stated that he was not aware of any consultations or physical search conducted by the 2nd defendant or by any of her predecessors in title to wit, Herbert D Semakula and Latimer Kagimu Mukasa prior to their transfer and registration of the respective certificates of title.


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the pledge was never fulfilled. That it was on the strength of the Presidential pledge that he approached Interstate Finance Company Limited where he borrowed some funds for the rehabilitation of the school and he provided the Certificate comprised in Busiro Block 298 Plot 22 at Gayaza as security.

The 1st defendant further stated that the loan was granted and the funds were used to do some rehabilitation but he later failed to pay the loan and Interstate resorted to auctioning the school. That the school was sold to Herbert Sekandi and Latimer Kagimu who later got registered on the certificate of title after the mortgage was released. That the said Herbert Sekandi and Latimer Kagimu then sold the land to the 2nd defendant.

The 1st defendant further stated that with regard to Block 298 Plot 58, when all the joint tenants passed away and he remained the only surviving tenant, he caused the land to be transferred into his names as the sole proprietor and later caused the land to be sub-divided into three plots. That he also later subdivided Plot 114 into many plots and they were all registered into his names as the proprietor.


The 1st defendant further stated that in 2008, the 1st Plaintiff lodged a caveat on Block 298 Plot 58 at Gayaza but the same was removed after the 1st Plaintiff was given notice to delay the removal of the caveat but failed to do so.

The 1st defendant contended that it was not true that he impersonated his late father since his names were Anselm Musoke Semakula which names are the same as those of his late father.

In her defence, Alice Karugaba hereinafter referred to as "the second defendant" stated that the suit land was originally comprised in Busiro Block 298 Plot 22 and was registered in the names of Anselm Semakula Musoke the 1st defendant who had mortgaged it to M/S Interstate Finance Company.

The 2nd defendant stated that the 1st defendant defaulted in the payment and the said financial institution advertised the land for sale which was sold to Herbert Sekandi and Latimer Kagimu Mukasa who got registered upon subdivision of plots 110 and 112 respectively.

That she was informed by S. Muleme the General Manager of the said financial institution during the process of sale that the 1st defendant was identified as the principal debtor.


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That through Herbert Sekandi and Latimer Kagimu Mukasa who already knew the 1st defendant through their previous transactions, they introduced her to the 1st defendant as the owner of plot 58. That through Latimer Kagimu Mukasa she together with her sisters a one Pauline Bwakosya and Florence Lwanga they purchased from the 1st defendant seven acres of land out of Block 298 Plot 58 which upon sub division became Plot 113 where they were duly registered as joint owners without any encumbrances.

The 2nd defendant further stated that they then took immediate possession and started using the land for agricultural use which included banana planting, goat and chicken rearing and cattle keeping among others.

The 2nd defendant further stated that she purchased plots Plots 110 and 112 respectively which they had mortgaged to various banks and she paid them through their respective banks to wit Orient Bank and DFCU Limited respectively. That she then took possession of the said plots and got registered on the said titles accordingly.

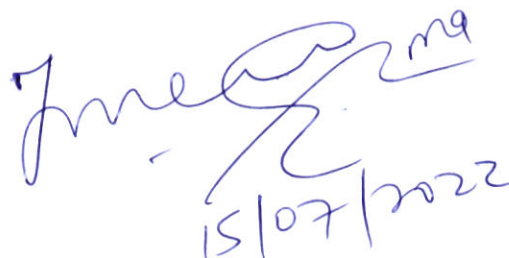
The 2nd defendant contended that during the time of purchase and until the suit was brought against her, she did not know that there was a problem on the suit land and that even the process of registration was free from any encumbrances.

The 2nd defendant further stated that she bought the land genuinely after paying the purchase price to the then registered owners including the 1st defendant who up to todate has never denied ownership of the suit land.

The 2nd defendant contended that in 2005 the LC1 Chairman Mukasa Edward witnessed a handwritten agreement in which she and her sister Pauline Ofongo paid Mr. Katta for the portion of their land which he was cultivating.

The 2nd defendant further stated that she constructed on her portion of land a residential house and even buried her late husband there and that some of the plaintiffs attended the burial of her late husband.

The 2nd defendant further contended that she was a bona fide purchaser who bought the suit land genuinely without knowing that there were any issues on the land basing on the fact that the 1st defendant was duly registered and known in the village as the owner.


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The 2nd defendant denied knowledge of Plots 111 and 114 and that she was not involved in the alleged fraud. She prayed that the suit should be dismissed with costs.

The Plaintiffs, the 1st defendant and second defendant filed written submissions the details of which are on record and which I will consider in determining this case.

I will combine three issues and resolve them concurrently as they are related.

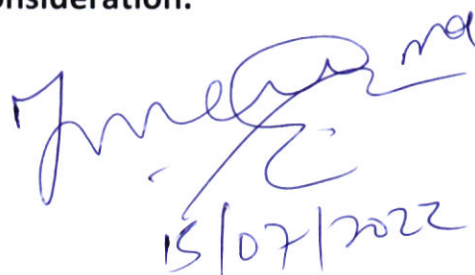
1. **Whether the 2nd defendant was registered on the suit land fraudulently.**
2. **Whether the fraudulent dealings in the suit land can be imputed on the 2nd defendant.**
3. **Whether the 2nd defendant is a bona fide purchaser for value without notice.**

It was held in the case of ***Kampala Bottlers Limited versus Damanico –S.C.C.A No. 22 of 1992*** that normally where fraud is pleaded, the particulars of fraud must be given. That it is generally accepted that fraud must be strictly proved the burden being heavier than on the balance of probabilities generally applied in civil matters. Fraud must be attributable to the transferee either directly or by necessary implication.

In her evidence in Chief, the 2nd defendant stated that she purchased the suit land from a one Herbert Sekandi and Latimer Kagimu Mukasa who had purchased the suit land from a financial institution which advertised the suit land in the Monitor newspapers. In essence she claimed that she was a bona fide purchaser for value without notice of any fraud and as such had an absolute defence against the Plaintiffs claims and her titles are good at law and hence could not be impeached without proof of fraud on her part.

It was held in the case of ***Hannington Njuki versus William Nyanzi –H.C.C.S No. 434 of 1996*** that for a purchaser to successfully rely on the bona fide doctrine he or she must prove the following:

- i. **He or she holds a certificate of title.**
- ii. **He or she purchased the property in good faith.**
- iii. **He or she had no knowledge of the fraud.**
- iv. **He or she purchased for valuable consideration.**
- v. **The vendors had apparent title.**



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- vi. He or she purchased without notice of any fraud.
- vii. He or she was not a party to the fraud.

I wish to add that a bona fide purchaser for value without notice of any fraud must have carried out reasonable due diligence before he or she has purchased the land on sale. This would ideally include carrying out a search on the title so as to verify ownership and whether the land is encumbered.

It also requires one to verify the ownership of the land from the local authorities and establish whether there are equitable interests as well. This is important because vendors can pose as owners when they are not. They may even assume the identity of the real owners when they are not. That is why even a search in the land registry may not suffice. This position is buttressed in the decision of ***Sir John Bageine versus Ausi Matovu –C.A.C.A No. 07 of 1996*** where it was held that land is not vegetables which are bought from unknown sellers. Land is a very valuable property and buyers are expected to make thorough investigations not only of the land but also of the owner before purchase.

In her written statement of defence, the 2nd defendant claimed that she purchased the suit land after conducting a search both in the land office and on the ground which revealed that the 1st defendant was the registered proprietor thereof and that there were no encumbrances whatsoever.

It was an agreed fact that the suit land comprised in **Busiro Block 298 Plots 22 and 58 now described as Plots 110, 111, 112, 113 and 114** land at Gayaza measuring 45.2 acres was originally registered in the names of **Anselm Semakula Musoke**.

It was also an agreed fact that the Plaintiffs are the administrators of the estate of the late **Anselm Semakula Musoke**.

In resolving this matter, I will only deal with **Block 298 Plots 110 and 112** which are exclusively registered in the names of the 2nd defendant and Plots Number **111 and 114** which remained in the names of the 1st defendant.

I will not deal with **Plot 113** because it is registered in the names of the 2nd defendant, **Pauline Byankosya** and **Florence Lwanga**. Pauline Byankosya and Florence Lwanga were not made parties to this suit and they cannot therefore be condemned unheard. **Article 44 (c) of the Constitution** provides that there shall be no derogation from the enjoyment of the right to a fair hearing. The

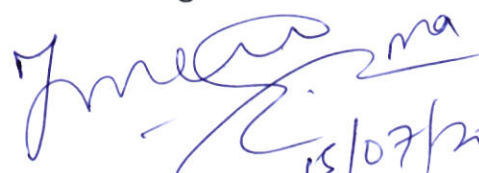
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Plaintiff have therefore not proved their case to the required standard with regard to **Block 298 Plot 113**.

The 1st defendant stated that he never had Letters of Administration to the estate of his late father in 2009 and it was not necessary to have them. He claimed that the land was under a joint tenancy and that his late father had mortgaged the land to a financial institution. The 1st defendant alleged that Block 298 Plot 22 was under his charge. The 1st defendant admitted that the Certificate of Title was still in the names of his late father when it was used as security to get a loan from a financial institution. He admitted having signed the transfer forms when the suit land was sold to Sekandi and Latimer Mukasa who bought the land when he failed to pay the loan. The 1st defendant also stated that he had initially obtained Letters of Administration from Mengo Chief Magistrate's Court which were later on revoked.

It is apparent that the 1st defendant was dealing in the estate of his late father when he had no authority to do so. **Section 188 of the Succession Act Cap 162 (as amended)** provides that *"No right as executor or legatee shall be established in any court of justice, unless a court of competent jurisdiction within Uganda has granted probate of the will under which the right is claimed, or has granted letters of administration under section 181"*. It was therefore illegal for the first defendant to register himself on the certificate of title of his late father or mortgage the title for a loan before he was granted probate of the will of his late father or obtained letters of administration for the same.

Much as the 2nd defendant claimed that she carried out a search on the suit properties before she purchased them, there was no search certificate to prove that she indeed carried out a search. The area Local Council Chairperson who testified as PW3 stated that he was never consulted by the 2nd defendant before she purchased the suit land. During cross examination the 2nd defendant stated that she never carried out a search on **plots 110 and 112** because she had bought them from a Bank. There was no proof of a sale agreement comprising the suit land between the said bank and the second defendant. There were no agreements tendered in evidence as proof that indeed the 2nd defendant had bought the suit land from them. The 2nd defendant instead claimed that they took her to the said bank from where she paid. The 2nd defendant never adduced any evidence as proof of payment to the said bank. The 2nd defendant also admitted during cross examination that


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she knew that the land that had been sold to her had problems at the time she bought it.

The 2nd defendant never called Latimer Kagimu Mukasa and Herbert Sekandi to confirm her alleged purchase of the suit land from them. DW2 did not call any witness from Interstate Finance Company Limited to clarify on the alleged purchase of the suit land.

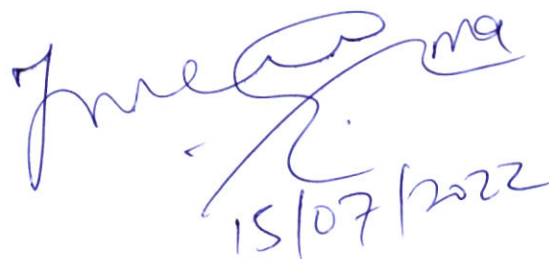
Section 101 (1) of the Evidence Act Cap 6 provides that ***"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."***

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The 2nd defendant having claimed that she had purchased the suit land from certain individuals, the burden was on her to prove that fact by either adducing the evidence of the vendors or an agreement to that effect.

With regard to Plot 110, the copy of the certificate of title was tendered by the 2nd defendant and marked as exhibit D 10. It clearly indicated that the said land was transferred to Latimer Kagimu Mukasa on the **15th June 2001** and yet the purported original owner, the 1st defendant in this case, had been registered on the title on the **11th August 2001!** In other words the purported original person from whom the vendor of the said land to the 2nd defendant derived title, was registered on the title after the purported vendor of the said land to the 2nd defendant! This was a glaring anomaly the 2nd defendant should have realised if she had carried out a search. If the 2nd defendant had indeed carried out a search she should have observed this anomaly and requested for the rectification of the certificate of title before she purchased the suit land. The 3rd defendant who would have given an explanation for this never filed their defence. The 3rd defendant in essence conceded to the claims by the Plaintiffs that the transfers of the suit land were fraudulently done. It was held in the case of ***H.G. Gandesha and another versus G.J Lutaaya-S.C.C.A No. 14 of 1989*** that uncontested evidence should be taken as the truth. T

The said title itself was adequate notice to the 2nd defendant that there was something fundamentally wrong with it specifically on how it was passed on to the vendor that sold her the said land. It should have raised a red flag.



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With regard to plot 112, the same had been transferred from the 1st defendant to Herbert D. Sekandi on the same day the 1st defendant was registered on the title and in a spell of two minutes! This is humanly impossible and should have raised eyebrows to the 2nd defendant. This is so because a transfer of that nature requires execution of the instruments of transfer, lodging the same before the Chief Government Valuer for assessment of fees for valuation, going to the bank to pay stamp duty, payment of registration fees etc. That cannot be done in a space of two minutes! It was held in the case of ***Uganda Broadcasting Corporation versus Sinba K Limited –Court of Appeal Civil Application No. 12 arising from Civil Appeal No. 107 of 2012*** that it was inconceivable that transfer forms could have been prepared signed and lodged within two minutes. That it was not possible to have the property valued by the Government valuers, given a value, had stamp duty assessed, paid stamp duty, lodged the receipts at the land registry, had the transfer forms endorsed, filed them for registration and completed all in a period of two minutes. That this may not be a finding of fact but it certainly raises a very red flag.

The said case is on all fours with the current one as the anomalies on the titles should have raised a red flag to the 2nd defendant that the purported sellers did not have a good title to the suit land and there was a possibility of them being impeached on the basis of fraud.

It was held in the case of ***David Sejjaaka versus Rebecca Musoke-S.C.C.A No. 12 of 1985*** that fraud must be attributed to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of such act by somebody else and participated in it or taken advantage of it.

The transfers of the suit land from the first defendant to the subsequent vendors that sold the land to the 2nd defendant as shown in the certificate of titles as exhibited in court should have revealed the anomalies on the said titles as I have already narrated. Despite the said anomalies the 2nd defendant went ahead to purchase the land. The 2nd defendant either ignored the anomalies or never carried out a search that would have revealed the anomalies to her. In her defence the 2nd defendant claims that the search was carried out by her lawyers and in essence implies that she should be exonerated in case the anomalies were found out by her lawyer! It is an elementary principal of our legal system that a litigant/client who is


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represented by an Advocate is bound by the acts and omissions of the advocate in the course of representation. Therefore if the 2nd defendant relied on her lawyer to carry out a search as she stated in her defence, she is bound by what her advocate advised her to do.

The 2nd defendant cannot claim to be a bona fide purchaser for value without notice of any fraud when the fraud was so glaring from the certificates of title.

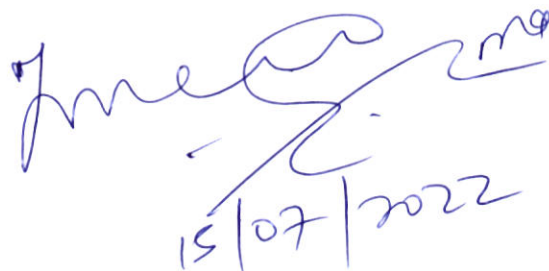
The 2nd defendant also admitted during cross examination that she purchased the suit land when she was aware that there were conflicts on it! This cannot qualify her as a bona fide purchaser for value without notice as she would wish to intimate. Evidence was also adduced that the 2nd defendant was aware of Claim No. 89 of 2003 before the Land Tribunal of Wakiso at Wakiso where the suit land was a subject of challenge between the beneficiary and the vendors who sold to her the suit land. The 2nd defendant was equally aware of **Civil Suit No. 006 of 2008(Family Division) involving the Plaintiffs and the 1st defendant** on issues of administration of the estate of their late father of which the suit land is part. It was held in the case of **Kayabura Enock and two others versus Joash Kahangire-C.A.C.A.No. 88 of 2015** that obtaining a certificate of ownership over disputed property which dispute is in court is a fraudulent act. By the 2nd defendant purchasing land which she knew was in dispute implied fraud on her part. PW1 had testified that the 2nd defendant had even bragged to them that she was in a better position to tussle it out with them in whatever forum because she had the financial muscle. This evidence was never rebutted by the 2nd defendant.

ISSUE 4: Whether land formerly comprised in Busiro Block 298 Plot 58 forms part of the estate of the late Anselm Semakula Mukasa.

In light of the holding on issues 1, 2 and 3, save for **Plot 113** the rest of the suit land forms part of the estate of the late **Anselm Semakula Musoke** and should be administered by the administrators of the estate of the late Anselm Semakula Musoke.

ISSUE 5: Remedies available to the parties.

Judgment will be entered for the Plaintiffs with the following declarations and orders:



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1. Cancellation of all entries and actions affecting the estate of the late **Anselm Semakula Musoke** comprised in **Busiro Block 298. Plots 22 and 58 now comprised in Plots 110, 111, 112 and 114 (Plot 113 is excluded).**
2. Restoration of the name of the deceased, **Anselm Semakula Musoke** on the Register Book in the office of the Registrar of Titles and subsequently register the administrators of the estate of the said deceased.
3. An eviction is to issue against the 2nd defendant from **Plots 110 and 112.**
4. A permanent injunction is to issue against the 1st and 2nd defendants restraining them from further trespass on the suit land.
5. The defendants are to jointly pay general damages of **one hundred million shillings (100,000,000/=) to the Plaintiffs.**
6. The amount in item 5 will attract interest of 10% per annum from the date of judgment until payment in full.
7. The defendants will pay the costs of this suit.



Hon. Justice John Eudes Keitirima

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