

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

**CIVIL SUIT NO.499 OF 2018**

**1. ARTHUR KIZITO KALENGE**  
**2. D.S. MUBIRU KALENGE:.....PLAINTIFFS**  
**VERSUS**

**1. UGANDA MUSLIM SUPREM COUNCIL (UMSC)**  
**2. UGANDA LAND COMMISSION:.....DEFENDANTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

The Plaintiffs, by order of Court applied to trike off the 1<sup>st</sup> Plaintiff; Arthur Kizito Kalenge on account of death, thereby retaining only D. S. Mubiru Kalenge (*Administrator of the estate of the late Mubiru Kalenge*) as the surviving Plaintiff.

Inspite of being served, the 2<sup>nd</sup> Defendant (Uganda Land Commission) never filed a Written Statement of Defence. Court proceeded against the 1<sup>st</sup> Defendant as if they filed a defence as per O.9 Rule 10 of the Civil Procedure Rules by the application of counsel for the Plaintiff.

The 1<sup>st</sup> Defendant also failed to file its evidence in Court whereupon by the application of the Plaintiff, Court proceeded

under O.17 Rule 4 of the Civil Procedure Rules without their evidence. This left the Plaintiff with the burden of to produce evidence to prove their claim on the balance of probabilities; as required by law.

According to the Plaintiff, the Plaintiff's claim against the Defendants is for a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is in trespass, unlawful issuance of title and fraud respectively committed on an equitable interest in land constituted on **Kibuga Block 18, LRV 1638 Folio 15 Plots 4-6 and 14; 16** at Natete. The Plaintiffs seek orders for;

- 1) A declaration that the estate of the late Eria Mubiru Kalenge, holds an equitable interest on the suit land,
- 2) A declaration that the said interest was illegally made part of the 1<sup>st</sup> Defendants' title,
- 3) Orders for cancellation of title or in the alternative,
- 4) Orders for specific performance against the Defendants that they subdivided and transfer the portion of the said land, constituting the Plaintiffs interest.

The facts are enumerated in paragraph (5) and (6) of the plaint.

According to the submissions filed by the Plaintiff's counsel, the following issues were listed for determination:

- 1. Whether the estate of the late Eria Mubiru Kalenge holds an equitable interest measuring 29 decimals on the land now comprised in Block 18 LRV 1638 folio 15, plot 4-0, 14-6 at Natete.**

2. Whether the Defendants were fraudulent in the transaction that led to the creation of the certificate of title for land now comprised in Block 18 LRV 1638 folio 15, plot 4-0, 14-6 at Natete in as far as the Plaintiff's interest therein is concerned.

3. What remedies are available.

In proving its case, the Plaintiff called evidence of PW1; D. S Mubiru who tendered in Court several exhibits annexed on the witness statement and received as PEXH 1-9.

The sum total of the evidence as presented was not taken as uncontested. On the strength of the said evidence regarding each of the issues, this Court now finds as follows:

**Issue No. 1:**

Whether the estate of the late Eria Mubiru Kalenge holds an equitable interest measuring 29 decimals on the land now comprised in Block 18 LRV 1638 folio 15, plot 4-0, 14-6 at Natete.

It arises from the testimony of PW1 (paragraph 2) of his evidence in chief in the witness statements that the late Eria Mubiru Kalenge owned an equitable interest at Natete measuring approximately 20 decimals. These were developed with various rentals and residential houses that he occupied and utilised since 1930 until his death in 1966. This was collaborated by PEXHI; a letter dated

23<sup>rd</sup> April 2013, authorised by Sheikh Abas Mponye; the chairman of Natete Central 'B'.

This evidence therefore supports the Plaintiff's assertion that the family of the late Eria Mubiru Kalenge occupied the suit land as early as 1930. I therefore agree with the observations by counsel for the Plaintiffs that the 1<sup>st</sup> Defendant's Certificate of Title for land now in Block 18 LRV 1638 folio 15, plots 4-0, 14-6 at Natete appears at page 5-12 and was marked as PEXH5, wherein the suit land was issued on the 5<sup>th</sup> February 1988.

Therefore having occupied the suit land as customary tenant (the family of the late Eria Mubiru Kalenge) and whose tenancy, was not disclosed to the 2<sup>nd</sup> Defendant, prior to the issuance of PEXH5, or whose interest was not compensated by the 1<sup>st</sup> Defendant upon obtaining the leasehold certificate of title (PEXH5), the family of the late Eria Mubiru Kalenge, qualify to be the lawful occupants on the 1<sup>st</sup> Defendant's certificate of title for land now comprised in Block 18 LRV 1638 folio 15, plots 4-0, 14-6 at Natete. This issue therefore is found in the positive.

## **Issue No.2**

**Whether the Defendants were fraudulent in the transaction that led to the creation of the certificate of title for land now comprised in Block 18 LRV 1638 folio 15, plot 4-0, 14-6 at Natete in as far as the Plaintiff's interest therein is concerned.**

The Plaintiff's evidence is contained in PEXH9, PEXH8, PEXH 7 for an assertion that the 1<sup>st</sup> Defendant acted in collusion with the 2<sup>nd</sup> Defendant, knowingly deliberately and with the intention to defraud the estate of the late Eria Mubiru Kalenge, surveyed and included the suitland in the 1<sup>st</sup> Defendant's leasehold certificate of title, did not form part of the 1<sup>st</sup> Defendant land and was owned and was in occupation of the family of the late Eria Mubiru Kalenge.

Further, under paragraph 6(a) of the plaint that the 2<sup>nd</sup> Defendant was fraudulent because it did not or prevent itself from inspecting and ascertaining the status of the suit land before issuing the impugned certificate of title to the 1<sup>st</sup> Defendant.

The Plaintiff argued that had the 2<sup>nd</sup> Defendant carried out due diligence as required by law, the same would have revealed that the suit land is owned and occupied by the family of the late Eria Mubiru Kalenge.

The Plaintiff argues that the Defendant deliberately omitted to disclose the known boundaries of its land to the 2<sup>nd</sup> Defendant which should have excluded the suit land. The 1<sup>st</sup> Defendant also omitted to notify the family the of the late Eria Mubiru Kalenge of the intended survey to ensure their participation, prior to obtaining the certificate of title; thereby illegally including the Plaintiff's land in the title.

As per the law espoused in **Black's Law dictionary 6<sup>th</sup> Edn.**, reported in ***Frederick Zaabwe versus Orient Bank & 5 Ors; CV App NO.04 of 2006***, Court held that;

*“Fraud is an intentional perversion of truth for the purpose of inducing another, in reliance upon it to part with some valuable thing belonging to him to answer a legal right....”*

*Anything calculated to deceive whether by a single act or a combination or any suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture.....”*

I do agree with counsel for the Plaintiff that all factors above considered, though the Defendants were aware of the Plaintiff's interest in the land, their conduct and actions in the transactions, that led to the creation of the certificate of title for land now comprised in Block 18 LRV 1638 folio 15, plot 4-0, 14-6 at Natete, amounted to fraudulent conduct. I find that the issue is terminated in the positive.

### **Issue No. 3**

What remedies are available.

The Plaintiff prayed for remedies in the cause and in the alternative. Having considered the circumstances of this case, Court finds that the prayers for the remedies in the alternative best suits the circumstances of this case, since there were attempts to resolve this matter amicably and positive steps taken to that end.

I therefore grant the following remedies to the Plaintiff:

1. A declaration that the Plaintiff has duly paid to the first Defendant the value of the legal interest constituted in the suit land measuring 29 decimals.

2. An order for specific performance against the Defendants to survey demarcate and process a title and transfer the estate of the late Eria Mubiru Kalenge to the Plaintiff as the Administrator.
3. The Plaintiff prayed for general damages of shs. 50,000,000/- (*fifty million shillings only*) in lieu of the facts of the case.

Having taken into consideration the time spent, by the Plaintiffs to pursue their interests since 2013, if we assign a value of loss of the use of land of shs. 1,500,000/- (*one million, five hundred thousand shillings only*) per year for 17 (*seventeen years*) since 2013, the amount would be shs.  $(1,500,000/- \times 17) = \text{shs. } 25,500,000/-$  (*twenty five million, five hundred thousand shilling only*). I will therefore allow the Plaintiff to recover shs.25,500,000/- (*twenty five million, five hundred thousand shilling only*) for the Defendants jointly and severally.

#### **Issue No.4**

##### Costs of the suit.

Costs of the suit are granted to the Plaintiff with interest at Court rate of 8% from the date of the judgment. I so order.

.....

Henry I. Kawesa

**JUDGE**

07/02/2022

07/02/2022:

Amon Abaasa holding brief for Baguma Cyrus for the Plaintiff.

Both parties absent.

Lydia: Court Clerk.

Amon: it is for judgment and I am ready to receive it.

Court:

Judgment read out in Court in the presence of Amon Abaasa and in the absence of the other parties.

Sgd:

Ayo Miriam Okello

**DEPUTY REGISTRAR**

07/02/2022