

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 140 OF 2009

The Administrator General

(Suing through its authorised Attorney

Noah Kasasa Mawagali)..... PLAINTIFF

VERSUS


1. AMANS MUTEBI
2. AKRIGHT PROJECTS LIMITED
3. THE CHIEF REGISTRAR OF TITLES DEFENDANTS

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

The Plaintiff's claim against the defendants is for:

- i. A declaration that the residue of the land in **Busiro Block 383, Plot 254 measuring 20.5 acres (8.34 hectares)** still forms part of the estate of the late John Baptist Kasasa which estate is under the administration of the Plaintiff.
- ii. An order that the Chief Registrar of Titles doth cancel the amended area sizes for **Busiro Block 383 Plot 388 from which plots 1566 and 1567** arose to their former true measurements of **10 and 4.01 acres**.
- iii. An order that the Chief Registrar of Titles cancels all plots created out of **Busiro Block 383 plots 1566 and 1567** in so far as the area sizes thereof are in excess of **14.01 acres (5.67 hectares)**.


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- iv. An order that the Chief Registrar of Titles issues a title for the residue of **20.5 acres** of land in favour of the Plaintiff as the Administrator of the estate of the late **John Baptist Kasasa**.
- v. An order that all the land dealings between the 1st and 2nd defendants on the one part and any other third parties including the residents of Kabulamuriro only affect the **14.01 acres (5.67 hectares)** formerly under **Busiro Block 383 Plot 388** but not the suit residue land.
- vi. In the alternative but without prejudice to the Plaintiff's prayers for recovery of the **20.5 acres (8.34 hectares)** of residue land, the Plaintiff in addition to recovering **16.2 acres (6.56 hectares)** as part of the residue land of **20.5 acres** which is still intact pray for payment of Uganda **Shillings Two hundred and sixty five million, one hundred and forty thousand (265, 140,000/=)** being the total market value of the **4. 419 acres** of land already sold and transferred to 3rd parties by the 2nd defendant to wit **Busiro Block 383 Plots 1580, 1582, 1589, 1590, 1593, 1596, 1597 and 1599** which acre is currently valued at to at least **sixty million shillings (60,000,000/=)** or what would then be the current market value of each acre of land at the time of judgment, plus interest thereon from the date of filing the suit till payment in full provided that such acreage forms part of the suit residue land of 20.6 acres.
- vii. Payment of general damages by the 1st and 2nd defendants jointly and severally for their arbitrary, illegal, fraudulent and or negligent actions, interest thereon at Bank rate plus costs of the suit.

The Plaintiff states that at all material times , land comprised in **Busiro, Block 383, Plot 254 measuring 48.4 acres at Kitende-Wakiso District** was registered in the names of the late **John Baptist Kasasa**, whose Estate has since 1977 been administered by the Plaintiff.

That by a mutation form of **24th February 1981** under **Instrument Number KLA 97489**, the Plaintiff transferred **13.89 acres (5.62 hectares)** of **Busiro , Block 383 Plot 254 at Kitende** in the names of one beneficiary **Fredrick Kiddu** thereby creating **Plot 387 of 13.89 acres (5.62 hectares)** which is now reading as **Busiro Block 383 Plot 603**. That on creating Plot 387 the 3rd defendant first converted original **48.4 acres into 19.63 hectares**, removed the **5.62 hectares**

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of Plot but mistakenly and negligently (which mistake the Plaintiff discovered in 2005) retained the residual title of **Plot 388 as 14.01 acres** instead of **14.01 hectares** thereby omitting approximately **20.5 acres or 8.3 hectares** from the title, the subject matter of the suit herein.

The Plaintiff contends that in 1984 vide a **Succession Certificate No. 9689** signed by the Plaintiff on 16th August 1984 under Instrument **No. KLA 110234**, the Plaintiff transferred another **13.89 acres (5.62 hectares)** to **Fredrick Kiddu out of Plot 388** of what ought to have been **34.5 acres (14.01 hectares)** but due to the said 3rd defendant's mistake, **Plot 388 was reading 14.01 acres** hence the 3rd defendant presumably saw no sense in leaving out just 12 decimals in such a rural setting of Kabulamuliro hence transferred the whole **14.01 acres to Fredrick Kiddu**.


That in 1984, Fredrick Kiddu sold and transferred **Busiro Block 383 Plots 388 of 14.01 acres** plus **Busiro Block 383 Plot 240 of five acres** all totalling to **18.89 acres** to one **Angel Investments Limited** who later mortgaged **Busiro Block 383 Plot 388 of 14.01 acres** under his company Angel Investments Limited to Uganda Development Bank.

That after Angelo Nsubuga Kizito under the said company had defaulted on the said loan, on the 24th February 2003, Uganda Development Bank through NPART sold and transferred the security to wit **Busiro, Block 383 Plot 388 of 14.01 acres to one Amans Mutebi (the 1st defendant)** after advertising the same for sale in the New Vision Newspaper of April 23rd 2002.

That in 2003, Amans Mutebi sub-divided **Block 383 Plot 388 of 14.01 acres** at **Kitende** into two plots to wit **Block 383 Plot 1566 of 10 acres** and **Plot 1567 of 4.01 acres** respectively.

That later on, the 1st defendant sold off **Busiro Block 383 Plot 1566 of 10 acres** to the 2nd defendant whereof the 2nd defendant paid stamp duty on only **10.00 acres**.

The Plaintiff contends that the above indisputable facts notwithstanding, and contrary to **Section 54 of the Registration of Titles Act, Cap 230**, the 1st and 2nd defendants consciously submitted a consent to transfer forms, secured stamp duty payments for only **14.01 acres** they had bought from NPART but later on amended the subject land area size to **14.01 hectares** to fraudulently gain extra **20.5 acres (8.34 hectares)** whose stamp duty they never paid and which land belongs to the estate of the late J.B. Kasasa.


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That the 3rd defendant made a mistake which the 1st and 2nd defendants sought to exploit to the detriment of the estate of the late J.B Kasasa beneficiaries.

The Plaintiff listed the particulars of the mistake as follows:


- i. Failure to name the residual **Plot 388 as 14.01 hectares** after **Plots 387** had been severed off the parent title of **Plot 254**.
- ii. Failure to create a residue title of approximately **20.5 acres (8.3 hectares)** in favour of the Plaintiff, which acreage the Plaintiff has never transferred to anybody.
- iii. That consequently in 2003 and with actual knowledge of the aforesaid earlier mistake by the 3rd defendant and well knowing what the 1st and 2nd defendant's exact interests were, the later fraudulently applied to amend the area sizes for **Busiro Block 383 Plot 388 of 14.01 acres** into **14.01 hectares** by manipulating the survey offices and securing area size amendments and thereafter created various plots from **1566 and 1567** now reading **10 and 4.01 hectares** instead of **acres**; to wit plots **1605, 1624 and 1580-1604** thereby illegally attempting to acquire the residue of approximately **20.5 acres**.

The Plaintiff contended that the interests of the 1st and 2nd defendants in **Busiro Block 383 Plot 388** from which **plots 1566 and 1567** were created can never be more than **14.01 acres** as prior transferred and registered in the names of **Fredrick Kiddu Kasasa** by the Plaintiff in relation to the said Certificate of Succession and related transfer Instruments from which all the later transferors /transferees derived their interest therefrom.

The Plaintiff further contends that it was in 2005 when it discovered the 3rd defendant's mistake and immediately communicated to the 3rd defendant to rectify the mistake but the 3rd defendant took no heed.

The Plaintiff further contended that the 1st and 2nd defendants were fraudulent in their actions and in an attempt to unjustifiably exploit the mistake of the 3rd defendant.

The Plaintiff listed the particulars of the fraud as follows:


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- i. Amending the area size for **Busiro, Block 383, Plot 388** from which plots **1566 and 1567** originated to read **10.00 hectares** and **4.01 hectares** respectively instead of the original acres they bought.
- ii. Contrary to **Section 54 of the Registration of Titles Act Cap 230**, the 1st and 2nd defendants submitted for valuation and effected stamp duty payments for only **14.01 acres** but later on amended the subject land area size to **14.01 hectares** to fraudulently gain an extra **20.5 acres** whose stamp duty they never paid.
- iii. Disregarding and neglecting the Instruments of the subdivision of Busiro **Block 383 Plot 254** that created plots **387 and 388** and the **Succession Certificate** plus other related transfer instruments from which **plot 388** was created.
- iv. Exchanging a sale agreement in October 2002 affecting Plot 388 that at the time neither belonged to the 1st nor the 2nd defendant.
- v. Subdividing the residue land of **20.5 acres** which land still forms part of the estate of the late John Baptist Kasasa in favour of the 2nd defendant without notice to and /or consent from the Plaintiff and /or the beneficiaries of the estate.
- vi. Consciously conniving to take over the **20.5 acres** outside the **14.01 acres** they bought from NPART and which the 1st and 2nd defendants are not entitled to.
- vii. Subdividing land in **Busiro Block 383 Plot 388** into **Plots 1566 and 1567** plus falsely causing valuations and effecting stamp duty payments before any of them owned the mother **plot 388**.
- viii. Consciously and deliberately, the 2nd defendant acting to defeat justice by conniving with the third defendant ignored and /or overlooked the Plaintiff's caveats lodged on **Busiro Block 383 Plots 1566 and 1567**


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resulting into the subsequent sub-divisions of plot 1566 thereby creating titles for such plots like **1580, 1582, 1589, 1590, 1593, 1596, 1597,** and **1599** in the names of the 2nd defendant which it hurriedly transferred to 3rd parties despite the existing caveats.

- ix. With due notice of the existing caveats on **Busiro Block 383, Plots 1566** and **1567** by the Plaintiff, the 2nd defendant together with the 3rd defendant by backdating entries created plots and issued titles to wit **Plots 1605 to 1624** out of **Plot 1566** thereby attempting to defeat justice.
- x. In October 2002 owing to the 1st and 2nd defendants fraudulent inside dealings within NPART and before the 24th February 2003 when the 1st defendant bought **plot 388** from NPART, he subdivided and secured a plot number and sold **plot 1566 of 10 acres** to the 2nd defendant.

The Plaintiff further contends that the 3rd defendant was negligent and fraudulent in their actions.

The Plaintiff listed the particulars of negligence/ fraud on the part of the 3rd defendant as follows:

- i. Failure to create a residue plot of approximately **20.6 acres** after Plots **387 and 388** were created from **Block 383 Plot 254**.
- ii. Failure to ascertain from the Instruments of the sub-division when plots 387 and 388 were created.
- iii. Neglecting the **Succession Certificate No. 9689 of 7th January 1981** which created **Plot 388 of 13.89 acres** but not **hectares**.
- iv. Failure to name the **14.01 acres** as **hectares** on severing off **plot 387** out of the original plot **254 of 48.4 acres** thereby omitting approximately **20.5 acres**.


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- v. Receiving information from the Plaintiff about the said mistake but neglected to rectify the error.
- vi. Intentionally neglecting the caveats lodged on **Busiro Block 383 Plots 1566 and 1567** thereby creating and passing out land titles for such plots as **1580, 1582, 1590, 1593 , 1596, 1597 and 1599** in the names of the 2nd defendant which the 2nd defendant transferred to third parties.
- vii. Fraudulently ignoring the Plaintiff's caveats **on Busiro Block 383 Plots 1566 and 1567** thereby creating Plots to wit, **Busiro Block 383 Plots 1605 to 1624 out of Plot 1566.**
- viii. Fraudulently neglecting to publish a notice in the Gazette of the 2nd defendant's application to amend and or rectify register/original and duplicate certificate of title for **Busiro Block 383 Plots 1566 and 1567.**
- ix. Acknowledging their mistake /error but negligently failed to correct the error that was created.


Plaintiff's action is partly based upon fraud on part of the 1st and 2nd defendants as provided under **Section 25(a) of the Limitation Act Cap 80**.

The Plaintiff lists the particulars of fraud as an exception to the period of limitation as follows:

- i. In 2003, at the detriment of the Plaintiff (beneficiaries) of the estate, the 1st and 2nd defendants fraudulently amended the area sizes of **plot 388** so as to exploit the 3rd defendant's mistake to their advantage.
- ii. The 1st and 2nd defendants neglected the Instruments of the subdivision of **Busiro Block 383 Plot 254** that created **Plots 387 and 388**, the succession certificate plus other related transfer instruments from which **plot 388** was created.
- iii. Sub-dividing the residual land of **20.5 acres** without consent from and/or notice to the Plaintiff.
- iv. Submitting transfers, securing valuation and paying for valuation of land comprised in **Busiro Block 383 Plot 388**, before the same legally belonged to them.
- v. Overlooking the plaintiff's caveats lodged on **Busiro Block 383 Plots 1566 and 1567** thereby creating various plots therefrom and hurriedly transferred the same to 3rd parties.
- vi. Consciously backdating entries thereby creating **plots 1605 to 1624** out of **plot 1566** with the suit land inclusive.

The Plaintiffs further contend that their claim is partly based upon the relief from the consequences of mistake on part of the 3rd defendant as provided under **Section 25 (c) of the Limitation Act** thereby making the suit not time barred.

The Plaintiff listed the particulars of mistake on part of the 3rd defendant as an exception to the period of limitation as follows:


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- i. In 1981 the 3rd defendant by mistake failed to name the residual title of **Busiro Block 383 Plot 388 as 14.01 hectares** after **plot 387** had been removed from the former **plot 254** thereby omitting the suit land of approximately **20.5 acres (8.34 hectares)** from the title.
- ii. In 1984 by mistake upon registering the interests of **Fredrick Kiddu** on **plot 388**, the 3rd defendant failed to create a residual title of approximately 20.6 acres in favour of the plaintiff which land the plaintiff has never transferred to anybody.


The Plaintiff further contended that their claim was partly based on the fact that at the time the 1st and 2nd defendants purchased **Busiro Block 383 Plot 388** they very well knew they were purchasing **14.01 acres** as indicated on the title of **plot 388**, but not **14.01 hectares** and as such are not bona fide purchasers for value of the land in excess of the **14.01 acres** as both are party to the fraud they both committed in 2003, to the extent of the claiming the suit land of **20.5 acres**.

The Plaintiff further contends that by 2003, both the 1st and 2nd defendants knew of the 3rd defendant's mistake hence the reason for amending the area size of **plot 388** to claim what they had earlier not purchased and hence cannot be protected by **Section 25(c) of the Limitation Act**.

That the 1st and 2nd defendants took adverse possession of the suit land in 2003 and according to **Section 11(1) of the Limitation Act**, it is the date when the plaintiff's cause of action arose hence a further exception to the period of limitation.

The Plaintiff prays for judgment against the defendants with the following remedies:

- i. An order that the 3rd defendant maintains the area size for **Busiro Block 383 Plot 388** from which **Plots 1566 and 1567** were created to read in total **14.01 acres** but not **hectares**.
- ii. An order that the 3rd defendant doth create a Plot and title for the residue of **Block 383 Plot 254 of 20.5 acres** in favour of the Plaintiff as the administrator of the Estate of the late **John Baptist Kasasa**.


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- iii. An order that the 3rd defendant cancels all the illegal plots created from **Busiro Block 383 Plots 1566 and 1567** in so far as the total acreage thereof exceeds **14.01 acres**.
- iv. An order that the 1st and 2nd defendants give vacant possession of the residue of **Busiro, Block 383 Plot 254** measuring **20.5 acres**.
- v. A permanent injunction be issued restraining the 1st and 2nd defendants from any further trespass on the residue of the suit land measuring **20.5 acres**.
- vi. In the alternative but without prejudice to the above prayers, for the recovery of the **20.5 acres** of residue land, and in addition to recovering part of the residue land measuring **16.2 acres** so far intact.
- vii. An order that the 2nd defendant pays the plaintiff as special damages of **two hundred and sixty five million, one hundred and forty (265,140,000/=)** of part of the residue land of **4.419 acres** of land already sold and transferred by the 2nd defendant to third parties provided such acreage forms part of the residue land of **20.5 acres**.
- viii. The 2nd defendant pays the Plaintiff interest on vii above at the Bank rate from the time of filing the suit till payment in full.
- ix. That the 1st and 2nd defendant jointly and severally pay to the Plaintiff general damages for trespass, illegal and arbitrary actions plus the inconveniences caused to the Plaintiff and the direct beneficiaries of the same Estate as a result.
- x. That an order that all land dealings between the 1st and 2nd defendants on the one part, and any other third parties including the residents of kabulamurilo on or before October 2005 only affect the **14.01 acres** formerly under **Busiro Block 383 Plot 388** but not the suit residue.


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- xi. That the 1st and 2nd defendants jointly and severally pay to the plaintiff interest on no. (x) at bank rate from the date of judgment till payment in full.
- xii. Costs of the suit be borne by the defendants jointly and severally.
- xiii. Any other relief that this court deems fit.

In his written statement of defence, **Amans Mutebi** hereinafter referred to as "**the first defendant**" states inter alia:

1. That the Plaintiff's claim was time barred.
2. That the issues raised in the Plaint are directly and substantially the same as those raised and determined in ***H.C.C.S No. 2004- The Administrator General versus 1. Amans Mutebi 2. Akright Projects Limited 3. The Registrar of Titles*** which were adjudicated upon by Hon. Justice Anna Magezi on the 8th May 2009 and therefore the matter was res-judicata under **Section 7 of the Civil Procedure Act**.
3. That all the transactions that affected the suit property comprised in **Busiro Block 383 Plot No. 254** were lawful and legitimate and there was no mistake known to law committed by either the 3rd defendant or any other person in the process of changing its ownership.
4. That the alleged acts of fraud committed by the first defendant were carried out after 28th February 2003 when he had purchased the suit property and had it transferred in his name long after the Plaintiff's interest in the suit land was extinguished on 1st December 1984 under **Section 16 of the Limitation Act**.
5. That there was no mistake from which relief from its consequences was being sought by the Plaintiff because the alleged mistake if at all by the 3rd defendant of registering one Fredrick Kiddu on the title to the suit property did not operate to conceal the cause of action of the Plaintiff of registering one which had started to run from the death of the late John


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Baptist Kasasa by operation of law to wit **Section 6 (2) of the Limitation Act.**

6. That the entry on the register of one Fredrick Kiddu Kasasa as the registered owner of the suit land on 21st August 1984 only operated as creating a new cause of action in favour of the Plaintiff against Fredrick Kiddu Kasasa to recover the suit property but that the cause of action was extinguished on 20th August 1996 after the expiry of twelve years.
7. The 1st defendant contends that he purchased 14 hectares from NPART which is the suit property and which he owned as a bona fide purchaser without any notice of fraud.
8. That the 3rd defendant did not commit any mistake or fraud which concealed the cause of action of the Plaintiff.
9. The first defendant further states that the Plaintiff's action to recover the suit land belonging to the estate accrued on the death of the late John Baptist Kasasa and after 12 years the Plaintiff's right of action was extinguished by **Section 16 of the Limitation Act.**
10. That the transactions which were carried out on the suit land were legitimate and not fraudulent as alleged.

The 1st defendant prayed that the suit should be dismissed with costs.

In their written statement of defence, **Akright Projects Limited** hereinafter referred to as "**the 2nd defendant**" stated inter alia:

1. That the 2nd defendant denies any responsibility in as far as the purported residue of **20.5 acres** was concerned since they bought the suit land as bona fide purchasers without notice of the purported interest of the plaintiff.
2. That the Plaintiff was therefore not entitled to the prayers sought.
3. The 2nd defendant contends that through an advert in the New Vision dated 22nd August 2002, the 1st defendant bought all the land


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comprised **Plot 388 measuring 14.01 hectares** but not **14 acres** and that the 2nd defendant would rely on the letter from the Trust Administrator NPART to the Commissioner Land Registration.

4. The 2nd defendant averred and contended that at the time the 1st defendant bought **Block 383, Plot 388**, the registered proprietor was **Angel Nsubuga Kizito** who had mortgaged the property to Uganda Development Bank under **Angel Investments Limited** and who failed to service their loan and the debt was transferred to NPART as a non performing account.
5. The 2nd defendant further contends that the land comprised in **Block 383 Plot 1566** was not **10 acres** but **14.01 hectares** and the omission to register it on the title was committed by the 3rd defendant and that the 2nd defendant will rely on the letter of the Commissioner Land Registration to Katamba and Company Advocates dated the 26th November.
6. That without prejudice to the amounts paid for stamp duty, the area in question was **14.01 hectares** but not **14.01 acres** and that the stamp duty was paid according to what was on the title which was curable and not fatal.
7. The 2nd defendant denies that the actions undertaken by the 3rd defendant which amounted to mistakes were intended to benefit them.
8. The 2nd defendant further contends that on relying on the letter of the Ag. Commissioner for Land Registration dated 26th November 2008, that a mistake which was committed by Fredrick Kiddu after obtaining his succession certificate in 1981 to omit to take plot 387 cannot be visited on the 2nd defendant and that the mistake cannot be corrected as of now since the land has changed to many other people.



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9. The 2nd defendant further contends that there is no residue measuring **20.5 acres** after the mistake made by Fredrick Kiddu to omit to enter on **Plot 387** and above all Plot 1566 was subdivided from Plot 1580-1624 by the 2nd defendant as the registered proprietor of plot 388 and so far sold to third parties.
10. The 2nd defendant refuted the allegations of fraud and that the sub-division was done in earnest thereof and bona fide.
11. The 2nd defendant further contends that that its interests in **Block 383, Plot 388** which was eventually subdivided into **plots 1566 and 1567** was **14.01 hectares** and not **14.01 acres** as alleged by the Plaintiff.
12. The 2nd defendant denies any liability and that the Plaintiff is not entitled to the prayers sought.


The 2nd defendant prayed that the suit should be dismissed with costs and an order be made directing the Ag. Commissioner for Land Registration to lift all the caveats lodged **Fred Makanga Bogere** from **Instrument No. KLA 282002** of the 6th October 2005 be lifted from its interests it purchased and or any other encumbrances of its land.

The 2nd defendant raised a counter claim against **The Administrator General, Solome Nakitto Kasasa, Christine Nakiguli Kasasa, Noah Mawagali Kasasa, Col. Bogere Fred Makanga, The Chief Registrar of Titles, Amans Mutebi** and the **Attorney General** hereinafter referred to as "the 1st, 2nd 3rd, 4th, 5th, 6th, 7th and 8th counter defendants respectively where they state inter alia:

- i. That their cause in the counter claim is for the recovery of **Uganda Shillings 9,360, 071,834/=** being actual costs and the projected lost construction net income as a result of the vexatious claims carried out by the counter defendants.
- ii. That of the land they had purchased they had designed to develop **10 acres** of land into residential /condominium apartments equivalent to **64 units** per acre totalling **640 units** which were sold as off plan products to clients who were depositing 20% of the sale price.


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- iii. That the rest of the land was meant to be developed into residential bungalows and they were supposed to be sold off like as site and service products to allow co-developers to maximize their test and preferences.
- iv. That in the year 2005 they had commenced on the project by putting up apartments, they commenced sale off plans and also commenced the model plans and they had got about 200 clients as depositors and they used the proceeds to procure materials and deposits to contractors and suppliers.
- v. That in February 2006 the 1st counter defendant and the 5th counter defendant lodged a caveat on the land and thus curtailed the process of completing condominium apartment titles and as such the project got halted and also the sale off plans stopped/paused and then the clients who had deposited their money started demanding for the refunds with costs.
- vi. That the condominium apartments according to their cost analysis were to cost each **73,600,000/=** which comprised of the site and service disbursements of the land, pre-procurement charges, procurement, planning and extension of utilities in the amount of **Uganda Shillings 1,083,367/=**, direct construction costs of architectural plans, materials, labour and supervision of **Uganda Shillings 67,251,633**, promotion and sales commission of **4,796,250/=**, and administrative general overheads of **Uganda Shillings 468,750/=**.
- vii. That the unit make-up of **Uganda Shillings 10,800,000/=** put the selling unit price at **Uganda Shillings 84, 400,000/=** and hence the total investment at phase one was at the sum of **Uganda Shillings 9, 360, 071, 834/=** representing actual costs of Uganda Shillings **6, 912, 000,000/=** computed at **Uganda Shillings 10,800,000/=** for the planned **640** condominium units.
- viii. The Counter claimant stated that when they started executing the project, the 1st counter defendant and the 5th counter defendant


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caveated the land with frivolous and vexatious claims claiming that they had an interest in the suit land.

- ix. That the project was then halted and put to a standstill to-date which made them demobilize the workforce /tools and machinery.

The counter claimant listed the particulars of fraud against the 1st, 2nd, 3rd, 4th, 5th and 6th counter defendant as follows:

- i. That the 1st defendant went ahead to conspire with the 5th counter defendant by signing empty transfer forms for property of **plot 254** equivalent to **20 acres** on an estate it was not administering since its office had earlier in 1978 caused a subdivision of **plot 254** into other different plots and the same transferred into the names of the beneficiaries of the late Kasasa John Bosco and by that act it no longer had authority to transact on that particular estate.
- ii. That a technical clarification was requested from the Director of Mappings and Surveys who clarified that it wasn't correct and was fraudulent to have a transfer on **plot 254 Block 388 measuring 20 acres** and it ceased to exist.
- iii. That it was in 2004 when the 2nd, 3rd and 4th Counter Defendants again entered into a purchase transaction by the 5th counter defendant that he had purportedly bought **20 acres** of land on **plot 254 Block 383** while knowing by both parties that the property was not in existence both in title and physical occupation.
- iv. That as a result of connivance of the 1st counter defendant and the 5th counter defendant on the land they knew was not in existence, the 5th counter defendant went ahead and lodged a caveat on the title and an interim order suspending the counter claimant from transacting on the entire piece of **plot 1566** and **1567** hence subjecting the counter claimant to fatal financial losses from 2005 to-date.


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- v. That the 6th counter defendant entertained the caveat based on false claims from the 1st counter defendant and 5th counter defendant well knowing that the property to which the caveator was lodging a caveat was not in existence since it was sub-divided into plots **387 and 388** which caused severe loses and damages to the counter claimant.
- vi. The counter claimant contended that by 2005 there was no land by the title of **plot 254** and once a title is subdivided it ceases to exist and it is from that very point that they used the sell and purchase agreement for **plot 254** that they fixed a caveat **on plot 1566** in the names of the counter claimant and **plot 1567** with the ill motive of frustrating and grabbing the entire project.
- vii. That the 6th counter defendant acted in conspiracy with the 1st counter defendant when he maliciously and ill motivated consented on all the allegations the 1st counter defendant had put up against the counter claimant.

The counter claimant listed the particulars of negligence by the 7th counter defendant as follows:

- i. That after purchasing another piece of land equivalent to **10 acres** from the 7th counter defendant in which he requested the counter claimant to use his expertise to negotiate and settle the squatters in an orderly manner by way of sharing with the 7th counter defendant so as to free the rest of the land from any claim by the squatters, the counter claimant successfully executed an M.O.U of squatter settlement on behalf of the 7th counter defendant and the squatters were settled on **plot 1567 occupying 6.3 acres and 3.7 acres** remained for the 7th counter defendant as free from any claim from the squatters rather the 7th counter defendant failed to give them the mother title so that they curve themselves out.

The counter defendant further contends that much as they realised that the 1st counter defendant and the 5th counter defendant had put a caveat on the land, they were willing to receive the mother title and keep it with their agent as an assurance for their settlement which wasn't done.


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The counter claimant further stated that the bibanja claimants have interfered with their entire land which they bought squatter free on **plot 1566** and this has created a multiplicity of interference in a way of trespass claiming that their interests were not settled nor compensated by the 7th counter defendant.

That the 7th counter defendant failed to find an alternative solution to solve the problem of the squatters for their piece of their bibanja which had been taken away from them as a result of the failed land sharing process, yet several alternatives were at his disposal for instance his balance of **Uganda Shillings 78,000,000/=** on the purchase price still owing from the counter claimant was always made available for him on condition that he settles the matter with the squatters but he was adamant.

That as a result of the negligence of the 7th counter defendant, the squatters who were supposed to occupy **6.3 acres** of land on **plot 1567** moved ahead and trespassed further on **plot 1566** while the 7th counter defendant was not making any effort.

The counter claimant prays for judgment in their favour with the following remedies:

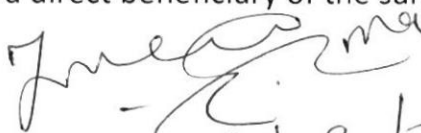
- i. That judgment be entered in their favour.
- ii. That this court orders the 6th counter defendant to lift all caveats lodged by the 5th counter defendant vide **Instrument No. KLA 282002** of the 6th October 2005 be lifted from its interests purchased and or any other encumbrances on its land.
- iii. An order for specific performance on behalf of the 7th counter defendant to settle the squatters as was agreed in clause 5 of the sale agreement of 2003.
- iv. The consent arising out of Civil Suit No. 142 of 2005 dated 11th January 2008 made between the counter claimant and the 7th counter defendant be set aside on grounds of incompetence as the spirit in which it was made was over taken by events.


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- v. That this court declares all the transactions done prior by the 1st, 2nd, 3rd, 4th, 5th and 6th counter defendants null and void.
- vi. An order for a permanent injunction against the counter defendants and their assignees, agents and trespassers restraining them from interfering with the counter claimant's land.
- vii. That the counter claimant be compensated for the loss by awarding them general damages of **United States dollars 7,680,000.**
- viii. Special and punitive damages.
- ix. Costs of the suit.


The Chief Registrar of Titles hereinafter referred to as "**the 3rd defendant**" entered into a consent judgment with the Plaintiff where they agreed inter alia:

1. That the land formerly comprised in **Busiro Block 383 Plot 254** measuring **48.4 acres** originally formed part of the Intestate estate of the late **John Baptist Kasasa** which Estate has since January 1977 to date been under the administration of the Plaintiff.
2. That at the time of creating land formerly comprised in **Busiro Block 383 Plot 387 of 13.89 acres (5.62 hectares)** out the land formerly comprised in **Busiro Block 383 Plot 254 of 48.4 acres**, the 3rd defendant by omission and /or mistake first converted the **48.4 acres** to **19.63 acres** created from former **Busiro Block 383 Plot 387 of 5.62 hectares** registered in favour of Fredrick Kiddu on 24th February 1981 vide instrument **No. KLA 97490** thereby creating a residue land title formerly comprised in **Busiro Block 383 Plot 388** measuring **14.01 acres** instead of **14.01 hectares** and from which former **Busiro Block 383 Plot 1566 of 10 acres** and current **Plot 1567 of 4.01 acres** arose.
3. That vide the Plaintiff's **Succession Certificate No. 9689** of 7th January 1981, Fredrick Kiddu a direct beneficiary of the same estate was given


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another **13.89 acres (5.62) hectares** out of the former residue title of **Busiro Block 383 Plot 388** reading as **14.01 acres** but instead the 3rd defendant by omission or mistake, on the 21st August 1984 under Instrument No. KLA .110234, did transfer and register Fredrick Kiddu on the entire title of former **Busiro Block 383 Plot 388** measuring and /or reading as **14.01 acres**.

4. That the 3rd defendant's omission and /or mistake in conversion of the **48.4 acres to 19.63 hectares** but maintaining the title measurements as **19.63 acres** left out from the title and all other subsequent transactions, a total of **20.5 acres (8.34 hectares)** which the Plaintiff has never distributed to anybody and which residue land still forms part of the estate of the late John Baptist Kasasa administered by the Plaintiff.
5. That the true and rightful registrable interests of the 1st and or 2nd defendants and or any other person deriving and /or claiming interest therefrom does not exceed **14. 01 acres (5.67 hectares)** as per the Certificate of Title of land formerly comprised in **Busiro Block 383 Plot 1566 of 10 acres** and **Busiro Block 383 Plot 1567 of 4.01 acres** resulting from the sub-division of former **Busiro Block 383 Plot 388 of 14.01 acres**.
6. That the 3rd defendant has come across instruments executed between the 1st and the 2nd defendants acknowledging that they bought and shared between themselves former **Plot 388 of 14.01 acres** resulting into **Plot 1567 of 4.01 acres** and former **Plot 1566 of 10 acres** respectively.
7. That owing to the discovered mistakes, the 3rd defendant undertook to rectify the earlier aforesaid mistake and /or omission in conversion by correcting the residue.
8. It was also agreed that the Plaintiff withdraws the suit against the 3rd defendant and it was withdrawn.


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9. It was further agreed that each party bear their own costs.


In reply to the counter claim, The Administrator General hereinafter referred as "the 1st counter defendant" stated inter alia:

- i. That the counter claim was bad in law and barred by the law of limitation and hence the counter claim should be struck out with costs.
- ii. In the alternative but without prejudice to the foregoing, the 1st counter defendant denies any cause of action against it in the sum claimed and /or at all in the counter claim.
- iii. The 1st counter defendant stated that its claim in approximately **20.5 acres of land** which is the main subject of litigation vide **H.C.C.S No. 140 of 2009** is neither frivolous nor vexatious but valid genuine and justifiable as evidenced by the Judgment and Decree therefrom In the ***Court of Appeal Civil Appeal No. 75 of 2011-Administrator General versus Akright Project Limited and two others***- and the Consent judgment of **23rd March 2016** vide **H.C.C.S No. 140 of 2009**.
- iv. The 1st counter defendant stated that they shall rely on documentary evidence to the effect that that the only counter claimant's bona fide interests were **ten acres (10 acres)** of registered land formerly comprised in **Busiro Block 383 Plot 1566 land at Kitende** as evidenced among others by the copies of the transfer form/application for consent to transfer of former **Busiro Block 383 Plot 1566** from the 1st defendant to the 2nd defendant, the sale agreements dated **29th October 2002** and **14th December 2002**, transfer forms of former **Busiro Block 383 Plot 388 of 14.01 acres** from NPART to Amans Mutebi dated 24th February 2003, the copy of the land title for former **Busiro Block 383 Plot 388**, the bank payment advice form and pay in slip dated 24th February 2003, the caveat by the 7th counter defendant dated 18th March 2003, the claimant's case vide **H.C.C.S No. 142 of 2005** dated 3rd March 2005, the 7th counter defendant's defence/counter claim thereof plus the transfer forms of


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Fredrick Kiddu Kasasa to Angelo Nsubuga Kizito of former Busiro Block 383 Plot 388.

- v. That the claim of any counter claimant's alleged developments were restricted to only **ten acres**.
- vi. The 1st counter defendant denies having ever occasioned any loss to the counter claimant.
- vii. That the counter claimant has since almost utilized its entire genuine **ten acres (10 acres)** of land as follows:
 - (a) Upon sub-division of former **Busiro Block 383 Plot 1566** into various plots, the counter claimant sold and transferred land comprised in **Busiro Block 383 Plot 1580 of 0.927 hectares, Plot 1582 of 0.4 hectares, Plot 1589 of 0.108 hectares, Plot 1590 of 0.11 hectares, Plot 1593 of 0.107 hectares, Plot 1596 of 0.108 hectares, Plot 1597 of 0.108 hectares and Plot 1599 of 0.108 hectares** all totalling approximately **1.976 hectares** or approximately **5 acres**.
 - (b) The 1st counter defendant contends that the counter claimant's intended developments ought to have been comprised in only 10 acres and hence any intended alleged developments on the land in excess of ten acres would be illegal and amounting to trespass and thus any purported financial loss and /or damage on part of the Counter claimant is unfounded and baseless.
- viii. The first counter defendant denies in toto any alleged fraud or conspiracy on its part nor any knowledge of and /or been a party to annextures "G", "H" and "I" to the counter claim and further denies having ever occasioned any financial loss to the counter claimant.
- ix. The 1st counter defendant further contends that that the interim order and /or stay of execution order sought from the court and registered on the land in dispute was justifiable.


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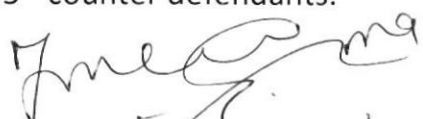
- x. That even with the 1st counter defendant's caveat still subsisting, the counter claimant illegally and fraudulently processed and transferred several land titles into the names of third parties with impunity as evidenced in annexures "P1" to "P8" and denies barring the counter claimant from transacting business on its genuine 10 acre piece of land.
- xi. The 1st counter defendant further contends that approximately **20.5 acres** of land the subject of litigation in this case does exist substantially and physically on ground which the counter claimant attempted to grab through fraudulent amendment of the area size.
- xii. The 1st counter defendant denies any alleged conspiracy, malice, and ill motivation on its part in relation to the consent judgment dated 23rd March 2016 as all the contents therein are supported by documentary evidence.
- xiii. The 1st counter defendant contends that the counter claimant is not entitled to any of the prayers sought in the counter claim against the first counter defendant.

In the alternative but without prejudice to the foregoing, the 1st counter defendant contends that if the counter claim was to succeed, the counter claimant would still pay the 1st counter defendant costs of the counter claim because prior to the institution of the counter claim, the counter claimant did not apply in writing to the 1st counter defendant stating the nature of the claim plus evidence in support of the claim as in the circumstances of the case the 1st counter defendant was reasonably entitled to require.

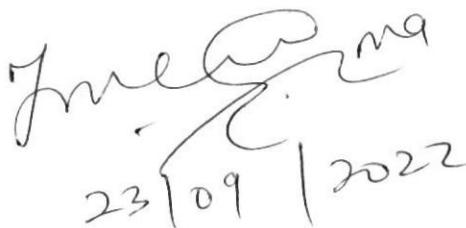
The 1st counter defendant prays that the counter claim should be dismissed with costs to the 1st counter defendant.

In their joint reply to the counter claim, **Christine Nakiguli Kasasa, Noah Mawagali Kasasa and Colonel Bogere Fred Makanga** hereinafter referred to as "**the 3rd, 4th and 5th counter defendants**" respectively state inter alia:

1. That the counter claimants' alleged claim is bad in law and barred by the law of limitation and hence the counter claim should be struck out with costs to the 3rd, 4th and 5th counter defendants.


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2. In the alternative but without prejudice to the foregoing, the said counter defendants deny to have occasioned any financial loss and /or damage to the counter claimant worth **Uganda shillings nine billion, three hundred and sixty million, seventy one thousand , eight hundred and thirty four shillings (9,360,071,834/=).**
3. The said counter defendants deny having committed any fraud as alleged by the counter claimant.
4. That the said counter defendants as direct beneficiaries to the intestate estate of the late John Baptist Kasasa attempted to sell to the 5th counter defendant 20 acres of the former **Busiro Block 383 Plot 254** as was originally known to them without regard to technical details of change of plot numberings but their intentions were genuinely pivoted on the residue of the former **Busiro Block 383 Plot 254.**
5. That the 2nd, 3rd and 4th counter defendants later discovered that the earlier severing of **5.62 hectares** of former **Busiro Block 383 Plot 254** gave rise to **plot 387** and the residue of **Plot 388 of 14.01 acres** leaving a residue balance of **20.5 acres.**
6. That initially it was not to the 5th counter defendant's knowledge that the estate of late John Baptist Kasasa was under the administration of the 1st counter defendant but immediately on discovery, the attempted purchase transaction was cancelled whereupon the 2nd , 3rd and 4th counter defendants agreed to refund part of the purchase money to the 5th counter defendant.
7. That because the 2nd, 3rd and 4th counter defendants were to refund the money in future instalments, in addition to the new discovery that the residue of **20.5 acres** was also being claimed by the counter claimant, the 1st, 5th and 7th counter defendants deemed it reasonable, justifiable and in good faith to lodge a caveat on former **Busiro Block 383 Plot 1566 and the current Plot 1567.**


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8. That in early 2006 and upon realising the mix up of counter interests in the subject land involving the counter claimant, the 1st and 7th counter defendants, the 5th counter defendant jointly worked out and agreed with the 2nd, 3rd and 4th counter defendants for a refund settlement upon which the 5th counter defendant vacated the caveats on former **Busiro Block 383 Plot 1566** and current **Plot 1567 of 10 and 4.01 acres** respectively despite the outstanding balances.
9. The 3rd, 4th and 5th counter defendants deny in total ever curtailing, halting, stopping and /or pausing the counter claimant's alleged developments and/or sell off plans nor ever occasioning any financial loss and/or at all to the counter claimant and aver and contend that in event the said caveats were not deregistered from the said titles, the fault was not on the part of the said counter defendants.
10. The 5th counter defendant contends that the purported notice of application to remove the 5th counter defendant's caveat on the land comprised in **Busiro Block 383 Plots 1605-1624** dated 8th September 2010 was of no legal effect and /or relevance as the 5th counter defendant had prior on 6th April 2006 applied and lodged the necessary document in Land Registry for the removal of the caveat on former **Busiro Block 383 Plot 1566** from which the plots herein were subdivided and current **Plot 1567**.
11. In the alternative but without prejudice to the foregoing, the 5th counter defendant contends that even if the said caveat still subsisted on the land titles, upon expiry of sixty days when the Notice of application was issued, the 6th counter defendant ought to have immediately cancelled the caveat from the affected titles.
12. In further alternative but without prejudice to the above, the said counter defendants contend that prior to and after lifting the 5th defendant's caveat from former **Busiro Block 383 Plot 1566** and current **Plot 1567** the said caveat did not affect the counter claimant's purported land transactions on 16th February 2006 as the counter

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claimant processed and created several sub-divisions out of former **Busiro Block 383 Plot 1566** namely **Busiro Block 383 Plots 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603** and **1604** which were registered in the counter claimants names and some of which specifically **Plots 1580, 1582, 1589, 1590, 1593, 1596, 1597** and **1599** were transferred from the counter claimants names into different names of third parties between 15th June 2006 and 22nd May 2007 and other 4 acres were sold to John Bosco Ntangaare and Joseph Turyabahika.

13. The 5th counter defendant denies having ever lodged a caveat on land comprised in **Busiro Block 383 Plots 1580 up to 1624**.
14. The said counter defendants further contend that the land comprised in **Busiro Block 383 Plot 1567** in the name of the 7th counter defendant has since been subdivided into provisional plots namely **Busiro Block 383 Plots 1881 to 1899 with Plot 1897** being an access road and hence the actions of the said counter defendants have since neither suspended the counter claimant from transacting on its genuine ten acre land nor have they ever barred the counter claimant from carrying out its purported business transactions and hence deny having occasioned the counter claimant any alleged financial loss.
15. The 5th counter defendant denies having ever lodged an interim order on land comprised in former **Busiro Block 383 Plot 1566** and current **Plot 1567**.
16. The 3rd and 4th counter defendants contend that the counter claimant has since utilized its ten acres of land and any purported planned developments could not be erected on property not legally belonging to and or owned by the counter claimant and which disputed land is the subject of this litigation.


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17. The 3rd and 4th counter defendants further contend that by the counter claimant's fraudulent actions of amending the area size of former **Busiro Block 383 Plot 1566 from 10 acres to 10 hectares**, it was an ill motive aimed at taking over additional land which is the subject of the litigation in this case and which the 6th counter defendant omitted to create a title for at the time former **Busiro Block 383 Plots 387 and 388** were created, hence the 3rd, 4th and 5th counter defendants deny ever frustrating and/or attempting to grab the counter claimant's entire project.

18. The 3rd and 4th counter defendants further contend that although former **Busiro Block 383 Plot 254** did not exist by 2005, substantially and physically the residue land of approximately **20.5 acres** does exist on ground which remained untitled at the time former **Busiro Block 383 Plots 387 and 388** were created and hence the counter claimant cannot hide under technicalities to fraudulently assume ownership of land in excess of the **14.01 acres** it and the 7th counter defendant bonafidely purchased.

19. The said counter defendants pray for the dismissal of the counter claim with costs.

The counter claimant withdrew their case against the 7th counter defendant.

The Plaintiff in the main case made replies to the 1st and 2nd defendants written statements of defence the details of which are on record.

The Parties also proceeded by way of witness statements from which they were cross examined. The detail of their evidence is also on record.

In their joint scheduling memorandum, the following issues were raised for determination.


1. **Whether or not the 3rd defendant made an apparent mistake in 1981 at the time of conversion of 48.4 acres to hectares of former Busiro Block 383 Plot 254.**


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2. If so whether or not registrable land of approximately 20.5 acres (8.34 hectares) was left out of the subsequent residue title of former Busiro Block 383 Plot 388 land at Kitende at the time Plot 387 was created.
3. Whether or not the 1st and 2nd defendant's purchase and transfer transactions in land comprised in former Busiro Block 383 Plot 388 at Kitende Wakiso district and the immediate resultant plots i.e former Busiro Block 383 Plot 1566 and current Busiro Block 383 Plot 1567 were in acres or hectares.
4. Whether or not the 1st and 2nd defendant's actions of amending the area sizes of former Busiro Block 383 Plot 1566 of 10 acres to 10 hectares and Plot 1567 of 4.01 acres to 4.01 hectares were fraudulent.
5. Whether or not the suit land of approximately 20.5 acres (8.4 hectares) still forms part of the estate of the late John Baptist Kasasa under the administration of the Plaintiff.
6. Whether the consent Judgment entered between the Plaintiff on the one hand and the 3rd defendant on the other hand dated 22nd March 2016 offends Sections 18, 19 and 20 of the Contracts Act, 2010.

ISSUE ONE: Whether or not the 3rd defendant made an apparent mistake in 1981 the time of conversion of 48.4 acres to hectares of former Busiro Block 383 Plot 254.

This issue was settled in *Civil Appeal No. 0075 of 2011-Administrator General versus Amans Mutebi and two others* where the Court of Appeal found as a fact there was indeed a mistake in converting 48.4 acres to hectares of former Busiro Block 383 Plot 254. This is what the Court of Appeal held in the said appeal; *"The relevant facts as we find them are that Busiro Block 383 Plot 254 comprised 48.4 acres that were being administered by the Administrator General at the time of removing Plot 387 comprised of 5.62 hectares, the third respondent (The Chief Registrar of Titles) converted 48.4 acres into hectares which became 19.63 hectares. The 5.62 hectares was removed from 19.63 now reading as acres instead of hectares so there was a balance of 14.01 acres instead of hectares. This resulted into a total of 20.6*


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acres being left out of the title. This was caused by the negligence and mistake by the third respondent which at the hearing of this appeal the third respondent admitted.

The 1st and 2nd respondent (Amans Mutebi and Akright Projects Limited respectively) discovered that mistake in 2003 and they then started to claim that they owned that land and attempted to bring on board the 20.6 acres they had not purchased. That is when the cause of action arose according to counsel for the appellant. The third respondent in substance admitted those facts and accepted that they made an error and would wish to be given opportunity to correct their mistake by their office. They would have corrected the mistake were it not for court orders preventing them from doing so."

The copy of the said Judgment was tendered in court and marked as exhibit Cd4-1.

The Plaintiff and the 3rd defendant also entered a consent judgment where it was agreed inter alia:

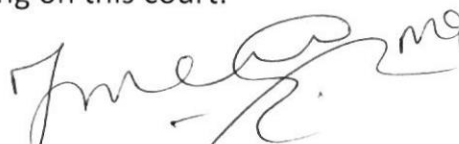
- i. That at the time of creating land formerly comprised in Busiro Block 383 Plot 387 of 13.89 acres (5.62 hectares) out of land formerly comprised in Busiro Block 383 Plot 254 of 48.4 acres , the 3rd defendant (The Chief Registrar of Titles) by omission and /or mistake first converted the 48.4 acres to 19.63 hectares but instead maintained the title measurements reading as 19.63 acres created former Busiro Block 383 Plot 387 of 5.62 hectares registered in favour of Fredrick Kiddu on 24th February 1981 vide Instrument No. KLA 97490 thereby creating a residue land title formerly comprised in Busiro Block 383 Plot 388 measuring 14.01 acres instead of 14.01 hectares and from former Busiro Block 383 Plot 1566 of 10 acres and current Plot 1567 of 4.10 acres.
- ii. That vide the Plaintiff's Succession Certificate No. 9689 of 7th January 1981, Fredrick Kiddu (a direct beneficiary of the same estate) was given another 13.89 acres (5.62 hectares) out of the former residue title of Busiro Block 383 Plot 388 reading 14.01 acres , but instead the 3rd defendant by omission or mistake, on 21st August 1984 under instrument No. KLA.110234, did transfer and


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register Fredrick Kidddu on the entire title of former Busiro Block 383 Plot 388 measuring and or reading as 14.01 acres.

- iii. That the aforesaid 3rd defendant's omission and /or mistake in conversion of 48.4 acres to 19.63 hectares but maintaining the title measurements as 19.63 acres left out from the title and all other subsequent transactions a total of 20.6 acres (8.34 hectares) which the Plaintiff has never distributed to anybody and which residue land still forms part of the estate of the late John Baptist Kasasa administered by the Plaintiff.
- iv. That the true and rightful registrable interests of the 1st and or 2nd defendants and or any person deriving and /or claiming interest therefrom does not exceed 14.01 acres (5.67 hectares) as per the Certificates of Title of land formerly comprised in Busiro Block Block 383 Plot 1566 of 10 acres and Busiro Block 383 Plot 1567 of 4.01 acres resulting from the sub-division of former Busiro Block 383 Plot 388 of 14.01 acres.
- v. That the 3rd defendant has come across instruments executed between the 1st and 2nd defendants acknowledging that they bought and shared between themselves former Plot 388 of 14.01 acres resulting into Plot 1567 of 4.01 acres and former Plot 1566 of 10 acres respectively.
- vi. That owing to the discovered mistakes, the 3rd defendant undertakes to rectify the earlier aforesaid mistake and /or omission in conversion by correcting the residue.

The said consent judgment has never been set aside and it is therefore apparent that the 3rd defendant made an apparent mistake in 1981 at the time of conversion of **48.4 acres to 19.63 hectares** of former **Busiro Block 383 Plot 254** but at the same time maintaining the 19.63 as acres instead of 19.63 hectares. These are facts that were confirmed by the said decision of the Court of appeal which decision is binding on this court.


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ISSUE 2: Whether or not registrable land of approximately 20.5 acres (8.34 hectares) was left out of the subsequent residue title of former Busiro Block 383 Plot 388 land at Kitende at the time Plot 387 was created.

From the resolution of issue one, it is clear that upon mutating off former **Busiro Block 383 Plot 387 of 13.89 acres (5.62 hectares)** from former **Busiro Block 383 Plot 254**, whose measurements were converted to **19.63 hectares**, by error in conversion by the 3rd defendant which is also reflected in the said consent judgment, a total of **20.6 acres (8.34 hectares)** was never reflected on the residue Certificate of Title of former Busiro **Block 383 Plot 388** which read **14.01 acres** instead of **14.01 hectares**.

ISSUE 3: Whether or not the 1st and 2nd defendant's purchase and transfer transactions in land formerly comprised in Busiro Block 383 Plot 388 at Kitende Wakiso District and immediate resultant Plots i.e former Busiro Block 383 Plot 1566 and current Busiro Block 383 Plot 1567 were in acres or hectares.

In the consent order that was entered into by the parties vide **Civil Suit No. 142 of 2005** who are the 1st and 2nd defendants in this case, it was agreed amongst the said parties inter alia:

1. That the Plaintiff(2nd defendant in this case) obtained possession of title for 14 acres out of Busiro Block 383 Plot 388 land at Kitende on the grounds that it had been purchased and paid for the same in full to the 1st defendant.
2. That the Plaintiff (2nd defendant herein) and the 1st defendant shall appoint independent land surveyors to curve out from Busiro Block 383 Plot 388 land at Kitende the fourteen acres (14 acres) mentioned in 1 above

The said consent order has never been set aside.

The transfer form from NPART to the 1st defendant which was tendered in court and marked as exhibit P.15 indicates that the acreage of land comprised in **Block 383 Plot 388** that was purchased by the 1st defendant from NPART was 14.01 acres. The 1st defendant never adduced any evidence by way of a sale agreement which indicated that the area of land he had purchased from NPART was in hectares. Therefore the registrable interest DW1 derived from


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NPART were **14.01 acres** and that is the land he could sale to the 2nd defendant.

The sale agreement between the 1st defendant and the 2nd defendant which was tendered in court and marked as exhibit P.17 clearly shows that the land the 2nd defendant bought from the 1st defendant was **10 acres**. That agreement was witnessed by Herbert Kwikiriza (DW2).

Section 91 of the Evidence Act Cap 6 provides that *“When the terms of a contract or of a grant , or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence , except as mentioned in section 79, shall be given in proof of the terms of the contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.”*

Section 92 of the Evidence Act Cap 6 provides that *“when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms;”*

It was also held in the case of **Uganda revenue Authority versus Stephen Mabosi-S.C.C.A No. 26 of 1995** that when terms of a contract or other disposition of property have been reduced to the form of a document, no other evidence is admissible to exclude or add to what is contained in the document. The document speaks alone and by itself.

The oral evidence of DW1 and DW2 that NPART sold **14.01 hectares** to DWI was neither supported by an instrument of transfer nor a sale agreement. In that regard their evidence is inadmissible since it contradicts the sale agreements and transfer forms that were tendered in court which show that all the transactions regarding the suit land were in acres.

The 1st and 2nd defendant only discovered that the former **Busiro Block 383 Plot 388** were in hectares in **March 2003** long after the 1st defendant had purchased **14.01 acres from NPART** sometime in September 2002.

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Therefore the 1st and 2nd defendant's purchase and transfer transactions in land formerly comprised in **Busiro Block 383 Plot 388 at Kitende Wakiso District and the immediate resultant Plots i.e former Busiro Block 383 Plot 1566 and current Busiro Block 383 Plot 1567** were in acres.


ISSUE 4: Whether or not the 1st defendant's actions of amending the area sizes of former Busiro Block 383 Plot 1566 of 10 acres to 10 hectares and Plot 1567 of 4.01 acres to 4.01 hectares were fraudulent.

It is evident that the 1st and 2nd defendant discovered or found out that the land they had actually purchased was more than had been earlier sold to them. They transacted in acres but found that the acreage was in hectares.

As earlier stated, the Certificate of Title as shown in Exhibit 5 obtained by DW1 as well as the transfer forms as shown in exhibits P.15 and P.16 clearly indicate that DW1 purchased **14.01 acres and not 14.01 hectares** from NPART. To prove purchase of the additional **20.6 acres (8.34 hectares)** from NPART, DW1 ought to have produced a sale agreement between himself and NPART or at least a transfer form to that effect.

In their memorandum of understanding that was made on the **27th March 2003** which memorandum was tendered in court and marked as exhibit P.23 the 1st defendant and the 2nd defendant acknowledge that they acquired **14.01 acres** from NPART but they later discovered that it was instead **14.01 hectares**. They then assumed that they had acquired the discovered/ excess land as well!

It was held in the case of ***Fredrick Zaabwe versus Orient Bank-S.C.C.A No. 04 of 2006*** where fraud was elaborately defined as *"an intentional pervasion of truth for the purpose of inducing another in reliance upon it to put some valuable thing belonging to him or her or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he or she shall act upon it to his or her legal injury. Anything calculated to deceive, whether by a single act or a combination of acts or by 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... A generic term, embracing all multifarious means which human ingenuity can get advantage over another by false suggestions or by suppression of truth, and includes all surprise, tricks, cunning, dissembling and any unfair way by which another is cheated. Bad faith and*


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fraud are synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness etc. As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, speech or by silence, by word of mouth or by look or gesture..."

What the 1st and 2nd defendant did is akin to someone selling ten cows to a purchaser and directing him to get them from his Kraal and on the purchaser finding 100 cows in the kraal takes them all on grounds that since all the cows were in the kraal, it was presumed that he had purchased them!

The actions of the 1st and 2nd defendants was an intentional pervasion of the truth on what they had purchased. It was a false representation of a matter of fact having purchased in acres and then assuming that they had purchased in hectares. The 1st and 2nd defendant's actions were intended to cheat the beneficiaries of the estate of John B. Kasasa which was being administered by the Plaintiff. Their actions were actually meant to defraud the beneficiaries of the said estate.

The said defendants attempted to "correct" the mistake on the face of the record comprised in **Block 383 Plot 388** and subsequently **Plots 1566 and 1567** from acreage to hectares simply because they had by miracle found the said land available! See exhibit P.24. That however was not what they had purchased as shown in the evidence on record. The said defendants attempted to transact amongst themselves, the discovered excess land as shown in exhibit P.23.

It is equally apparent that there were no executed transfer forms to the said defendants for the excess suit land and no valuation of the excess land (**20.6 acres**) was ever done for purposes of paying stamp duty. There was no evidence adduced by the said defendants that stamp duty was paid for the excess land they had discovered on the ground. It was held in the case of **Betty Kizito versus David Kizito Kanonya and 7 others-S.C.C.A No. 08 of 2018** that by public policy, any transaction designed to defraud the government of its revenue was illegal. It was further held that a buyer is not a bona fide purchaser where he or she inserts a lesser figure on the transfer form as consideration when he actually paid more in order to defraud government of

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revenue. The mode of acquisition becomes tainted with fraud and illegality. Any transaction designed to defraud Government of its revenue is illegal and therefore the title deed acquired in such circumstances would be void because of fraud.

The 1st and 2nd defendants cannot be seen to seek protection under **Section 59, 176 nor 181 of the Registration of Titles Act Cap 230**. It was held in the case of *Molly Turinawe and four others versus Engineer Ephraim Turinawe and another –S.C.C.A. No. 10 of 2018* that a certificate of title is not conclusive proof of ownership in land until the circumstances of acquisition have been investigated.

The said defendants having discovered the extra land than that which they had purchased should have sought to legally acquire the excess land. The excess they found could not be part of what they had purchased. Their actions to convert the excess land as theirs without having legally acquired it amounted to fraud.

Issue 5: Whether or not the suit land approximating 20.6 acres (8.4 hectares) still forms part of the estate of the late John Baptist Kasasa under the administration of the Plaintiff.

It was an agreed fact that land formerly comprised in **Busiro Block 383 Plot 254 of 48. 4 acres** was registered in the names of the late John Baptist Kasasa. The Plaintiff (The Administrator General) administers the said estate.

The registrable interests of the 1st and 2nd defendants are derived from the said estate. The evidence adduced shows that the registrable interest of the 1st and 2nd defendants from the said estate was **14.01 acres** and not **hectares**.

The evidence on record was also to the effect that the Plaintiff had given out of the said estate **13. 89 acres** to **Fredrick Kiddu** as shown in exhibit P.6 and **14.01 acres** as shown in exhibit P.5 totalling **27.9 acres** out of the original **48. 4 acres**.

The balance of the acreage of land of the said estate that has not been parcelled out is **20.5 acres**. This land has never been legally sold nor distributed to the beneficiaries of the said estate.

Therefore land which is approximately **20.5 acres (8.4 hectares)** still forms part of the estate of the late John Baptist Kasasa and is still under the administration of the Plaintiff.


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Issue 6: Whether or not the Consent Judgment entered between the Plaintiff on the one hand and the 3rd defendant on the other hand dated March 2016 offends Section 18, 19 and 20 of the Contracts Act 2010.

The best way to have challenged the said consent judgment was to file a formal application with valid grounds to set it aside.

It was held in the case of *M. Buwule versus Asuman Mugenyi- C.A.C.A No. 24 of 2010* it was held that to go against a consent judgment/ and or order is tantamount to sitting in appeal over the earlier judgment/and or order or reviewing it.

It was also held in the case of *Attorney General and Uganda Land Commission versus James Mark Kamoga and another-S.C.C.A No. 8 of 2004* that consent Judgments are treated as fresh agreements and may only be interfered with on limited grounds such as illegality, fraud or mistake.

The 1st defendant ought to have amended its written statement of defence and pleaded material facts in relation to the illegality, fraud or mistake of the said consent judgment. It cannot therefore be introduced as an issue if it is not pleaded. It was held in the case of *Interfreight Forwarders Limited versus East Africa Development Bank-S.C.C.A No. 33 of 1992* that in a trial a party should not depart from his or her pleadings.

This issue was therefore never pleaded and has no merit.

ISSUE 7: Remedies available to the Parties.

In light of the resolution of the issues hereinabove, Judgment will be entered for the Plaintiff against the defendants with the following declarations/orders:

1. The 3rd defendant is to maintain the area size for Busiro, Block 383 Plot 388 from which Plots 1566 and 1567 were created to read in total 14.01 acres.
2. The 3rd defendant is to create a Plot and title for the residue of Block 383 Plot 254 of 20.5 acres in favour of the Plaintiff as the administrator of the estate of the late John Baptist Kasasa.
3. An order that the 3rd defendant cancels all the illegal Plots created from Busiro Block 383 Plot 254 measuring 20.5 acres.


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4. The 1st and 2nd defendants are to give vacant possession of the residue of Busiro Block 383 Plot 254 measuring 20.5 acres to the Plaintiff.
5. A permanent injunction is to issue against the 1st and 2nd defendants from any further trespass on the residue of the suit land measuring 20.5 acres.
6. In event that any of the residue land has been transferred to third parties, the 1st and 2nd defendants are to compensate the Plaintiff the market value as prevailing of the transferred residue land to third parties.
7. The 1st and 2nd defendants are to jointly pay the Plaintiff two hundred million shillings (200,000,000/=) as general damages for trespass and inconvenience caused to the Plaintiff.
8. The 1st and 2nd defendants are to pay interest on items 6 and 7 above at the rate of 10% per annum from the date of Judgment until payment in full.
9. The 1st and 2nd defendants are to jointly pay the costs of the main suit.
10. I find no merit in the counter claim since the counter claimant failed to prove ownership of the disputed land and hence the counter claim will be dismissed with costs to the counter defendants.



Hon. Justice John Eudes Keitirima

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