

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 0565 OF 2015

VERSUS

2.KRISTINA KASIBAYO ::::::::::::::::::::DEFENDANTS


JUDGMENT

- a) The Plaintiff is a sister to the late Christopher Kasibayo and share a biological mother the late Ruth Bwashuko and the same father the late Elnest Kato Momo.
- b) That prior to the demise of their father who passed away in 1952 Christopher Kasibayo who is the eldest son had been entrusted by their father and mother to take care and have full custody of their properties.
- c) That the Suit land had been registered into the names of Kasibayo Christopher.

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- d) That the late Kasibayo Christopher being the eldest son was further entrusted by his late mother who agreed to have her land comprised in Kigezi Block 5 Plot 135 land at Kagunga, Rukungiri registered in his names.
- e) That upon the demise of their father, the beneficiaries to the respective estates agreed in principle to retain the eldest son Kasibayo Christopher as the head and care taker over both the respective estates of their father and mother.
- f) That the land which had been registered in the names of Kasibayo Christopher was distributed among the beneficiaries of the late Elnest Kato momo save for the land that belonged to their mother Ruth Bwashuko comprised Kigezi Block 5 Plot 135 land at Kagunga, Rukungiri registered in the names of Kasibayo Christopher which is now the Suit land.
- g) That following the demise of Kasibayo Christopher, the care taker of the suit property, the Suit property was claimed by the defendant who is the widow and Administratrix of the estate of the late Kasibayo. That this was upon obtaining a Grant vide No. 425 of 1986.
- h) That in January 1990 the defendant assisted by her lawyers Yusuf Kagumire well knowing that Christopher Kasibayo held the Suit land constructively in trust to all the children Cum beneficiaries of the late Ruth Bwashuko executed a transfer duly witnessed by the said lawyer to the then Ruth Bwashuko widow to Elnest


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Kato momo who also had dully signed the same and the appropriate fees and stamp duty paid thereon.

- i) That the said Ruth Bwashuko at the time entrusted M/S Kateera Kagumire and Company Advocates to effect the said transfer but unfortunately passed away in 1991 and the Plaintiff on 6th August 2004 became the administratrix thereof in 2004 vide Administration Cause No. 55 of 2004.
- j) That upon the Plaintiff getting to know in 2012 that the transfer forms were with M/S Kateera & Kagumire and Co. Advocates and upon cross checking with the said lawyers it was discovered that the said lawyers had not effected the transfer.
- k) That the Plaintiff requested the defendant to execute a new transfer in her favour as the Administratrix of the late Ruth Bwashuko's estate but in vain hence this Suit.
- l) The Plaintiff further contends that the representative of the late Kasibayo Christopher by way of signing of the said transfer, the Plaintiff was entitled to the said land as the administratrix of Ruth Bwashuko.
- m) The Plaintiff further contends that the defendant applied for and obtained Letters of Administration to the late Kasibayo's estate well knowing that part of the estate and in particular the Suit property did not belong to her late husband's estate but to the late Ruth Bwashuko as evidenced by her willingness to transfer the same to the late Ruth.


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- n) That the defendant has wilfully and negligently refused to execute the transfer and to surrender the title to the Plaintiff without any claim of right whatsoever.
- o) The Plaintiff further contends that as a result of the defendant's actions and /or omissions, the Plaintiff's work as an administratrix of her late mother's estate has been frustrated and that she has been deprived of her most valuable possession she inherited from her mother's estate.

The Plaintiff prays for Judgment against the defendant with the following orders;


- i) A declaration that the Suit land forms part of the estate of the late Ruth Bwashuko.
- ii) An order to deliver into Court the said title.
- iii) An order directing concealment of title in the names of the defendant.
- iv) An order directing the Commissioner lands to in place enter the name of the Plaintiff into the register and unto the Duplicate certificate of title.
- v) Deliver vacant possession.
- vi) General damages
- vii) Costs of the Suit.

In their amended written Statement of Defence and Counterclaim, the defendants state inter alia;

- i. That the Plaint does not disclose a cause of action against them as alleged.


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- ii. That the Suit property comprised in Kigezi Block 5 Plot 135 land at Kagunga, Rukungiri never formed part of the estate of the late Elnest Kato momo, but rather the property prior to being registered belonged to the late Edward Suleiman Karegyesa who was the beneficial and actual owner of the land prior to its registration.
- iii. That the late Edward Suleiman Karegyesa was the maternal grandfather of the late Christopher Kasibayo and the late Christopher Kasibayo orphaned at a young age after the death of his father Elnest Kato momo was raised by his maternal grandfather.
- iv. That upon his death, the late Edward Suleiman Karegyesa left a will in which he bequeathed the Suit land to his grandson Christopher Kasibayo, the eldest son of Edward Suleiman Karegyesa's daughter Ruth Bwashuko.
- v. That the Complaint is false when it alleges that the Suit land ever belonged to Ruth Bwashuko.
- vi. That the Suit land was subsequently registered in the names of the late Christopher Kasibayo on the 24th June 1960 and has been in his name since then.
- vii. That upon the death of Christopher Kasibayo, the 1st defendant, his widow applied for and obtained letters of Administration vide High Court Administration Cause No. 425 of 1986.


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- viii. The 1st defendant contends that she executed the unregistered transfer in the mistaken belief that the Suit land property belonged to her mother in-law the late Ruth Bwashuko.
- ix. The 1st defendant contends that after the death of the late Ruth Bwashuko and at her funeral, the surviving children of the late Edward Suleiman Karegyesa publically read their father's will and categorically stated that the Suit property belonged to the family and children of the late Christopher Kasibayo
- x. The 2nd defendant contends that the 1st defendant has no authority to dispose of the Suit property without valuable consideration and that the said transfer form has no legal effect at all.
- xi. The defendants contend that the Plaintiff knew as far back as 1991 that the transfer form had not been effected.
- xii. The defendants further contend that the said transfer was not effective and is not capable of passing any interest to the Plaintiff as alleged or at all and that the Plaintiff is not capable of holding the said land.
- xiii. The defendants further contend that the Plaintiff has no claim of right over the Suit property and is not entitled to any of the remedies sought.
- xiv. The defendants are praying that this Court dismisses the Suit with costs.
- a. The defendants /counter claimants raised a counterclaim where they state inter alia;


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- i) That the Counter defendant has trespassed on the suit land since she has illegally, forcefully and with no claim of right occupied the Suit Property.
- ii) That the Counter defendant has with no claim of right constructed a house on which she lives on the Suit land and attempted to permanently expropriate the property despite repeated requests from the counter claimants and local leaders.
- iii) That the Counterclaimants filed a report to the Police when it came to their attention that the counter defendant had started constructing on the suit land. That the Police requested the counter defendant to cease her activities to no avail.
- iv) That the counter claimants have since been denied possession of the suit land despite the fact that they are beneficiaries to the estate of the late Christopher Kasibayo.
- v) That the Counter defendant has caveated the Suit land barring the Counter claimants from conducting any lawful or legitimate transaction on their property.

The counter claimants are praying for the following remedies against the counter defendant;

- i) An order of eviction of the counter defendant.
- ii) Mesne profits for the period when the counter defendant fraudulently and with no claim of right occupied the suit property.

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- iii) A permanent injunction restraining the counter defendant from dealing with the suit property in anyway.
- iv) The caveat be vacated.
- v) General damages for trespass.
- vi) Costs of the counter claim.

In her written statement of defence to the counter claim the counter defendant states inter alia;

- i) That the suit property forms part of the estate of the late Ruth Bwashuko and not the estate of Cristopher Kasibayo.
- ii) That the counter defendant being a beneficiary to the estate of the late Ruth Bwashuko and the Administrator of the same has a legal interest in the suit property and all the allegations that she is a trespasser all baseless.
- iii) That the 1st counter claimant is well aware that the suit property though registered in her late husband's names belongs to the estate of the late Ruth Bwashuko and even executed transfer forms duly witnessed by her lawyers who also signed the same but never effected the transfer.
- iv) That being the eldest and most educated child, both Edward Karegyesa and Ruth Bwashuko entrusted her said late brother with care and full custody of their properties which among others included the suit land.


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- v) That after the demise of their father Edward Karegyesa, all other properties which were entrusted with the late Cristopher Kasibayo were distributed among the beneficiaries save for the suit property which was left intact because it was their mother's personal property and she was still alive by that time.
- vi) The counter defendant contends that she lodged a caveat on the suit property to protect and safe guard her lawful interest therein since she is not only a beneficiary but also the administrator of the estate of the late Ruth Bwashuko which among others comprises of the suit land.
- vii) The counter defendant contends that the counter claim is defective in substance for not stating the particulars of the trespass which is a matter of law and must be strictly pleaded.
- viii) The counter defendant prayed that the counter claim should be dismissed with costs.

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

The parties also filed written submissions the details of which are on record and which I have considered in determining this case.

In their Joint Scheduling Memorandum, the following issues were raised for determination.


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1. Whether the Plaintiff's suit is barred by limitation.
2. Whether the Plaintiff or defendant are the rightful owners of the suit land.
3. Whether the suit property forms part of the estate of the late Ruth Bwashuko as the Plaintiff claims.
4. Whether the parties are entitled to any reliefs sought.


Issue one; whether the Plaintiff's suit is barred by limitation.

Submissions of the Plaintiff /counter defendant on issue one;

It was submitted that the Plaintiff testified that upon the demise of her mother Ruth Bwashuko her brother was entrusted with the family property, the suit property inclusive.

That however before her mother's demise, her late mother had demanded for the suit land since it was her personal property and the 1st defendant with the help of her lawyer Yusuf Kagumire executed transfer forms of the suit property to the Plaintiff's mother duly signed and the taxes were duly paid but not effected until the demise of Ruth Bwashuko.

That the Plaintiff obtained letters of administration to claim her mother's interest and soon thereafter the plaintiff lodged a caveat on the 16th July 2009 to protect her interests in the same.



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The Plaintiff submitted that this suit was instituted from the date of lodging the caveat and obtaining Letters of Administration hence within the time required by law to file a suit in regard to recovery of land. That the suit was therefore not time barred by any limitation since Section 5 of the Limitation Act Cap 80 requires 12 years for recovery of land from the date on which the right of action accrued to him or her.

Submissions of the defendants /counter claimants on issue one and Preliminary objection

The defendants raised a Preliminary point of law to the effect the Plaintiff's claim arises from an alleged grant of letters of Administration from the Chief Magistrates Court of Rukungiri admitted as exhibit P1. That the alleged Letters of Administration were obtained under the administration of Estate (Small Estates) (Special Provisions) Act. That under Section 2 of the said Act, it states that Jurisdiction to grant Probate or letters of administration in respect of small estates of deceased persons shall be exercised by a Magistrate Grade2 where the total value does not exceed ten thousand shillings.

That the letters of administration attached were issued by a Magistrate Grade 2. That the Plaintiff's Petition and acquisition of Letters of Administration from the Chief Magistrates Court of Rukingiri and more so from the Magistrate Grade 2 are indicative of the fact that the Plaintiff was at all times aware that the estate was a small estate that did not include the suit land which measures approximately twenty acres. That


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the grant was obtained with the knowledge that the Suit land did not form part of the estate of the late Ruth Bwashuko. Counsel for the defendants cited the case **Wadri Mathias and others versus Dravilla Angela – Civil Revision No. 007 of 2019 (Land Division)** where it was held that;

“Jurisdiction of the Court is a creature of statute which is expressly conferred by law. If proceedings are conducted by a court without jurisdiction they are a nullity.”

Counsel for the defendants /counter claimants also cited the case of **Desai versus Warsaw (1967) E. A 351** to buttress his submissions.

Counsel for the defendants /counterclaimants further submitted that where a person obtains letters of administration from a Magistrate Court in respect of a big estate, the Court infers fraud on part of the Petitioner. He cited the case of **Yonasani Ddiba and another versus Michael Kiyinji and others H.C.S No. 043 of 2007 (Family Division)** to buttress his submissions.

The defendants /counter defendants contended that the grant of grant of Letters of Administration on which the Plaintiff derives her claim were obtained in regard to a small estate and cannot be the basis on which the Plaintiff claims the suit land whose value is above ten thousand shillings. That on this ground alone the Court should dismiss the case.


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On issue one, the defendants submitted that Section 5 of the Limitation Act provides that;


“No action should be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him or her or, it first accrued to some person through whom he /she claims to that person”.

The defendants submitted that the Plaintiff brought this suit seeking for recovery of the suit land and that the Plaintiff in Paragraph 3(c) of her Plaint stated that the late Christopher Kasibayo was duly registered as the proprietor of the suit land. That the copy of the title tendered in Court and marked as exhibit D3.

The defendants/counter claimants further submitted that the Plaintiff institute the instant suit in 2013 more than 53 years after the cause of action arose.

Counsel for the defendant cited the case of **Odyek Alex and another versus Gena Yokonani and 4 others H.C.C.S No. 009 of 2017 (Gulu High Court)** to buttress his submissions.

The Plaintiffs submitted that the cause of action accrued in 1960 when the late Christopher Kasibayo was registered as the proprietor of the suit land and therefore the instant suit would be barred by the statute of limitation. That even if the cause of action


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was deemed to have arisen upon the death of the late Ruth Bwashuko which occurred in 1991, the Plaintiff's suit was brought in 2013 which was brought out of time.

The defendants/counter claimants contended that statutes of limitation are by their nature strict and inflexible enactments and therefore litigation should be subdued automatically after a fixed length of time regardless of the merits of a particular case. The defendants/counter claimants contended that the suit was brought over 53 years after the cause of action arose. They prayed that the suit should be dismissed with costs.

Submissions by the Plaintiff in reply to the Preliminary objections and in rejoinder to issue one.

With regard to the Preliminary objection raised, Counsel for the Plaintiff /Counter defendant submitted that the issue as to a cause of action was never pleaded nor raised as an issue in the joint scheduling Memorandum at the scheduling conference. That the defendants were attempting to sneak an issue in their submissions and hence was a departure from their pleadings. They prayed that this Court disregards the submissions in respect of the said issue.

In the alternative, the Plaintiff submitted that she was a beneficiary which evidence was never rebutted and that as a beneficiary she had a right to claim for her interest once it was under threat by any other person.


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The plaintiff /counter defendant further submitted that the Plaintiff obtained Letters of Administration way back in 2004 when the estate's Pecuniary Jurisdiction and value was not as it is now and that the application was done by her lawyers. The Plaintiff cited the cases of **AG versus AKPM Lutaaya S.C.C.A No. 12 of 2007;**

Godfrey Mageze and Brian Mbazira versus Sudhir Ruparelia – SC- Civil Application No. 10 of 2002 and Kibuuka versus Uganda Catholic Lawyers society and 2 others Misc. Cause No. 696 of 2018 UG HCCD 72 where it was held that the omissions, mistakes, lapses or inadvertence of Counsel ought not to be visited on the litigant.

The plaintiff further submitted in rejoinder that prior to instituting this suit, the Plaintiff was involved in Preliminary steps and actions all intended in asserting her interest and recovery of her mother's land. That she lodged a caveat in 2009 in the Land Registry thus deflating the limitation period in that regard. The Plaintiff contended that the suit was not time barred and that the authorities cited by the defendants were cited out of context and misguided.

Decision of Court on Preliminary Objection and issue one.

Ideally, a Preliminary objection should be raised at the very start of hearing of a case as it has the potential of disposing off a matter at that stage. However, it was held in the case of **Tororo Cement Company Limited Versus Frokina International**


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Limited S.C.C.A No. 2/2001 that it was not mandatory for a party to clarify in his or her pleadings of their intention to raise a preliminary objection at the commencement of the hearing. A point of law can be raised at any time so it was proper for the defendants to raise their Preliminary point of law even at this stage.

The Plaintiff sued in her capacity as Administratrix of the estate of the late Ruth Bwashuko. It is clear as shown in exhibit P1 that the Letters of Administration the plaintiffs relied on were issued by a Grade Two magistrate vide Ruk-00-CV-AC 055/2004 and the estate was classified as a small estate. Under the **Administration of Estates (Small Estates) (Special Provisions) Act Cap 156, Section 2 (1) (a) of the Act** provides;

“Notwithstanding any Provision of the Succession Act on the Administrator’s General’s Act to the contrary, Jurisdiction to grant probate or letters of administration in respect of small estates of deceased persons shall be exercised by -

(a) A Magistrate Grade II where the total value of the estate does not exceed ten thousand shillings;”

The suit land is titled land comprised in Kigezi Block 5 Plot 135 land at Kagunga in Rukungiri District and 19.0 acres of land. This clearly cannot be a small estate which the Plaintiff purported to administer.


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I agree with submissions by Counsel for the defendants that the grant of letters of administration on which the Plaintiff derives her claim were obtained in regard to a small estate and cannot be the basis on which the plaintiff derives her claim. The suit land is clearly over and above ten thousand shillings which is the Pecuniary jurisdiction a Grade Two Magistrate has in issuing Letters of Administration for small estates.

The above notwithstanding, it was an agreed fact that the suit land is registered in the names of the late Christopher Kasibayo. He was registered on the 24th June 1960. It is therefore clear that the suit land did not belong to the estate of the late Ruth Bwashuko as the Plaintiff claims.

S.176 of the Registration of tittles Act Cap 230 provides that;

“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases;

a) the case of a mortgage as against a mortgagor in default;

b) the case of a lessor as against a lessee in default;

c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise


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than as a transferee bona fide for value from or through a person so registered through fraud;

d) The case of a person deprived of or claiming any land included in the certificate of title of other land by misdescription of the other land or of its boundaries as against the registered proprietor of that other land not being a transferee of the land bona fide for value;

e) the case of a registered proprietor claiming under a certificate of title prior in date of registration under this Act in any case in which two or more certificates of title may be registered under this Act in respect of the same land , and in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every Court to be an absolute bar and estoppel to any such action against the person named in that document as the grantee , owner , proprietor or lessee of the land described in it, any rule of law or equity to the Contrary notwithstanding .”

So clearly the suit land did not belong to the estate of Ruth Bwashuko which the Plaintiff purported to administer and which forms the basis of her claim in this case.

The Preliminary objection to that effect is therefore upheld.


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In my view this would dispose of the plaint /Plaintiff's claim but since the defendants raised a counter claim I will resolve the other issues to determine the Counterclaim as well.

With regard to issue one **section 5 of the Limitation Act Cap 80 provides that;**

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

In my view therefore, if I take the Plaintiff /counter defendant's version that the suit land had been entrusted to Kasibayo Christopher, then the cause of action should have arose on the 23rd July 1986 when the said Kasibayo Christopher died. That is when the late Ruth Bwashuko or even the Plaintiff would have claimed what they believed belonged to them.

However, since the Plaintiff was claiming as an Administratrix of the estate of the late Ruth Bwashuko who according to the Plaintiff's evidence died in 1991, the cause of action should have arose at that time.

The Plaintiff instituted this Suit on 19th August 2013 (as per the Plaint). This was 22 years after the death of the said Ruth Bwashuko. The suit was therefore time barred.

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It was held in the case of **Mohammad.B. Kasasa Versus Jasphar Buyonga Sirasi Bwogi – C.A.CA No. 42 of 2008** that statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is to ensure that litigation shall be automatically stifled after a fixed length of time, irrespective of the merits of a particular case, “*reipublicae ut sit finis litum*”.

Issue 2; whether the Plaintiff or Defendants are the rightful owners of the suit land.

It was an agreed fact that the 1st defendant /counter claimant is the administratrix of the estate of the late Christopher Kasibayo. The suit land is registered in the names of the late Christopher Kasibayo.

The Plaintiff /Counter defendant had claimed that the 1st defendant had executed transfers in respect of the suit land to Ruth Bwashuko, see exhibit P.2.

It was also the Plaintiff's evidence that the transfer was not effected by the time Ruth Bwashuko died.

Section 54 of the Registration of Titles Act Cap 230 provides that;

“No instrument until registered in the manner herein provided shall be effected to pass any estate or interest in any land under the operation of this Act or to render the land liable to any mortgage; but upon such registration the estate or interest


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comprised in the instrument shall pass or as the case may be , the land shall become liable in the manner and subject to the covenants and conditions set forth and specified in the instrument or by this Act declared to be implied in instruments of a like nature ; and , if two or more instruments signed by the same proprietor and purporting to affect the same estate or interest are at the same time presented to the registrar for registration , he or she shall register and endorse that instrument which is presented by the person producing the duplicate certificate of title .’’


Therefore, the unregistered transfer instrument as shown in exhibit P.2 did not pass any interest to Ruth Bwashuko as it was not registered in order to pass the suit land to her.

In any case, the 1st defendant could not purport to transfer the suit land to the said Ruth Bwashuko until she was registered on the certificate of title as an administrator of the estate of the late Christopher Kasibayo in respect of the suit land.

In any case the 1st defendant had stated that she had purported to transfer the suit land to Ruth Bwashuko under the mistaken belief that it belonged to her.

S.192 of the Succession Act Cap 162 provides that;

“Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.”


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The 1st defendant was granted letters of administration for the estate of the late Christopher Kasibayo as shown in exhibit D2. The suit land is part of the said estate.

The 2nd defendant is a beneficiary of the estate of the late Christopher Kasibayo.

The defendants /counter claimants are the rightful owners of the suit land.

Issue three: Whether the Suit property forms part of the estate of the late Ruth Bwashuko.

This issue has already been resolved in issue two. The suit Property does not belong to the estate of the late Ruth Bwashuko but it belongs to the estate of the late Christopher Kasibayo of which the 1st defendant is the administrator.

Issue four: Remedies available to the Parties;

1. The Plaint will be rejected with costs since it does not disclose a cause of action and is barred by law.
2. Judgment will be entered for the counter claimants with the following orders;
 - i) An eviction order is hereby issued against the counter defendant from the suit land after a period of six months from the date hereof as it belongs to the Counter claimants.
 - ii) The Caveat lodged on the certificate of title of the suit land by the counter defendant is to be vacated with immediate effect.


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- iii) A permanent injunction will issue against the counter defendant restraining her from dealing with the suit land in anyway.
- iv) The counter defendant is to pay twenty million shillings (20, 000, 000/=) as general damages for trespass on the suit land.
- v) The Counter defendant will also pay the costs of the counter claim.



Hon. Justice John Eudes Keitirima

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