

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

CIVIL SUIT NO.364 OF 2012

NURDIN KATENDE:.....PLAINTIFF

VERSUS

1. YUNUS KABUGO

2. HARUNA MUGERWA

3. ABUDU BISASO

4. TIFU SSALI

5. ASUMANI LUKWAGO:.....DEFENDANTS

**Before: Lady Justice Alexandra Nkonge Rugadya.**

**JUDGMENT:**

**Introduction:**

The plaintiff sued the defendants jointly and severally for a declaration that he is the lawful owner of land comprised in **Block 4, Plot 176, Namirembe Road Bakuli Kampala** ("suit land"), having lawfully acquired and developed the same; a permanent injunction restraining the defendants, their agents or servants from interfering with his possession; general damages; and costs.

**Background.**

The plaintiff claims he is a *bonafide* purchaser without notice of fraud or any irregularities of the suit land comprised in **Block 4, Plot 176 Namirembe Road, Bakuli, Kampala** (suit property).

That he purchased the suit land and the incomplete structures thereon which formerly belonged to the late Kapapaali Kuzaalakuzibu (hereinafter referred to as the "deceased"), from one Hajji Twaha Bisase who was in possession of a grant of letters of administration granted to him by the High Court on 22<sup>nd</sup> January 1996.

That he took possession of the suit property in 1996, formalized ownership and not only obtained the consent of Kampala City Council to develop the same, but also paid the property rates of the local authority.



In addition, he took possession of the suit land, developed the same with a commercial building which he rented out to tenants. However that in May, 2012 or thereabout, the defendants without the plaintiff's consent or authority tried to physically enter upon the land, purported to evict his tenants and attempted to take over the land claiming that it belonged to them.

In their joint written statement of defence, the defendants however denied the allegations as set out in the plaint and contended that the plaintiff is not entitled to the reliefs sought in the plaint as he illegally acquired the suit property from Hajji Twaha Bisase who was not the lawful owner thereof.

In their counter claim they seek an order of eviction of the plaintiff/counter defendant and his agents from the suit property; mesne profits from the date the suit property has been in the possession of the counter defendant to date; interest thereon; general damages; and costs.

**Agreed facts:**

At the scheduling, the agreed facts were that the defendants are the children and beneficiaries of the late Kapaapali Kuzalakuzibu who died intestate in 1981. The suit property was one of the estate properties he left behind.

It was not in dispute that in 1996 Hajji Twaha Bisase sold the suit property to the plaintiff. In 2002 he was however convicted of, among other charges, forgery and uttering false documents committed in the process of procuring letters of administration issued to him, vide: **AC No. 222 of 1995** on 22<sup>nd</sup> January, 1996.

The grant was however revoked by court under **Civil Suit No.86 of 2008**, on 23<sup>rd</sup> September, 2011; and a fresh one issued on 20<sup>th</sup> August, 2012 to six of the beneficiaries to wit: *Kabugo Yunusu, Sentongo Moses, Tamale Sulaiman, Nakigudde Sarah, Nakabugo Mariam and Tamale Tiff*.

**Representation:**

The firm of **M/s Mukiibi & Kyeyune Advocates** represented the plaintiff while that of **M/s Nyanzi, Kiboneka & Mbabazi** represented the defendants.

**Issues:**

The following are the issues that were framed for determination by this court:

1. **Whether there was a valid sale agreement between Twaha Bisase and Nurdin Katende;**
2. **Whether the plaintiff lawfully acquired the suit property;**
3. **What remedies are available to the parties.**





In their submissions, counsel for the plaintiff added another issue, that is: ***Whether the defendant are entitled to the counterclaim***, which I found pertinent.

**Consideration of the issues:**

- 5 The plaintiff led his evidence through three (3) witnesses to wit; Nurdin Katende (***Pw1***), Hajji Twaha Bisase (***Pw2***) and Kyatuka Godfrey (***Pw3***).

The defendants relied on the evidence of Kabugo Yunusu, (***Dw1***), Tamale Tiffu (***Dw2***) and Badilu Mugerwa (***Dw3***). The parties also presented several documents which were exhibited in court.

10 **Issue No.1 & 2**

**The law:**

Under ***sections 101,102 and 103 of the Evidence Act***, it is stipulated that whoever wants court to believe in the existence of a given set of facts must have the burden to prove the existence of those facts, and such proof must be on a balance of probabilities.

- 15 ***Sections 2 and 10 of the Contracts Act, No.7 of 2010***, define a contract to mean an agreement enforceable by law, made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

***Pollock – Principles of Contract, 13th Edition at page 1*** also defines a contract as a promise or a set off promises which the law will enforce. The essentials of a legally binding contract as stipulated in ***Harlsbury's Laws of England 4thEdn Vol. 9 (1) page 12 Paragraph 15*** and cited in ***Dr. Vincent Karuhanga v NIC and URA [2008] U.L.R at page 666*** are therefore summarized as: *offer and acceptance; a promise or obligation supported by valuable consideration; intention to create legal relations; capacity and apparent authority to contract.*

- 25 It is now settled law that once a contract is valid, it automatically creates reciprocal rights and obligations between the parties thereto and that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (***See: William Kasozi vs DFCU Bank Ltd, High Court Civil Suit No.1326 of 2000***).

- 30 The plaintiff in this suit, Mr. Nurdin Katende testified as ***Pw1***. He claimed to have acquired the property situate at Mulira village, Bakuli, Hoima Road from Haji Twaha Bisase (***Pw2***), on 15<sup>th</sup> April, 1996 for valuable consideration of ***Ugx 3,000,000/= (three million shillings only)*** which sum he had duly paid. (***PExh1***).

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That both the mailo owner and KCC recognized him as the owner. On 27<sup>th</sup> June, 2012 however, the defendants illegally purported to evict the plaintiff's tenants as per their notice, **Ref: (PExh 4)**.

He stated further that prior to the sale, Hajji Twaha Bisase had confirmed to him that he had the authority to sell the property since he had letters of administration. However that he was aware that Hajji Twaha Bisase was holding the property on behalf of the beneficiaries.

The vendor had assured him that there was no problem from the beneficiaries; believed him therefore when he told him that he had talked to them about the sale. He admitted however that he never secured from him any proof of that interaction.

It was also his evidence that what had been sold was 50ft by 70 ft, with an unfinished building. By his rejoinder he also added that the estate had been wound up and inventory filed in the family court in 1998.

A careful look at the sale agreement (**PExh 1**) however reveals that the size of the land bought by the plaintiff was not indicated in that agreement. What was sold to him as per agreement was an *uncompleted structure on plot No. 176, Block 4 Namirembe, Kampala with interests thereon....*

It is also therefore clear to court that the estate remained with the rest of that property, out of which he continued to collect rent.

From the above therefore, it can be stated that for valuable consideration, the plaintiff acquired an *uncompleted structure on plot No. 176 Block 4 Namirembe, Kampala with interests thereon* in 1996 from Hajji Twaha Bisase.

The actual size of the area he purchased and what left unsold was not established from the evidence led by each side.

However by that arrangement, both parties intended to create legal and binding obligations.

It is also not in dispute that the plaintiff from 1996 when he bought that property he enjoyed quiet possession until 2012 when the defendants started to make claims over the land. The defendants did not come up with any substantial response in that area.

The main issue from their response appears to have been centred on whether or not Hajji Twaha Bisase who testified as **Pw2** had the capacity to sell that property or any portion of it as he had done; and whether as administrator of the estate he had obtained consent of the beneficiaries to dispose of the land; and if not, whether the absence of such consent rendered the entire transaction invalid.





**Capacity to contract:**

According to **section 180 of the Succession Act**, an administrator of the estate of a deceased person is his or her legal representative for all purposes, and as such all the property of the deceased person vests in him or her.

5 Furthermore, under **section 264 of the Succession Act**, after a grant of letters of administration, no person other than the person to whom the same has been granted has the power to sue or prosecute any suit, or otherwise act as representative of the deceased, until the probate or letters of administration has or have been recalled or revoked.

10 In **section 25** therefore, all property in an intestate devolves upon the personal representative of the deceased, as trustee for all the persons entitled to the property.

Citing the Supreme Court decision in **David Sejjaka Nalima Vs Rebecca Musoke, SCCA No. 12 of 1985**; and **Sanyu Musoke vs Sam Galiwango SCCA No. 48 of 1995**, counsel submitted that the plaintiff could not have obtained a good title from a grant that was fraudulently obtained. Accordingly, that the sale of the suit property to the plaintiff was not 15 only illegal but also null and void *ab initio*.

That once brought to the attention of court, an illegality once detected overrides all questions of pleadings including the admission made thereon. (**Makula International Co. Ltd vs H>E Cardinal B Nsubuga, SCCA No. 4 of 1981**).

20 It was not in issue that Hajji Twaha Bisase who testified as **Pw2** had secured letters of administration, vide **Administration Cause No.222 of 1995** on the 22<sup>nd</sup> day of January, 1996 (refer to the certified copy: **PExh5**). The said grant however was subsequently revoked by court in 2011.

25 The plaintiff testified that prior to the transaction he had conducted a search to verify the authenticity of the grant and its owner. He therefore confirmed that Hajji Twaha Bisase at the material time had the capacity to enter into binding relations with him, a contention which the defendants however refuted for, according to them, Hajji Twaha Bisase had no authority to deal with the estate given that his grant had been revoked.

30 It is now settled law that a grant of letters of administration remains valid until revoked even where it is later established that the grant had been obtained by fraud, for so long as it remains in operation, it is taken to represent the estate of the deceased. (**Anecho Haruna Musa vs Twalib Noah & 2 Ors HCCS No. 0009 of 2008**).

35 **Section 266** of the **Succession Act**, ensures that the general public can freely deal with administrators. It stipulates that all payments made *bonafide* to an administrator under a grant before it is revoked, shall be a legal discharge to him/her, notwithstanding the revocation. In short therefore, all things constant, the order of revocation of the grant does





not operate retrospectively so as to render invalid any transactions with a third party which may have been made previous to such revocation.

This court besides noted that from the defendant's evidence, the order revoking the grant had been made on 23<sup>rd</sup> September, 2011 (**DExh 2**), 15 years after he had disposed of the property.

5 The transaction was thus concluded on 15<sup>th</sup> April, 1996, about two months after Hajji Twaha Bisase had obtained the letters of administration. This was long before the letters were declared invalid by court.

10 The total sum of it all therefore is that Hajji Twaha Bisase as administrator of the estate had the authority, power at the material time to transact, and therefore the capacity necessary to deal with the assets of the estate accordingly. (**See also: Anecho Haruna Musa (Legal representative of Adam Kelili) vs Twalib Noah (Legal representative of Majid Noah) & 2 others Civil Suit No. 9 of 2008**).

**Consent of the beneficiaries:**

15 The general position under the law as noted in reference to **section 191 of Succession Act (supra)** is that subject to **section 4 of the Administrator General's Act**, no right to any part of the property of a person who has died intestate is to be established in any court of justice unless letters of administration have first been granted by a court of competent jurisdiction.

20 It follows therefore that a grant of letters of administration entitles the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after the death of the deceased (**See: Section 192 of the Succession Act**).

25 The defendants argued that there had been no valid sale agreement, owing to the fact that Hajji Twaha Bisase was not the lawful owner of the suit land, only held the suit property in trust for the beneficiaries of the deceased's estate and therefore required prior consent from them to transact as he did.

That in any case, the estate had already been distributed by Sheikh Semafumu under *sharia law*, in the presence of the children of the deceased. A distribution scheme made in 1982 was presented as **PExh 9**.

30 That evidence came out through **Dw1, Dw2, and Dw3**, all children of the deceased. According to them the deceased had left 31 children and 11 of them claimed a share in the illegally sold property.

35 Counsel for the defendants' submission therefore was that an administrator had to obtain consent from the beneficiaries before dealing with the estate property. Without such consent the transaction was unlawful. He referred to the case of **Asiki Charles vs Dianna Ayume & 3 others CACA No.134 of 2012**.





The plaintiff's response however through his counsel was that it is not in all instances that an administrator as a trustee is required to seek the consent of the beneficiaries before dealing with the property. Details of their respective arguments which I have taken into consideration are available in the court record.

- 5 A trust has been defined as a relationship which is recognized by equity and arises where property is vested in a person known as a trustee, who is under a duty to hold for the benefit of others, known as *cestuis que trust* or beneficiaries.

Power to transact connotes authority to dispose of some interest in the property although it does not confer any right to enjoy the property. (***Keeton, Law of Trusts 10<sup>th</sup> Edn p.5***). In  
10 similar terms, the power to administer an estate of a deceased does not necessarily confer a right to own it.

By way of comparison, a power is discretionary while a trust is imperative. This would generally imply that if a person accepts to act as a trustee, he must do as the settlor directs. (***Equity & Trusts, David Bakibinga 2011, Law Africa, page 66***).

- 15 It is a correct assertion that an administrator assumes all rights the deceased had including sale or disposal of the estate property. As a trustee, the administrator must manage the estate on behalf of its owners- a role that also requires identifying all the properties of the deceased; payment of debts; doing all in the best interests of all the estate.

The law therefore places an obligation onto such person to account for all his actions and act  
20 in a transparent manner, and for that purpose is also required to take out an inventory and file an account of all that is expended in the administration of the estate.

The execution of that role may therefore involve disposal of some of the estate property to meet the debts incurred by the deceased prior to his death and those found necessary after his death, including funeral expenses, debts incurred in the process of securing the grant,  
25 recovery of any the properties, and to meet any exigencies, as the situation may call for. (***Refer also to: sections 279 – 283 of the Succession Act***).

All this therefore creates a duty to the executor or administrator to account for any proceeds out of the trust property. (***Anecho Haruna Musa vs Twalib Noah & 2 Ors HCCS No. 0009 of 2008***). That role is accomplished through the filing of an inventory or an account of the  
30 proceeds, as required under ***section 278 of the Succession Act***, which the beneficiaries are always free to challenge.

According the plaintiff counsel however, the case of ***Asiki Charles vs Dianna Ayume & 3 others CACA No.134 of 2012*** as cited by counsel for the defendants was distinguishable since it was premised on fraud.





That the defendants in the present case did not plead or attribute any fraud to the plaintiff in their counterclaim; and for some reason as noted by court, they did not make the administrator a party to their counterclaim.

It was the evidence of Hajji Twaha Bisase that he had discovered that the deceased had left a number of debts and found out that part of the property had been misappropriated by some people, which had prompted him to sell off the property in contention, to run the estate, pay the debts and hire lawyers to recover some of the properties.

Furthermore, **Pw6** is a letter from Kampala City Council dated 17<sup>th</sup> January, 1995 addressed to Hajji Twaha Bisase. It reads:

**TEMPORARY CLOSURE AND DEMOLITION:**

*You are informed that our office has confirmed that the following nuisance exists on your premises following the sanitary inspection carried out on the 11<sup>th</sup> January, 1995.*

- a. The latrine is completely filled and overflowing.*
- b. The residential house is collapsing and is likely to injure the health of the tenants.*

*You are therefore requested to see to it that your tenants vacate the premises before 13/3/95 because the premises will be closed temporarily and thereafter the structure demolished.*

The above correspondence gives yet another of the reasons why he decided to sell off the property. The land had dilapidated mud and wattle structures which, going by the contents of that letter, KCC had threatened to demolish and take over and sell it to other developers.

Indeed as per the photographs exhibited as **PExh 2**, it was evident to court that the structures on the property were in such a sorry state and in dire need of repair. Under the inventory dated 19<sup>th</sup> September, 1998, **PExh 7A**, which showed partial distribution of the estate, a semi-permanent house had been put up on the suit land, valued at **Ugx 3,000,000/=**.

It was also noted on the 3<sup>rd</sup> page of the inventory that the house had been sold and part of the proceeds used to solve a dispute in **Civil Suit No. 148 of 1995, Mengo Court**. A sum of **Ugx 2,300,000/=** had been expended to process letters of administration and obtain a certificate of no objection.

In summary, that he therefore needed to raise money to run the estate, pay off debts, and hire lawyers to recover some of the properties which had been taken. That evidence was never rebutted.

**Section 270 of the Succession Act** provides that an executor or administrator has power to dispose of property of the deceased as he or she may think fit. The powers extensive save that it restricted any transactions relating to the residential holdings (**section 26**).

As held by the Justices of Appeal court in the case cited by counsel for the defendants, the administrator is a trustee holding the property on trust for the lawful beneficiaries. In their





judgement they emphasized the requirement for consent of the beneficiaries in order to sell off property.

The matter in that suit had however been heard *ex parte*, under **order 17 rule 4 of the CPR**. On *page 13* of its judgment, court stated that the 1<sup>st</sup> defendant in the trial court had been appointed a trustee by the beneficiaries and therefore had two capacities under which his role was considered.

In the first capacity he had an express contract by way of a memorandum of understanding in which the beneficiaries had agreed that the rest of the property belonged to certain beneficiaries, as named, property he held in trust for those beneficiaries. He therefore had to secure their express consent before selling that property.

In the second capacity was that of the administrator of the estate for the property held in trust for those entitled to the share in the distribution scheme, and in respect of which **section 180 and 25 of the Succession Act** applied.

The trustee in that suit on being appointed in 2008 executed the agreement on 5<sup>th</sup> October, 2007 to pay off two members of the deceased family, so that the rest of the property belonged to him and his other siblings.

Court declared that the 1<sup>st</sup> defendant had no evidence that he sold the property to settle creditors of the deceased; and unlike in this case, lacked basis to sell the property. The above analysis and findings by the court in my view demonstrate that the facts therein were quite different from the present case.

Another question that the appellate court did not address in that case related to what would happen in a case where there is any disagreement between the administrator and the beneficiaries or in any situation where such consent is unreasonably withheld?

As seen in *paragraph 24* of **Dw1** witness statement, the plaintiff had called a meeting of the family at Nakatovu Kayunga district with the purpose of purchasing the suit property but all the children had rejected the idea, despite the fact that the property was in a state of disrepair.

An administrator ought to be able to take those hard decisions which may at times not augur well with the beneficiaries. He/she must be equipped with such authority that would empower him/her to ably manage and/or salvage the estate. It may involve the power to dispose of some estate properties.

He/she ought to satisfy court however that the decision he took was in the best interests of the entire estate. That does not deprive the beneficiaries the right to challenge any such decision. However in this case, none of the beneficiaries had done so.

  
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**Section 19 of the Limitation Act, Cap.80**, gives no specific limitation for recovery of estate property by beneficiaries of an estate, where fraud is alleged to have been committed or for recovery of proceeds received and converted to the exclusive use of a trustee.

5 The suit could have been filed against the administrator, to challenge his failure to secure their consent or act according to their expectations in respect of the transaction. It was not enough for the beneficiaries of the estate to file the criminal case against the administrator, have him convicted.

10 Besides, it would also serve no useful purpose for them to challenge cancellation of the grant without challenging the transactions; then sit back and wait for a party who acquired property under that transaction to file a suit against them; believing that the revocation was sufficient to restore their interest under a counter claim.

As already noted, in the counterclaim they did not even plead fraud or add the administrator as a party, yet sought to question his powers.

15 The defendants did not challenge the plaintiff when he acquired the property, developed it, paid rates to KCC; collected rent from it and enjoyed its occupation for close to two decades. They did not take any step to challenge his acquisition and long stay on the property they claimed to have acquired as early as 1982.

20 There was also nothing to show that as a trustee Hajji Twaha Bisase had failed to act in the best interests of the estate. It is also the view of this court that the interests of the entire estate superseded the individual interests of the beneficiaries.

I could not agree more, **section 270 of the Section Act** as cited by plaintiff counsel was applicable in relation to the sale transaction, satisfying this court therefore that in those circumstances as highlighted, prior consent of the beneficiaries was sought, unreasonably denied and justifiably dispensed with.

25 **Application of the doctrine of estoppel:**

It is argued for the plaintiff side that after distribution by the administrator, some of the beneficiaries took their shares and sold. It was also **Pw2's** evidence that they had been satisfied by the distribution.

30 Among those who sold off part of their share was **Dw1**, the 1<sup>st</sup> defendant. **PExh 8 (a)** was a sale agreement dated 7<sup>th</sup> July, 2008, for his plot in Ngoma LC 1 A, which he sold to one Kyatuka Godfrey.

35 That property was not listed in the 1982 distribution scheme which the defendants wished to rely on. It appears instead in the addendum by Hajji Twaha Bisase: **(PExh 7(B))**, filed on 3<sup>rd</sup> August, 2008, as property in Ngoma LC1 A, Bulemeezi Nakaseke. The rest of the parties who received that share were not witnesses in this suit.

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The above therefore lends credence to the argument that some of the defendants (and several of their siblings) had benefited from the distribution by Hajji Twaha Bisase.

Equity comes in true to form, to mitigate the rigours of strict law. It will prevent a person from insisting on his/her strict rights, whether arising out under a contract or on his title deeds or by statute, when it would be inequitable to do so having regard to the dealings which have taken place between the parties. (*Ibaga vs Tarakpe Civil Appeal No. 0004 of 2017*).

In the case of *Verschures Creameries Ltd vs Hull & Netherlands Steamship Co. Ltd*(1921) 2 KB 608 at p.612, *Scrutton LJ* emphasized the equitable principle that one cannot approbate and reprobate at the same time.

He stated that the principle is based on the doctrine of election and that;

***"...a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage."***

By conduct, they had endorsed the distribution, thus also endorsing any other transactions by the administrator, in the process abandoning the earlier distribution, **PExh 9**, by Sheikh Semafumu, who in any case had no authority to administer the estate.

As noted earlier, the law renders illegal, null and void any acts committed in relation to the estate of the deceased by a person who does not hold letters of administration for it is only by the grant that a person is clothed with the legal authority to deal with the estate of the deceased, or any part of it.

It is besides noted that neither the distribution by Hajji Twaha Bisase nor the transaction between him and the plaintiff were ever challenged by the defendants in any court of law. On those grounds, the sale agreement is therefore considered by this court as valid.

I need also to add that the defendants by their own admission, were fully aware of the vendor's intentions to acquire the property. Immediately after the purchase, the plaintiff had taken possession of the property and as per **PExh 3**, paid the 1996-7 KCC charges on the property.

A number of receipts presented proved that indeed he had been recognized as the owner for some years. On the other hand, no proof of payment of the KCC charges and fees was presented by the defendants.

The above events including the continued occupation/stay of the suit property by the plaintiff from 1996 which the defendants allowed to happen or chose to ignore lead one to believe that there had been acquiescence on their part.



At common law, acquiescence of a degree that amounts to passive encouragement, may by way of a proprietary estoppel, deprive an owner of land in favour of an occupier of land in possession under a mistaken belief in his or her own inconsistent legal right, when it is unconscionable for the owner to reassert his or her title (**see Willmott v. Barber (1880) 15 Ch D 96 and Taylors Fashions Ltd v. Liverpool Victoria Trustees Co Ltd [1982] QB 133**).

This requires proof in the first place that:

- a. The occupier made a mistake as to his legal rights.
- b. The occupier must have expended some money or must have done some act (not necessarily upon the owner's land) on the faith of his or her mistaken belief.
- c. The owner of the legal right, must know of the existence of his or her own right which is inconsistent with the right claimed by the occupier.
- d. The owner the legal right, must know of the occupier's mistaken belief of his or her rights.
- e. The owner of the legal right, must have encouraged the occupier in his or her expenditure of money or in the other acts which he or she has done, either directly or by abstaining from asserting his or her legal right.

The principle requires an approach which is directed at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to deny that which, knowingly or unknowingly, he or she has allowed or encouraged another to assume to his or her detriment (**see Willmott v. Barber (1880) 15 Ch D 96**).

If the legal owner stands by and allows the claimant to, for example, build on his or her land or improve his or her property in the mistaken belief that the claimant had acquired or would acquire rights in respect of that land or property then an estoppel will operate so as to prevent the legal owner insisting upon his strict legal rights.

It also applies where the true owner by his or her words or conduct, so behaves as to lead another to believe that he or she will not insist on his or her strict legal rights, knowing or intending that the other will act on that belief, and that other does so act.

Under those circumstances the question whether or not the plaintiff was a *bona fide* purchaser becomes rather academic.

Under the authoritative work of **R.E Meggery and H.W.R Wade on the Law of Real Property (3<sup>rd</sup> Edn) at pg 582I**, cited in several cases, on completion of a contract of sale of



immovable property, property passes to the purchaser and the vendor holds it as a trustee for the purchaser.

The legal title on the other hand remains with the vendor until a transfer is effected. The equitable title which passes to the purchaser is considered to be superior to the vendor's legal title which is extinguished on payment of the purchase price. (**Halima Wakabi vs Asaba Selevano HCCA No. 0064 of 2008**).

It is against that background that I would therefore rule that the plaintiff validly acquired the an uncompleted structure on **plot 176, block 4, Namirembe** Road, with measurements: 50ft x 70 ft. The rest of that property is to be curved of, as it constitutes part of the estate of the deceased.

**Issues 1 and 2** are therefore determined in favour of the plaintiff.

**Issue No. 3: Remedies.**

**General damages.**

Counsel for the plaintiff prayed for **Ug. Shs 400,000,000/= (Uganda Shillings Four hundred million only)** as damages, owing to the fact that the plaintiff had been evicted from his land for over 9 years.

General damages, according to **Lord Macnaghten** in the often cited case of **Stroms V. Hutchinson**, are such as the law will presume to be the direct natural or probable consequence of the act complained of.

They are a result of inconvenience and mental anguish caused due to the Defendant's action as against the plaintiff. **See: Ronald Kasibante versus Shell (U) Ltd (2008) HCB 163**. They are often rewarded at court's discretion in light of the evidence adduced as to the suffering and pain that cannot be computed in monetary terms and pleaded specifically.

In the circumstances, the plaintiff ably led evidence that he acquired the suit land and developed the same until the defendants evicted him in 2012. I however find that the sum of **Ugx 400,000,000/= (Uganda Shillings four hundred million shillings)** is excessive and I hereby do award **Ug. Shs. 80,000,000/= (Uganda Shillings eighty million shillings only)**, payable by the estate of the deceased.

Having already held that the transaction between the plaintiff and Hajji Bisase was lawful and that the plaintiff validly acquired the land, the orders below shall therefore issue:

- a. **The plaintiff lawfully acquired the property in the portion of the area comprised in plot 176, block 4, Namirembe suit land, with measurements: 50ft by 70 ft, which was originally part of the estate of the late Kapapaali Kuzaalakuzibu.**



b. *The order hereby issues for an independent survey to be conducted to determine the actual boundaries of the original kibanja, prior to the sale, and what remained after the sale, which now constitutes part of the estate.*

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c. *A permanent injunction issues, restraining the defendants or any person claiming under them from interfering with the plaintiff's possession of the suit property.*

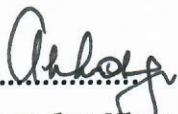
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d. *Ugx. 80,000,000/- (Uganda shillings eighty million only) is awarded as general damages at an interest of 15% p.a from the date of institution of the suit until payment in full.*

e. *Costs are awarded to the plaintiff.*

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**I so order.**

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20 **Alexandra Nkonge Rugadya**

**Judge**

**3<sup>rd</sup> March, 2022.**

*Delivered by email  
Alex  
3/3/2022*