THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

(LAND DIVISION)

CIVIL APPEAL NO 0056 of 2020.

(Arising from Civil Suit No. 350 of 2009)

CHARLES MUKUYE.....APPELLANT

VERSUS

JOHN NSUBUGA.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

This appeal arises from the judgment and decree of the learned Chief Magistrate Her Worship Prossy Katushabe in ***Civil Suit No. 350 of 2009*** dated 28th February, 2020 in which she entered judgment for the respondent, dismissing the counter claim with costs.

Background:

The background to this appeal is that the respondent Mr. John Nsubuga filed the suit in the Chief Magistrates Court at Makindye against the appellant Mr. Charles Mukuye, claiming that the suit property comprising of houses located at Makindye Zone forms part of the estate of the late Specioza Nakitto; a declaration that he is the one legally responsible for collecting rent and manage the suit property; a permanent injunction restraining the appellant/defendant from collecting rent or interfering in the management of the suit property; an order of account of rent collected from the suit property by the defendant since 2007; general damages; costs of the suit and any other relief deemed fit by court.

Nsubuga further claimed that his late mother, Specioza Nakitto owned a piece of land, located at Makindye Mubarak Zone which had been bought for her by her late husband.

She had managed and paid ground rent for the suit property since 1970 till 2002 when she passed on. In 1998 prior to her demise she had sold part to the defendant Charles Mukuye and his wife.

Furthermore that following her death the clan leaders had distributed the deceased's property and the plaintiff, Nsubuga had obtained letters of administration vide ***AC No. 311/2002*** on 12th February, 2002.

He started collecting rent and paying ground rent between 2002 and 2007 when Mukuye forcefully took up the management of the suit property and started collecting rent without making any remittance to Nsubuga, thus depriving him of the use of the suit property as a result of which he suffered damages and inconvenience.

The appellant, Mukuye however claimed that the land in issue which was a *kibanja*, consisted of 5 blocks of houses built by seven siblings including Teddy Nanfuka, his own mother. He refuted Nsubuga's claim that Nsumba the late husband to Specioza Nakitto had bought the land for her.

According to him the siblings had jointly and severally bought the *kibanja* in 1967. Nanfuka, his late mother owned a block of 4 rooms which he had inherited while Nsubuga's mother on the other hand, Specioza Nakitto owned one block of 8 rooms and had sold to him part of her land in 1998. Furthermore in 2007, his uncles and one of his aunties had sold him part of their share containing 3 houses.

It was the appellant's claim that Nakitto did not own the entire *kibanja* and that Nsubuga's interest was limited to only what his mother had left behind after her demise, but not what belonged to Nakitto's siblings in respect to which she had only been authorized by her siblings to collect and remit rent, retaining some for payment of ground rent.

That Nsubuga had out of dishonesty sold parts of what he claimed using the names of Kiyega John and Moses Nsubuga. In his counterclaim therefore he asked court to declare that the suit property rightfully belonged to him; a permanent injunction restraining Nsubuga from interfering with the suit property; general damages and costs.

The issues during the trial were as follows:

1) ***Whether the defendant lawfully took over the management of suit property;***

2) ***Whether the defendant is obliged to make an inventory of the monies collected from the suit property between 2007 and 2015.***

3) ***What remedies are available to the parties.***

Decision by the trial court:

The trial court in its judgment delivered on the 28th day of February, 2020 declared as follows:

1) *The 12 rooms on the suit kibanja at Mubaraka Makindye form part of the estate of the late Nakitto Specioza.*

2) *The plaintiff is legally responsible for collecting rent and management of the 12 rooms on the suit property and the defendant is hereby restrained from collecting rent or interfering in the management of the said suit property.*

3) *The defendant must give an account of whatever money that he received between 2007 and September, 2015 from the 12 rooms on the suit kibanja and pay the same to the plaintiff and this should be done after evaluation of the rent for those years;*

4) *The plaintiff is entitled to general damages of* ***Ugx 3,000,000/=;***

5) *The counterclaim fails and the counterclaimant is not entitled to a permanent injunction, costs of the counterclaim and award of damages;*

6) *Whereas court knows that costs follow the event, this is a matter that involves multiple relatives and neighbours and in the circumstances court has ordered that each party to bear its own costs.*

Grounds of appeal:

Being dissatisfied with the decision the defendant appealed to this court, raising the following grounds of appeal:

1. ***The learned Chief Magistrate erred both in law and fact when she failed to properly evaluate the evidence on the court record hence reaching a wrong decision of entering judgment in favour of the plaintiff and dismissing the counterclaim.***

2. ***The learned Chief Magistrate erred both in law and fact when she found that the property claimed by the plaintiff /respondent hereof belonged to the estate of the late Specioza Nakitto when there was no evidence to that effect.***

3. ***The learned Chief Magistrate erred both in law and fact when she dismissed the counterclaim with costs when there are suit properties which are contained in the counterclaim which at the locus the plaintiff/respondent did not claim ownership.***

4. ***The learned Chief Magistrate erred both in law and fact when she found that the defendant/appellant hereof failed to adduce evidence that he bought the suit property.***

Objection to admissibility of the witness statements in the withdrawn suit.

By way of a brief introduction, ***Civil suit No. 222 of 2009: Experito Kisambwe & 2 others vs John Nsubuga*** was initially filed in the High Court at Nakawa. Later on ***Civil suit No. 350 of 2009: John Nsubuga vs Charles Mukuye,*** the subject of this appeal was also filed but stayed by court, pending the hearing of the earlier filed suit.

On 17th September, 2014, ***Civil Suit No. 222 of 2009*** under which Kisambwe sought a declaration to revoke the letters of administration obtained by Nsubuga for his mother's estate, was dismissed by court. ***Civil Suit No. 350 of 2009*** which is the subject of this appeal and had also been dismissed was later reinstated and heard by the trial court.

In 2016, yet another suit: ***Civil Suit No. 12 of 2016*** was filed by John Nsubuga against Mukuye Charles on 23rd May, 2016 in the Chief Magistrate's Court at Makindye. During the trial, ***Civil Suit No. 12 of 2016*** was withdrawn with the consent of both parties in this appeal, and the hearing of ***Civil Suit No. 350 of 2009*** proceeded inter *partes*.

In his submissions, counsel for the appellant argued that the respondent did not file witness statements for ***Civil Suit No 350 of 2009*** but instead relied on the statements filed in respect of ***Civil Suit No. 12 of 2016,*** which was never disposed of and that court had been informed about this anomaly but chose to ignore it.

That to him implied that the respondent did not produce any evidence in chief before court which made ***Order 17 Rule 4 of the Civil Procedure Rules*** applicable. That in such instance where plaintiff fails to adduce evidence, court notwithstanding the default, proceed to decide the suit immediately.

In reply however, the counsel for the respondent argued that it had been upon the prayers of counsel for the appellant on the 30th of March, 2007 that the suit be withdrawn. However that the witness statements by ***Pw1*** John Nsubuga and ***Pw2*** Experito Kisambwe had been adopted by court as their respective evidence in chief.

That counsel for the appellant who even went ahead to cross examine on them could not now turn to claim that the respondent had no evidence on record.

This court upon perusal of the court proceedings could not find any of the arguments alluded to by the parties. The typed record of proceedings availed to this court does not indicate how and when this matter had come up and how court came to the conclusion that it did.

What is on record is a statement by the plaintiff John Nsubuga who testified as ***Pw1*** and another by his maternal uncle, Experito Kakande ***(Pw2)***. Both had been filed on 23rd May, 2016. In absence of any such notes for perusal by this court, one would be correct to assume that these statements had been intended for the ***Civil Suit No. 12 of 2016*** which was later withdrawn as there was already an earlier pending ***Civil Suit No. 350 of 2009***. But be that as it may, this case was between the same parties, and over the same suit property. This implies that the same evidence would have been used by the same parties over the same subject matter. All that appellant needed to do is satisfy court about the prejudice he suffered on account of that anomaly.

The trial court may have faulted in adopting the statements from the withdrawn suit and failing to make the necessary adjustments to reflect ***Civil Suit No. 350 of 2009*** instead of ***Civil Suit No. 12 of 2016***. But this could not have been fatal to the case since essentially the only difference between the two suits were the dates on which each was filed.

Given that the appellant did not show the injustice occasioned to him, in the view of court such an error which is partly attributed to court could not be visited on the litigant. For those reasons, this objection is therefore dismissed.

Analysis of the evidence at trial:

Grounds 1, 2 & 4.

By virtue of ***section 101 (1) of Evidence Act, Cap. 6,*** whoever desires court to give judgment to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist.***(George William Kakoma v Attorney General [2010] HCB 1 at page 78).***

The burden of proof lies therefore with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more probable the conclusion which the plaintiff contend, on a balance of probabilities. ***(Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004.***

The appellant Mukuye claimed that the trial court had failed to properly evaluate the evidence on record when she found that property claimed by the respondent herself belongs to the estate of the late Specioza Nakitto when there was no evidence to that effect. That she came to the wrong finding that the appellant had failed to adduce evidence that he bought the suit property.

Being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before

coming to its own conclusion. The duty is well-explained in ***Father Nanensio Begumisa and 3 others vs Eric Tiberaga: SCCA No. 17 of 2000 [2004] KALR 236***

It is also a well settled principle that court must make due allowance for the fact that it has neither seen nor heard the witnesses, and ought to weigh the conflicting evidence before drawing its own inference and conclusions: ***Bithum vs Adonge, Civil Appeal No. 20 of 2017.***

The plaintiff, Mr. John Nsubuga had only two witnesses. He himself testified as ***Pw1*** and his maternal uncle, Experito Kisambwe who had filed an earlier suit against him testified as ***Pw2,*** in support of his claim. Nsubuga argued that the land in dispute had been bought by Isaac Nsumba who was Nakitto's husband. It is not in dispute that letters of administration were issued to him for the administration of his late mother's estate.

He admitted that he had not seen the sale agreement as proof that Nsumba had purchased the *kibanja* for his wife. As he himself stated, at the time when his mother put up the structures on that land he was still a child.

Nsubuga however relied on the various receipts issued by KCC since 1970s in the names of Specioza Nsumba claiming that he had been residing with his mother since 1967 when the land was bought for her.

Mukuye in his response however sought to discredit the above evidence. He alluded to some contradictions between what was stated by ***Pw1*** and that by ***Pw2***. That while in *paragraph 4 (d)* of his plaint, ***Pw1*** admitted that in 1998, his mother had sold a portion of the land to Mukuye and his wife, his own witness ***Pw2*** in *paragraph 6* of his statement claimed that his late sister Nakitto Specioza had never sold her property to a third party or any relative for that matter.

The second contradiction was that while ***Pw1*** claimed that it was Nsumba who bought the land for his mother, ***Pw2*** on the other hand claimed it was Nakitto herself who had purchased it. For this court, since the question of how the subject *kibanja* was acquired/purchased by whom and for whom and how it was dealt with were all at the centre of the controversy in this case, I will deal with those questions later.

Suffice to state however at this stage that Mukuye's evidence on that point was the sale agreement dated 20th June, 1998, ***(DE II),*** between him and Nsubuga's mother Nakitto which Nsubuga did not challenge and which was duly acknowledged by him in his pleadings. Nakitto had sold off part of that land to Mukuye in 1998.

<u>Ruling by the LC II court</u>:

By way of another preliminary objection, Charles Mukuye through his counsel contended in *paragraph 4* of the amended WSD/counterclaim that the matters sought to be adjudicated upon in the suit were heard and disposed of by the LCII court and that the decision passed in August, 2006 had been upheld by the Chief Magistrate's court.

Dw2, Mr. Kyalwozi Lubega Tomasi as the sole witness for Mukuye tendered in court a copy of the said ruling, attached to his statement. ***(PE8)***. He informed court that he had been at that time a member of the LC II court at Makindye in which ***Pw2*** Kisambwe had brought a case against Nsubuga.

Nsubuga never turned up in that court and the case proceeded against him in his absence. In that case, ***Kisambwe Expedito vs John Nsubuga Case No. LPD/010/MBK/06*** ***Pw2*** had informed court that the *kibanja* had been jointly purchased by the siblings.

The LCII court had this to say:

> ***That the kibanja was jointly bought by the seven brothers and sisters as named below:***
>
> ***I. Kisambwe Expedito;***
> ***II. Kalule Lawrence;***
> ***III. Nanfuka Teddy***
> ***IV. Kasule Henry;***
> ***V. Ssalongo Kibirige;***
> ***VI. Nakitto Specioza;***
> ***VII. Nakabuye Constansia.***
>
> 1. ***Court saw the copy of joint kibanja purchase agreement for which the seven acquired the kibanja containing their names.***
> 2. ***Court found that there was no other legal and formal transfer of owners of the kibanja from the seven joint owners to Nakitto the mother of Nsubuga by her death time.***
> 3. ***Nsubuga and Kisambwe are relatives with Nsubuga being a maternal nephew to Kinsambwe.***
> 4. ***That Nsubuga John wrongly sold off a piece of kibanja before acquiring powers of attorney and before establishing which share of the whole estate belonged to his mother Specioza Nakitto.***
> 5. ***That Specioza Nakitto was the caretaker in management and collection of rent fees of the estate on behalf of the family owners.***

6. ***That when Nakittio died, there were no wrangles of owners amongst the remaining relatives (owners).***

7. ***That after Nakitto's death, Nsubuga took over powers of administration of his mother's share not ownership of the kibanja and all houses thereon.***

8. ***That the powers of attorney acquired on 12th February, 2003 granted to Nsubuga John were to allow him manage his mother's property which was just part of the whole estate but did not include what was for Nakitto's co-owners.***

9. ***That the letters of administration from the Administrator General issued on 12th February, 2003 renewable after six months or as the administrator General may decide had expired and no other renewal was presented, therefore no longer valid.***

Furthermore, the LCII decided that the one block of 6 rooms be returned to Kisambwe Experito ***(Pw2)*** and directed Nsubuga to stop collecting rent fees and relinquish all authority concerning the management of the house to Kisambwe Experito. It is not known to this court to what extent the orders above had been executed if at, all they were.

The details about who issued the powers of attorney, the nature and extent of those powers were not revealed. The LC court in its ruling also declared that any party dissatisfied with the judgment was free to appeal to a higher court within 14 days from 6th August, 2006.

Although other suits similar to the present suit had been filed the said orders of that court remained unchallenged. What court however did not pronounce itself on was determining under those circumstances, what Mukuye was actually entitled to as against Nsubuga. The reason was because Mukuye though one of the witnesses in that case, had not been party to that case.

Mukuye also besides had some unresolved disputes against his uncles and aunties concerning this *kibanja*. None of them were however added as counter claimants in this suit yet from his own evidence he had entered into a number of transactions after that ruling was made. Some of these transactions directly concerned Nakitto's estate, which Nsubuga during the trial sought to challenge.

As provided under ***section 7 of the Civil Procedure Act, Cap. 71***, no court is to try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and *finally* decided by that court.

The contention at the LCII court in this case rotated around property that Nsubuga sought to claim as part of his late mother's estate. From Experito Kakande Kisambwe ***(Pw2)***'s evidence, Nsubuga wanted to acquire exclusive ownership of the suit premises, without taking into account the interests of the joint owners/beneficiaries of this property.

Issues now more pertinent to this appeal therefore include how Mukuye had acquired a portion of what he himself acknowledged as a jointly owned estate, while some of the owners who were his own relatives were still alive.

Related to that, court had to look into the capacity under which Nsubuga and Mukuye had each dealt with the varied interests of their relatives on the suit premises, which they had been entrusted to manage, as per the findings in that ruling.

Pw2 during the hearing by the LC II court relied on the agreement of sale, ***PE 7*** which as noted by court had all the names of the purchasers of the *kibanja* all siblings of Nakitto. Nakitto herself had signed the agreement which was entered on 24th July, 1967 with one Hajji Kakembo, the original owner. It was the very same agreement which was presented to the trial court by the defendant, Mr. Mukuye.

Nsumba, Nakitto's husband was not party to that sale agreement. Such evidence led by the plaintiff's/respondent's sole witness rules out the possibility therefore that it was Nakitto's husband who had purchased the *kibanja* for Nsubuga's mother.

During the trial before the Chief Magistrate, ***Pw2*** provided another version, different from that which he had asserted before the LCII court, maintaining instead that it was his sister Nakitto who had bought the *kibanja* notably, land on which the rest of the siblings had claims.

Pw2 who had 6 rooms which the LCII declared as belonging to him did not attempt to disown his own signature which appeared on the sale agreement, dated 24th July, 1967 presented by him as his evidence at the LCII court.

Needless to say, forgery which is an element of fraud, has to be pleaded and proved. Thus on account of Nsubuga's failure to lead evidence to prove that the signature of his mother had been forged, he therefore had no satisfactory evidence to prove his claim that the sale had been fabricated. In any case as earlier noted, he never took the trouble to challenge the findings and conclusions by the LCII court under that ruling.

In that agreement, exhibited as ***PE. 7***, and as noted by court, the names of the purported vendors were all listed.

Although out of the seven family members, it was only the late Nakitto, mother to the respondent and ***Pw2***, Expedito Kisambwe who had endorsed that agreement, the actions, conduct and developments on the *kibanja* thereafter indicate that it was acknowledged by the family for years as jointly owned premises.

The third person who endorsed that same sale agreement was Kibirige Silvester, a brother to ***Pw2,*** the late Nanfuka and the late Nakitto. He was also a witness in the LC court against Nsubuga. He did not turn up as witness before the Chief Magistrate's court.

Each of the family members claimed different rooms/blocks on the *kibanja* implying that it was jointly acquired and therefore jointly owned, property over which no one could claim exclusive entitlement.

What this court found lacking was the court's pronunciation on what Mukuye was entitled to. From the evidence, Mukuye had bought a portion of that land in 1998, and that was not challenged by the respondent. In addition, his mother Teddy Nanfuka had 4 rooms on the *kibanja* which he claimed. Therefore whatever was put up by Mukuye on the land purchased by him from Nakitto in 1998 (which the trial court did not clearly ascertain) belonged to him.

Ssalongo Kibirige Sebunya, aged 75 years, a sibling to both ***Pw2*** and Nakitto in his unchallenged testimony before the LC II court confirmed that the *kibanja* was jointly owned by the seven siblings who had pulled resources together and jointly bought the *kibanja* in Mubarak zone in 1967.

They slowly started developing it into a commercial estate. Kibirige told the LC court that the seven siblings therefore had a share of the premises out of which they each earned rental income. Furthermore, it was his statement that Nakitto had supervised the work of building on that *kibanja* and collecting money from the rent.

That after the death of Nakitto, both parties in this appeal had been entrusted with the task of collecting money from the tenants. Nsubuga later turned against them and claimed ownership for all of the properties on that land.

It was also brought to the attention of court that Nsubuga's mother had given him one room in 1999 where he had started a retail shop. It is not known whether or not the said room was part of, or different from, the 12 rooms which he claimed.

Under those circumstances, Nsubuga could neither maintain his claim that he or his mother Nakitto were exclusive owners of the *kibanja* which had been bought from Hajji Kassim Kakembo together with all the buildings that were later put up with her help.

Ground No. 3: The learned Chief Magistrate erred both in law and fact when she dismissed the counterclaim with costs when there are suit properties which are contained in the counterclaim which at the locus the plaintiff/respondent did not claim ownership.

It was the appellant's claim that the learned trial magistrate erred in law and fact when she dismissed the counter claim with costs on the basis that the defendant does not own the 12 rooms, yet at the *locus* the plaintiff did not claim ownership.

The findings at the *locus* revealed that the *kibanja* had a total of five (5) blocks and that Nsubuga identified one house with 12 rooms. That he did not lay any claim onto the other blocks. However it was Mukuye's contention that out of those 12 rooms, 4 of them belonged to his (Mukuye's) late mother, Teddy Nanfuka.

That 4 rooms belonged to Sylvester Kibirige; and the other 4 to Lawrence Kalule. However gathered from the ruling, Nakitto was sharing hers not with Mukuye's mother but with Constantincia Nakabuye, another of their sisters. *(Page 4 of the LCII ruling).* In *paragraph 5* of his witness statement it was Nsubuga's claim that he was given the suit property and 12 rooms.

In light of the above, the issue becomes how many rooms the late Nakitto was entitled to which were passed onto Nsubuga by the clan as claimed in *paragraph 4* of ***Pw2's*** statement. Mukuye admitted in fact that the 12 rooms belonged to the estate of the late Nakitto but that they had been sold to him by ***Pw2,*** a claim which ***Pw2*** however refuted.

Pw2 as one of the purported signatories of the 1967 sale agreement had this to say in his statement:

1) *That I am an uncle to John Nsubuga and a biological brother to the late Specioza Nakitto.*

2) *That Specioza Nakitto bought the suit property from a one hajji jaffali kakembo on the 24th July, 1967.*

3) *That after buying that property, she developed it by constructing houses which houses have existed since then.*

4) *That.....as a clan we sat in the family meeting and her property was distributed among the beneficiaries.*

5) *That part of her property was a 12 roomed house which was given to John Nsubuga.(emphasis mine)*

6) *That my late sister had never sold her property to any third party neither did any of her relatives sell after she died.*

Despite the fact that ***Pw2*** was of advanced age of 93 years, as indicated on *page 10* of the record of proceedings he was able to recall with clarity his siblings' names and those who had since passed on and a number of things vital to this case.

His evidence that 12 rooms was part of the estate of the late Nakitto which was given to Nsubuga by the clan was therefore believable. Mukuye knew about this or was in position to find out, from the time the clan allegedly handed over the properties to Nsubuga following his mother's death. The question however still lingers, whether or not that property was validly sold to Mukuye.

A small portion of the record of proceedings at the *locus* was unedited and difficult to understand. However court was able to establish that Mukuye had purportedly bought from ***Pw2*** some properties including what originally belonged to Nsubuga's mother, and what belonged to ***Pw2.***

DE2 is an agreement dated 22nd April, 2007, based on which Mukuye made the claim that he had purchased the property in issue from his uncles and aunties. However as duly noted by the trial court, he did not bring any of them or those who were witnesses to those transactions to testify during the trial.

In his submissions, counsel for the respondent referred to the case of ***J.K. Patel vs Spear Motors Ltd 1993 VI KALR 85 cited in HCCS No. 0011 of 2005 Katwe Butego Division Local Government Council vs Masaka Municipal Local Government Council,*** where court stated that failure to call a material witness in a case where that witness is available and no explanation is given for the failure leads court to draw an adverse inference against the party so failing.

The above authority applies specifically to ***DE 3,*** *'An agreement for compensation of a plot and 4 roomed house in military barracks zone'*, dated 4th February, 2015; and ***DE8*** dated 26th January, 2008: *'Agreement for compensation'*.

In respect of ***DE8***, Mukuye who was not a party to that transaction needed to go further and prove his claim that Nsubuga had used different names in the different transactions where he allegedly sold off the *kibanja* property and therefore committed fraud.

Indeed where no witnesses are called, the validity of those documents alleged to have been signed or witnessed by them, and such like as ***D Id.1 to D id.5*** (for identification) would have no evidential value attached to them, since they were never tested at the trial.

Even if one were to believe Mukuye's assertion that ***Pw2*** had sold the 12 rooms to him, ***Pw2*** as the trial court rightly observed, was neither an authorised agent, caretaker or trustee of the family interests or administrator of Nakitto's or any of their deceased siblings' estates.

Mukuye as a family member was fully aware of the history and background to the ownership of the premises. He was aware of what each family owned. He could not therefore have been a *bona fide purchaser* for value without notice of the property that Nsubuga claimed as a beneficiary from his mother's estate. The purported transaction between him and ***Pw2*** jointly with any other siblings could not therefore have been valid since neither Nsubuga nor the rest of the beneficiaries had consented to that sale.

Mukuye all in all, failed to make the appropriate distinction between on the one hand what was acquired by him including the *kibanja* that he had purchased from Nakitto in 1998 and the other hand that to which he was entitled to as a beneficiary under his mother's estate. As noted by court, he had no letters of administration over his mother's estate.

More importantly, in respect of what he allegedly bought from ***Pw2***, he had to seek prior consent or authority from those who owned the property and that includes Nsubuga who had obtained letters of administration ***(PE1)*** over his mother's estate. It also therefore goes without saying that Nsubuga had no right to dispose of any part of his mother's estate in his individual capacity but rather in his capacity as the administrator and therefore as the trustee of the estate.

Thus without the participation and consent of the beneficiaries or the holder of letters of administration, and with specific reference to Nakitto, Mukuye could not claim to have legally bought from ***Pw2*** the 12 rooms which he himself had duly acknowledged to be part of Nakitto's estate.

Mukuye seemed to have done what he was accusing Nsubuga of doing, claiming possession and ownership of a substantial portion of the suit premises that had not been rightfully acquired by him or even belong to his mother's estate.

The trial Magistrate on *page 4* of the judgment had this to say:.

> ***"the defendant (counterclaimant) did not prove on a balance of probabilities on how the ownership of the land was passed onto him from the original owners. In his evidence during cross examination, he stated that in 2007 when he was buying, he did not know exactly who he had bought from and thus basing on this there is lack of sufficient evidence to show how he acquired this property and from whom he had actually acquired it from. Therefore premised on the principles in the doctrine of Nemo dat quod non habet, that for one to pass on good title, he***

must have a better title court finds that the defendant unlawfully took over management of the suit property without legal basis"

Mukuye from the above finding indeed failed to prove how ***Pw2*** could have sold to Mukuye what did not belong to him.

As also rightly pointed out by counsel for the respondent, ***Pw2*** who is alleged to have sold the jointly owned property denied knowledge about the sale, as per ***DE2.*** That evidence was never discredited.

I could not agree more therefore that the trial court came to the right decision. I therefore have no basis upon which I could reverse its orders. The trial court was justified in its conclusion that the 12 rooms were part of the estate of the late Specioza Nakitto.

Nsubuga did not lead any evidence to prove that he owned any other property on the suit land other than the 12 rooms which he and other beneficiaries were entitled to under Nakitto's estate. Accordingly, the letters of administration which were issued to him were exclusively for the administration of that estate over which he but not Mukuye, had lawful management and control.

This appeal is accordingly dismissed with costs to the respondent, in respect of this appeal.

Alexandra Nkonge Rugadya

Judge

13th December, 2022

Delivered by mail

13/12/2022