

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
LAND CIVIL SUIT NO. 096 OF 2016
(FORMERLY HIGH COURT CIVIL SUIT NO.100 OF 2008)**

5

**GLADYS NAKASAWA
(Suing through her LAWFUL Attorneys
Augustine Rwemityaza & Paul Kakyе) =====PLAINTIFF**

VERSUS

10

- 1. THE COMMISSIONER LAND REGISTRATION**
- 2. THE ADMINISTRATOR GENERAL**
- 3. SEBUTAMA FRANCIS**
- 4. KABUYE WILSON**
- 5. NAKOOKO EDWARD**
- 6. KIGWATA GEORGE**
- 7. SUUNA JOLLY**
- 8. MWEBAZE GODFREY**

15

}
=====DEFENDANTS

20

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE
JUDGMENT**

Brief facts:

25

The plaintiff filed this suit against the defendants jointly and severally for a declaration that the registration of the 2nd defendant by the 1st defendant as administrator of the estate of late Mika Kagingo on land comprised in Gomba Block 6 plot 1 land at Kasambya was done fraudulently, an order for cancellation of the name of the 2nd defendant from the special certificate of title at Gomba Block 6 Plot 1 land at Kasambya measuring 640 acres, an order for entry of the plaintiff as the administratrix to the estate of Daudi Tebyasa on land comprised in Gomba Block 6, plot 1 land at Kasambya measuring 640 acres, an eviction order against the 5th 6th 7th and 8th defendants as illegal occupants on the suit land, general damages and mesne profits and costs of the suit.

30

35

It is the plaintiff's case that she is the grand daughter and Administratrix of the estate of Daudi Tibyasa who died in 1942. She contends that her late grandfather never sold any more than 20 Decimals of land to Mika Kagingo from whom the defendants derive their interest in title. The same land was later registered in the name of the 2nd Defendant. The Plaintiff presented a Sale Agreement dated 1st February 1928 and a Certificate of Title indicating an entry of the name of Daudi Tebyasa (her late grandfather) on the certificate of title as far back as 12th September 1921.

40

The 2nd, 3rd and 4th Defendants on the other hand averred that Daudi Tebyasa sold his entire 640.20 Acres comprised in Gomba Block 6 Plot 1 to Mika Kagingo on 08/02/1912 and later another 20 Decimals on 1st February 1928. And that since Mika Kagingo's Title was valid, the 2nd Defendant's Title is equally valid.

5

The 3rd, 4th, 5th, 6th, 7th and 8th Defendants filed a joint Written Statement of Defence on 14th May 2019, but none testified in court except the 8th Defendant, while the 1st Defendant did not file a written statement of defence, it notified court that the office of the Registrar of Titles would in the final result abide by whatever orders this court will give.

10

Representation:

At the hearing the Plaintiff was represented by Dr. David Guveme Mushabe, the 1st defendant was represented by Mr. Mudawa Godfrey and Mr. Godwin Atusasire while Mr. Tumusiime Justus represented the 3rd, 5th, 6th, 7th, and 8th defendants and Ms. Annet K was for the 4th Defendant. Both sides filed written submissions.

15

Issues:

1. Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres)?
2. Whether or not the Registrar of Titles was justified in entering the Administrator General on the Certificate of Title when the Plaintiff had already lodged a Caveat thereon?
3. Whether or not the 3rd, 5th, 6th, 7th, and 8th Defendants have interest in the suit land?
4. What remedies are available to the parties?

20

25

Submissions:

Issue one: Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres)?

30

Counsel for the plaintiff submitted, that PEX.4 a sale agreement between Daudi Tibyasa and Mika Kagingo (both deceased) dated 1st February 1928 was accepted to be a genuine document by both the Plaintiff and the Defendants and that in that regard, Daudi Tibyasa remained with a residue of 640 Acres as of 1928. That whereas DWI averred that Daudi Tebyasa had sold 640 acres in 1912, he did not attach any proof of a sale agreement. Counsel added that, it defeats logic that Daudi Tebyasa who was registered in 1921 would have sold 640 Acres Nine (9) years before he acquired it. Counsel invited this court to make a finding that the same constitutes fraudulent misrepresentation.

35

40

Counsel noted that the 2nd Defendant adduced a purported Transfer Form for the 640.20 Acres and that DW1 having acknowledged the sale agreement for 20 decimals (PX.4), attempted to supplement it with the alleged Transfer Form to

5 prove that Daudi Tebyasa sold and transferred the 640.20 acres to Mika Kagingo whereas not. It was counsel's submission that while it is alleged that the said Daudi Tebyasa had received full consideration, it was equally admitted that no proof/evidence of a receipt was tendered in court, and that the Transfer Form does not mention the form of payment.

10 Counsel went on to submit that PW1 in his testimony informed court that where there is a Transfer arising from a Sale, letter "T" is input in the cartridge image, and that where the transfer is as a result of a Gift intervivos, letter "G" is put in the cartridge image. That in the instant case it is an anomaly that the map tendered in court in respect to the suit land does not neither indicate letters "G" or "T".

15 Counsel further submitted that PW1 confirmed that during the conduct of proceedings in *Criminal Case No. 0017/2006 (CRB No. 337/2006)* at Mpigi the Commissioner Surveys and Mapping instructed him to make a report (PX.9) about Gomba Block 6 Plot 1 at Kasambya wherein he confirmed that the suit land belonged to Daudi Tebyasa.

20 It was further submitted for the plaintiff that in the Succession Register, evidence revealed that whereas Daudi Tebyasa's Estate falls under **SR No. 8** of 863 part 2 and is indicated at Gomba – Kasambya, Mika Kagingo's estate falls under SR No. 8 of 2008 part 1 indicating Gomba – Kyabogo, which proves that Mika Kagingo's land is not located at Kasambya but Kyabogo. Meaning that **Gomba Block 6 Plot 1** located at Kasambya belongs to Daudi Tebyasa.

25 Furthermore Counsel for the plaintiff submitted that the issue of Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres) is an issue that is precluded from re-litigation and cited the case of **General Industries (U) Limited V Non Performing Assets Recovery Trust & 3 others, Civil Appeal No. 51 of 2007**, at page 6. That the concept of "preclusion" precludes re-litigating *"Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres)"* because it was resolved beyond reasonable doubt in Criminal Case No. 0017/2006 (CRB No. 337/2006). The 640 Acres were adjudged to Daudi Tebyasa's estate, and 20 Decimals to Mika Kagingo's estate. Thus, this issue was directly and substantially in issue in the criminal case between the same parties.

40 ***Issue 2: Whether or not the Registrar of Titles was justified in entering the Administrator General on the Certificate of Title when the Plaintiff had already lodged a Caveat thereon?***

Counsel for the plaintiff submitted that DW2 testified that by the time she secured the judgment vide Criminal Case No. 0017/2006 (CRB No. 337/2006), the 2nd Defendant had already been registered on the title on 27/6/2007 as the

Administrator of the estate of Mika Kagingo, which defeated and pre-empted her next step of applying for consequential orders from the High Court, hence this suit. That the 1st Defendant fraudulently transferred the entire of 640.20 Acres in the 2nd Defendant, on 27th June 2007, allegedly as the administrator of Mika Kagingo's estate, as the proprietor. Thus should be struck off the title for Gomba Block 6 Plot 1 and replaced with the name of Gladys Nakasawe as the Administratrix of the estate of Daudi Tebyasa.

Counsel added that the issue of ownership of **Gomba Block 6 Plot 1** was conclusively determined in Criminal Case No. 0017/2006 (CRB No. 337/2006). In the absence of an appeal, the evidence cannot be re-evaluated and the ownership issue cannot be re-litigated. Therefore, the Registrar of Titles was not justified in entering the Administrator General on the Certificate of Title for Gomba Block 6 Plot 1 because the **3rd and 4th Defendants** had forged a certificate of Title in the names of Mika Kagingo (the late Grand Father).

Issue 3: Whether or not the 3rd, 4th, 5th, 6th, 7th, and 8th Defendants have interest in the suit land?

Counsel for the plaintiff submitted that, the 3rd and 4th Defendants who are Mika Kagingo's grandsons have no legal and/or equitable interest in the suit land. That the 5th, 6th and 7th Defendants did not file trial bundles nor did they ever testify in Court. And that since the 5th, 6th, 7th and 8th Defendants never filed any counterclaim, and their claims arising from the Mika Kagingo's estate are baseless. That the 8th Defendant testified in Court, but did not bring any purchase agreement to prove his proprietary interest in the suit land. That even if the 5th, 6th, 7th and 8th Defendants had purchased the suit land from the 3rd and 4th Defendants the sale would be null and void for fraud. Further, that Mwebaze Godfrey (DW2) who is a son of the 5th Defendant and a brother to the 7th Defendant, testified that their father (5th Defendant) is the one who purchased 400 acres from the 3rd and 4th Defendant.

Issue 4: What remedies are available to the parties?

Counsel for the plaintiff submitted on the remedies as prayed for as follows;

- a) ***A declaration that the registration of the 2nd Defendant by the 1st Defendant as administrator of the estate of late MIKA KAGINGO on the land comprised in Gomba Block 6 Plot 1 land at Kasambya was done by fraud.***

Counsel for the Plaintiff based his argument on the fact that the plaintiff particularized fraud under paragraphs 7, 8, 8(a), (b), (c) & (d), 9 and 10 of her amended Plaintiff, the Judgment, Conviction and Sentence in Criminal Case No.

0017/2006 (CRB No. 337/2006) at Mpigi which in his view all make it necessary and proper to issue a Declaration that, indeed, the registration of the 2nd Defendant by the 1st Defendant as administrator of the estate of late MIKA KAGINGO on the land comprised in Gomba Block 6 Plot 1 land at Kasambya was done by fraud.

5 b) *An Order for cancellation of the name of the 2nd Defendant from the Special Certificate of title to Gomba Block 6 Plot 1 land at Kasambya measuring 640 Acres.*

10 Counsel for the plaintiff cited **Section 177** Registration of Titles Act which gives authority to court to direct the Registrar by way of consequential orders to make an entry. That the Plaintiff is seeking a cancellation of title (paragraph 12(b) of the plaint) and prayed for court to grant the same.

15 c) *An Order for entry of the Plaintiff as the Administratrix to the estate of DAUDI TEBYASA on land comprised in Gomba Block 6 Plot 1 land at Kasambya measuring 640 Acres.*

20 d) *An eviction order against the 5th, 6th, 7th and 8th Defendants as illegal occupants on the suit land.*

25 Counsel for the plaintiff submitted that the 2nd Defendant can be evicted under **Section 176(c)** Registration of Titles Act because he was registered through fraud. And that, since the 1st, 2nd, 3rd and 4th Defendants are not on the land, Counsel prayed for an eviction order against the 5th, 6th, 7th and 8th Defendants.

30 e) *An Order for General Damages.*

35 Counsel quoted the case of ANNET ZIMBIHA V. ATTORNEY GENERAL, Civil Suit No. 0109 of 2011, where HON MR. JUSTICE BASHAIJA K. ANDREW held that:-

40 *“...the award of general damages is at the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant’s act or omission. See James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe v. Isaac Patrick Matovu & A’nor H.C.C.S. No. 177 of 2003 per Tuhaise J.*

45 *Secondly, in the assessment of the quantum of damages, courts have mainly been guided by the value of the subject matter, the economic inconvenience that a party may have been put through..... See Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305. A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong. See Charles Acire v.*

Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992.

5 That in the premises, all the factors taken into consideration, this court should consider Uganda Shillings One Billion (UGX 1,000,000,000/=) to be the appropriate general damages.

f) An Order for Mesne Profits.

10 Counsel for the plaintiff submitted that in the instant case, Mika Kagingo's family, particularly the 3rd and 4th Defendants, deprived Daudi Tebyasa's family possession of the suit land for the last twenty (20) years. That the Plaintiff is therefore, entitled to mesne profits which the Defendants actually received or
15 might with ordinary diligence have received from the suit land together with interest on those profits.

That the rental value of One (1) acre in that area per year is Uganda Shillings Two Hundred Thousand (UGX 200,000/=). 640 Acres X 200,000 = Ugx. 128,000,000/= per year. 128,000,000 X 20 years = Ugx. 2,560,000,000/=.

20 Counsel prayed that court be pleased to award the sum of Uganda Shillings Two Billion Five Hundred Sixty Million (Ugx. 2,560,000,000/=) in mesne profits plus interest at commercial rate.

25 *g) An Order for costs of the suit.*

Counsel for the plaintiff prayed for costs of the suit according to **Section 27 (1) & (2)** of the Civil Procedure Act.

30 **2nd Defendant's Submissions:**

Issue 1: Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres).

35 Counsel for the 2nd defendant submitted that the plaintiff as a granddaughter to Daudi Tebyasa instituted this suit in 2008 which is 66 years since the death of Daudi Tebyasa and the administration of his estate by Buganda Government. That the plaintiff did not plead disability or sufficient cause exempting her from the limitation as strictly demanded by law under **Sections 5 and 20** of the Limitation
40 Act.

Counsel submitted that limitation period starts to run from the date when the right of action or the right to receive one's share or interest accrued and in this instant

suit it accrued in 1942 when Buganda Kingdom assumed administration of the estate of Daudi Tebyasa. That during cross examination the plaintiff admitted that her father never claimed the suit property as forming part of Tebyasa's Estate and no evidence was ever adduced to that effect. That Tebyasa died 2 years after Kagingo's death and also never challenged the inclusion of this land in the succession register as belonging to Kagingo and limitation period started running against Tebyasa himself for 2 years from when his land was included as part of Kagingo's Estate until his death in 1942.

That the plaintiff's father chose to do nothing for 44 years and never challenged the inclusion of the entire land as part of Kagingo's estate for 44 years from 1942 until his death in 1986. Thus, the plaintiff is bound by her father's inaction through whom she claims an interest and failed to demonstrate sufficient cause to be exempted from application of the limitation statute.

Counsel noted that settled interests should never be treated lightly and limitation statutes are always strictly interpreted. Counsel relied on the case of **Madhvani International S.A Versus Attorney General SCCA No. 23 of 2010** and the case of **Ramanathapuram Market V East India Corporation Ltd AIR 1976 Mad 323, (1975) 2 MLJ 214**. Counsel concluded that the plaintiff instituted this suit after more than 12 years had expired it being 66 years from the time her right in the deceased's estate accrued and the suit ought to be dismissed without any further inquiry into the merits.

Issue 2: Whether or not the Registrar of Titles was justified in entering the Administrator General on the Certificate of Title when the Plaintiff had already lodged a Caveat thereon?

Counsel for the 2nd defendant submitted that, the late Mika Kagingo bought the suit land in two installments and these transactions were cited in a transfer executed by Daudi Tebyasa in 1940 and that the said transfer form cited provisional certificate No. 2244 in respect of the transaction in 1912. Thus, before Tebyasa's registration in 1921 his interest was comprised in a provisional certificate capable of being dealt in since it was a transferable interest and the registration of Tebyasa in 1921 was merely a formalization of his pre-existing interest contained in the provisional certificate.

Counsel added that the conflicting years on the lower left bottom of transfer were clarified by DW1 that transfer form was a standard form document which could be modified or customized as and when appropriate. Counsel submitted that the transfer form was an agreed document and prayed that its objection be ignored and its authenticity ought to be presumed under **Section 90** of the Evidence Act it being a transfer acted upon for registration 70 years ago.

Further counsel submitted that plaintiff's counsel's reliance on the Judgment of the Chief Magistrate's Court of Mpigi Criminal Case No. 17 of 2006 is clearly misconceived because that case never purported to determine ownership rights, the 2nd defendant was neither a party nor a witness in that case and that the argument by the plaintiff's counsel that the question of ownership was determined by the criminal court is not only legally untenable but also acutely self-defeating as the instant suit is not for consequential orders as claimed. And that the argument that the instant suit is res-judicata is misplaced. That the chief magistrate's court was not competent to decide on ownership of land in criminal trial for forgery and uttering false documents.

Counsel for the 2nd defendant noted that it is this court which is clothed with the jurisdiction to determine ownership and that the 2nd defendant adduced incontrovertible evidence to prove that the suit land measuring 640.20 acres entirely belonged to the late Mika Kagingo having bought it from Daudi Tebyasa, 110 years back and this court should be cautious while adjudicating the same so as not to disturb settled rights. That Daudi Tebyasa and Mika Kagingo affairs were clearly recorded in Succession Register Vol. 8 Page 863 and Succession Register Vol 8 page 208. Counsel in citing the case of **Paulo Kawesa versus Administrator General HCCS No. 918 of 1993** submitted that Succession Registers have been judicially noticed by courts over ages. And that succession records are among documents whose authenticity is presumed under **Section 90** of the Evidence Act and the succession register came into lawful custody of the 2nd defendant by virtue of the Local Administrations (Performance of Functions) Instrument No. 150 of 1967.

Counsel further submitted that on the alleged fraud by the 2nd defendant the plaintiff acknowledged that the criminal court attributed fraud to other parties and not the 2nd defendant. The title that was forged and subject to a criminal case was not the title the 2nd defendant possessed as administrator of Kagingo's estate and if there was any forgery then it was done by 3rd parties without the involvement of the 2nd defendant.

Counsel went on to submit that the 2nd defendant's title has remained intact since 2007 when the 2nd defendant was registered and the same can only be impeached on grounds of fraud strictly pleaded and proved which the plaintiff has dismally failed to do and prayed that this court finds basing on the evidence adduced that the suit land measuring 640.20 acres entirely belongs to the estate of Mika Kagingo. He further submitted that the catridge map clearly indicated that suit land was "sold to Kagingo" and the F.C No. quoted on the map corresponded with that in the succession register record of Mika Kagingo estate and its only logical that the suit land is the property of Kagingo estate.

Issue 3: *Whether or not the 3rd, 4th, 5th, 6th, 7th, and 8th Defendants have interest in the suit land?*

5 Counsel submitted that the 2nd defendant obtained Letters of Administration to the estate of Mika in 2002 before institution of the current suit and he never knew of the criminal case and was never notified about the Judgment and his registration on the suit land as Administrator of Kagingo Estate was clearly within the ambit of **Section 134** of the **Registration of Titles Act** and its utterly erroneous for counsel to
10 allege that 1st defendant fraudulently transferred the entire 640.20 acres to 2nd defendant, his registration as administrator in 2007 was merely a legal formality under **Section 134** of the Registration of Titles Act. That there was no evidence adduced by the plaintiff to show that at the time of registration of the 2nd defendant her caveat was still subsisting and it logically follows that at the time of registering
15 the 2nd defendant in 2007 there was no subsisting caveat.

Submissions for the 5th, 6th, 7th and 8th defendants:

20 Counsel submitted that the 5th defendant occupied the suit land in the 1960's and is still in occupation of the same together with his children including the 6th, 7th and 8th defendants. That Mr. Mwebaze Godfrey in his witness statement confirmed that they have occupied the suit land since 1960's and the plaintiff did not produce any evidence in court to contradict their evidence. That they are therefore, bonafide occupants on the suit land and their interest is supposed to be recognized
25 by any rightful owner of the suit land.

Counsel cited the case of **Dominic Waburoko V. Nataka Michael Richard, HCCS No.21 of 2015** and submitted that the evidence of the 5th to 6th defendants was never contested and thus they are bonafide occupants and prayed that this court
30 finds the 5th to 8th defendants bonafide occupants of the suit land comprised in Gomba Block 6 Plot 1 Land at Kasambya in Gomba District.

Counsel also relied on **Section 29(2) (a)** of the Land Act on the definition of a bonafide occupant and **Section 32(1) and (2)** of the Land Act which provides that
35 a bonafide occupant can only be evicted for non-payment of annual nominal ground rent. That in the instant case the defendants had no one to pay busulu to because ownership of the suit land has been in contention and no rightful owner has been confirmed yet and the plaintiff did not produce any evidence to confirm that she had ever introduced herself to the defendants as the landlord or demanded
40 busulu.

On general damages, Counsel submitted that there is no fault which was confirmed in evidence by the plaintiff against the 5th to 8th defendants to justify grant of general damages.

5 **Plaintiff's Submissions in Rejoinder:**

10 In regard to issue 1 Counsel for plaintiff submitted that the 8th Defendant (DW2) testified in Court that the 5th Defendant purchased 400 acres from the 3rd and 4th Defendants, but did not tender into evidence any purchase agreement to prove the alleged proprietary interest in the suit land.

15 In regard to issue 2 counsel contended that that the 5th, 6th, 7th and 8th Defendants are not bonafide occupants. Counsel cited **Section 8 (1) (a) (i)** of Busuulu and Envujjo Law which grants a right of residence to a kibanja holder on mailo land which only extends to the wife and child of the kibanja holder, and the successor to the kibanja holder in accordance with native customs of the kibanja holder as per **Section 8 (2)** of the said Law. That the law applicable in these proceedings is the Busuulu and Envujjo Law 1928 or the Land Reform Decree 1975, regarding the way the said Defendants claim to have acquired the suit land. The said provisions of law elaborately layout the rights/obligations enjoyed by customary and kibanja holders. And if their occupation of the land dates back to the 1960s, which is not true, then the applicable Law was the Busuulu and Envujjo Law 1928 and it is up to the Defendants to prove compliance with the said provisions of Law. That in the instant case the 5th, 6th, 7th and 8th Defendants are not kibanja holders.

25 Counsel further submitted that the 2nd Defendant belabored to convince court that the succession register records are authentic and ought to be admitted into evidence without questions. However, as a matter of fact **DW1** admitted that if the succession record from Buganda Government had forgeries, the Administrator General has no capacity to identify such forgeries. Indeed, he testified that most records were destroyed during the war and the current succession register is a collection of various pieces of papers that survived the destruction. Impliedly, the 2nd Defendant admitted that the register does not represent 100% of the succession records of Buganda Kingdom. That Counsel for the 2nd Defendant failed to explain anomalies in the Succession Register. Evidence revealed that whereas Daudi Tebyasa's Estate falls under SR No. 8 of 863 part 2 and is indicated at Gomba – Kasambya, Mika Kagingo's estate falls under SR No. 8 of 2008 part 1 indicating Gomba – Kyabogo. That this evidence leads to the inevitable conclusion that Gomba Block 6 Plot 1 located at Kasambya belongs to Daudi Tebyasa (Deceased).

40

Analysis of court:

Law applicable:

Sections 101 of the Evidence Act provides that;

5 *“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.”*

Section 103 of the same Act provides as follows;

10 *“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”*

In the case of *Maria Ciabaitaru M'mairanyi and Others v. Blue Shield Insurance Company Limited*, 2000 [2005]1 E.A 280 it was held that:-

15 *“Whereas under section 107 of the Evidence Act, (which deals with the evidentiary burden of proof and is equivalent to our section 102 of the Evidence Act), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognises that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”*

20 The burden in this case therefore, lies on the plaintiff to prove her case against the defendants on a balance of probabilities.

Issue 1: *Whether or not Daudi Tebyasa sold his entire 640.20 Acres to Mika Kagingo or just 20 Decimals (0.20 Acres)?*

25 In the instant case counsel for the 2nd defendant submitted that the suit was statute barred for having been instituted after the limitation period of 12 years as provided for in law. That the plaintiff's father got to know about the fraud way back in the 1940's and did nothing about it and that that is when the time started running. That the plaintiff is also bound by that limitation period; therefore, this suit should be struck out.

30 I have carefully considered the evidence as adduced by the plaintiff and I did not find anywhere that she told court that her father was aware of the fraud as committed by Mika Kagingo before his death. The plaintiff in her witness statement stated that she got to know of the fraud in 2007 after she had started pursuing the Letters of Administration for her father's estate.

35 I however, noticed that the plaintiff lodged a caveat on the title in 2002 meaning she was already aware of the alleged fraud before even pursuing the letters of

administration while her counsel claimed that the fraud was discovered in 2006 according to her submissions.

5 According to the plaintiff's trial bundle at page 30, the grant indicates that the plaintiff acquired the Letters of Administration in 2000. Be as it may, this suit still falls within the limitation period of 12 years and this suit is rightly before this court in as it was filed in 2008.

Section 5 of the Limitation Act Cap 80 provides that;

10 *“No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or her...”*

15 In the case of **F.X. Miramago v. Attorney General [1979] HCB 24**, it was held that the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run against the plaintiff.

I therefore, find no merit in this preliminary objection and it is hereby overruled. I now turn to the merits of the case.

20 Counsel for the 2nd defendant submitted that counsel for the plaintiff's reliance on the chief Magistrate's judgment was misconceived and that the said court is not a competent court to handle issues of ownership rights, therefore, this suit cannot be said to be res judicata. That the 2nd defendant was neither a party nor a witness in that case and that the argument by the plaintiff's counsel that the question of ownership was determined by the criminal court is not only legally untenable but also acutely self-defeating as the instant suit is not for consequential orders as claimed.

25 The plaintiff in the instant case heavily relied on the judgment of the trial magistrate in the criminal case. The said judgment is however, not binding on this court and the chief Magistrate had no powers to determine issues of ownership rights under a criminal case. The trial Magistrate only had powers to prosecute the offences relating to fraud, forgery and uttering false documents. Thus, the argument that the instant suit cannot again discuss issues of ownership as they are res judicata is misguided. For clarity's sake, the instant suit is not one that falls under Res judicata as counsel for the plaintiff would want this court to believe. Counsel also claims that the suit would be seeking for consequential orders which
30 however, cannot be granted because the 2nd defendant was already registered on the certificate of title before the criminal judgment could be delivered.

35 The matters before the Trial Magistrate were for forgery, fraud and uttering false documents which clearly are of a criminal nature and also involved some of the parties (3rd and 4th defendants) in this case but not all the defendants. This court

therefore, is the one clothed with the powers of handling ownership rights in the instant case and as such ownership rights were not determined in the lower court. This issue is there not res judicata.

5 The position of the law on Res Judicata is **Section 7** of the Civil Procedure Act, and it provides as follows;

10 *“No court shall try any suit or issue in which the matter directly and substantially in issue has been 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 common law doctrine of res judicata therefore, bars re-litigation of cases between the same parties over the same issues already determined by a competent court. (See: **Henderson v. Henderson 3 Hare 114**).

15 The plaintiff contended that this suit was brought to obtain consequential orders, to which I disagree and concur with the submissions of the 2nd defendant. The plaintiff cannot apply for consequential orders as against parties that were not party to the criminal case and secondly, the trial Magistrate did not have the powers to make orders as to cancellation of Title under a criminal case where
20 ownership rights of the parties were not determined. The plaintiff therefore, cannot proceed to apply for consequential orders in the instant case before the determination of the actual owner of the suit land.

The plaintiff (PW2) testified in court that she is an Administrator of the estate of the Late Daudi Tebyasa who died in 1942. And left a will which she only
25 discovered in 2015 after instituting a suit in court and the suit land was mentioned in that will. That she has been on the suit land ever since together with her brother Sonko who is still there. That once she learnt that the land was in the name of Mika kayingo she lodged a caveat in 2002. She further claimed that she informed the Administrator General of the fraud and the Commissioner Land Registration.

30 PW3 Paul Lumala Kikawa testified that he is the one who found the will to Daudi Tebyasa’s estate and handed it over to the plaintiff in 2015 where Daudi Tebyasa bequeathed his Mailo land at Nabuguyu and at Kasambya to the plaintiff’s father. This will was challenged by counsel for the 2nd defendant and he stated that the
35 this witness discredited the will and it was never explained why Daudi Tebyasa’s son never had the will in his custody or why the witness whose duty it was to keep wills only discovered it in 2015. That none of the witnesses who attested to the will were ever produced in court.

The plaintiff stated that the will indicated that the suit land was bequeathed to her father, however, the piece indicated as belonging to her father as per the will
40 measures only 210 acres while the suit land is said to measure 640.20 acres.

The defendant's did not dispute that Daudi Tebyasa sold to Mika Kagingo .20 decimal acres of the land. The contention is on the 640 acres.

5 PW1 Joseph Mbiito Tumwesigye, a server photographer stated that he handled a search on Gomba Block 6 Plot 1 at Kasambya, made a film of the said land and found out that there was a document saying that Kayongo bought 20 decimals of an acre from Daudi Tebyasa but never saw transfer documents to that effect. Section 58 of the Evidence Act Provides that;

“All facts, except the contents of documents, may be proved by oral evidence.”

10 During examination of DW1 Muyomba Simon Peter stated that on the transfer Mika Kayongo had 640 acres of land at Kasambya, and not Kyabogo under SR No.8/208 as alleged by the plaintiff's interpretation of the register, and his estate comprised 640.20 acres and testified that Daudi Tebyasa transferred the land to Mika in 1940.

15 The 2nd defendant in his defence relied on the search statement dated 13th August, 2002, a copy of the white page of Gomba Block 6 plot 1 which emanates from the transfer instrument 24th January, 1940. The search showed that Mika Kayongo was the registered proprietor of 640.20 acres. In the case of **Attorney General v. Henley Property Developers Ltd, Civil Appeal No. 0421 of 2021**, it was stated as follows;

20 *“...under the torrens system, the register is everything, except in cases of actual fraud on part of the person dealing with the registered proprietor, such person upon registration of title has indefeasible title except on ground of fraud. (See: David Seijaaka Nalima v. Rebecca Musoke, Civil Appeal No. 12 of 1985, UGSC 12 (09 November 1986).”*

It was further stated that:

30 *“I also agree that the lands registrar guarantees the accuracy of all the particulars contained on the register. The register is conclusive evidence of ownership and thus, there is no need to search behind or beyond the certificate of title to ensure proven ownership of the land. (See: Kampala Bottlers Ltd v. Damanico (U) Ltd (Civil Appeal No. 22 of 1992) [1993] UGSC 1 (11 January 1993); Aziz Kalungi Kasujja v Naune Tebekanya Nakakande (Civil Appeal No. 63 of 1998)[1998]UGSC 6(25 March 1998).”*

35 The 2nd defendant further relied on the transfer dated 24th January 1940, which was signed by Daudi Tebyasa in regard to the 640.20 acres and the additional 20 decimals in favour of Mika Kagingo. The said transfer was claimed by the 2nd

defendant to be an authentic document under **Section 90** of the Evidence Act. The transfer made reference to two purchases that is one that was effected on the 8th day of February 1912 and another effected on 1st February 1928. In regard to the cancelled year, it was the evidence of the 2nd defendant that it is a document subject to adjustments.

The plaintiff however, contended that there was no sale agreement for the purchase of the 640 acres and indeed this is true as none was submitted in court. The succession register and the transfer gave two different locations of the suit land one being Kasambya and another being Kayongo which is suspicious.

The certificate of title was also challenged because the signature of the registrar who entered the name of Mika on the title in 1912 was the same as that of the entry of the 2nd defendant in 2007. The registrar who made the entry in 2007 on the certificate denied the signature made in 1952 claiming that she was not even born at the time. She claimed that her signature was forged.

It is my considered view that Mika Kagingo did not buy the 640 acres from Daudi Tebyasa as there is no sale agreement to prove the same. The only sale agreement that was tendered in court was for the 20 decimals. The transfer as relied on by the 2nd defendant cannot stand when it has no supporting sale agreements even though it is a document over 30 years old as submitted by counsel.

The entries on the certificate of title have the same signature which is practically impossible as the same registrar could not have been in the same office for a period of 57 years.

If indeed Mika had bought 640 acres from Daudi then he would not have been the first registered proprietor on the certificate of title and Daudi obtained his title in 1921. Thus, Daudi could not have sold what he did not have. Ordinarily Mika would have been entered as the second proprietor and Daudi cancelled as the previous owner which is not the case in the instant matter. The Registrar of titles was however, unable to confirm to this court that the title as presented by the plaintiff was not on the Lands Register. He concluded that it was a forgery.

The plaintiff further in her evidence through PW1 testified that the only available documents with the lands office at Entebbe are in regard to the 20 decimals only, there is not record of the 640 acres as belonging to Mika and no sale agreement was tendered in this court to support this claim.

It is therefore, my finding that Daudi did not sell 640 acres to Mika Kagingo, he only sold to him a piece of land measuring 20 decimals.

This issue is hereby resolved in favour of the plaintiff.

Issue 2: Whether or not the Registrar of Titles was justified in entering the Administrator General on the Certificate of Title when the Plaintiff had already lodged a Caveat thereon?

5 The plaintiff lodged a caveat on the suit land under instrument number KLA237935 on 28.6.2002. For a caveat to be valid, the caveator must have a protectable interest legal or equitable to be protected by the caveat. (See: **Sentongo Produce V Coffee Farmers Limited & Anor vs Rose Nakafuma MUYIISA HCMC 690/99**). The caveat lodged by Gladys in the instant case was valid; her being the administrator of the estate of Daudi Tebyasa. Under **Section 180** of the succession
10 Act all rights and interests belonging to Daudi Tebyasa vested in her.

Section 141 of the Registration of Titles Act provides that as long as any caveat remains in force prohibiting any registration or dealing, the registrar shall not, except in accordance with some provision of the caveat, or with the consent in writing of the caveator, enter in the Register Book any change in the proprietorship
15 of or any transfer or other instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect to which that caveat is lodged.

The plaintiff upon lodging the caveat took no immediate action in fighting for her rights until 2008 when she instituted this suit and the caveat has never been removed to date since 2002. There is also another caveat lodged by bugiri estates
20 Ltd.

It was the submission of counsel for the 2nd defendant that no fraud was attributed to the 2nd defendant and it was also not a party to the criminal case before the magistrate's court. Counsel further submitted that there were no allegations of fraud in respect to the caveat that were attributed to the 2nd defendant. That the
25 plaintiff has not shown any proof that at the time the 2nd defendant was registered on the title the caveat was still subsisting. That it can only mean that by the time the 2nd defendant was registered on the title there was no subsisting caveat as evidenced by the copy of the white page of Block No. 6 Plot 1 on page 30 – 31 of the 2nd defendant's trial bundle.

30 Counsel went on to submit that the 2nd defendant's title has remained intact since 2007 when the 2nd defendant was registered and the same can only be impeached on grounds of fraud strictly pleaded and proved which the plaintiff has dismally failed to do.

I have carefully looked at the court record and it is my finding that even though
35 no fraud was attributed to the 2nd defendant in the lower court. There were however, caveats that were still subsisting at the time the 2nd defendant was entered on the certificate of title. This is evidenced by the letter dated 1st November, 2022 written to this court clarifying the status of the suit land by the Registrar of Titles, Mr. Atusaasire Godwin. The said letter has an attached a copy of the

certificate of title on which the 2nd defendant is registered and it was certified on 1st November, 2022 indicating that the caveats are still subsisting.

I accordingly find and hold that the Registrar of Titles was not right in registering the 2nd defendant on the Certificate of Title while the plaintiff still had a subsisting caveat.

I accordingly resolve this issue in favour of the plaintiff.

Issue 3: Whether or not the 3rd, 4th, 5th, 6th, 7th, and 8th Defendants have interest in the suit land?

DW2 Mwebaze Godfrey also the 8th defendant testified in court that his father acquired interest in the suit land having stayed on the land as a bona fide occupant. During locus in quo the 5th 6th 7th and 8th defendants were found in possession of the suit land with the permission of the 2nd 3rd and 4th defendants.

It was also testified by the 5th defendant that he bought 400 acres from the 3rd and 4th defendants but no sale agreement was ever tendered in court to support this claim.

The 3rd to 8th defendant in the instant case claim to be bonafide occupants on the suit land protected under **Section 29** of the Land. However, the said defendants did not adduce any proof to show this court how they got to occupy the suit land in accordance with the law.

During locus it was observed that the said defendants had no developments on the suit land. What was on the suit land were not structures from the 1960s as they allege, the structures looked recently constructed. The defendants only got to occupy the suit land recently and not in the 1960s as they claim.

The 3rd and 4th defendants were found to be fraudsters in the lower court and I maintain the same and if they sold any land to the 5th defendant then the transaction was tainted with fraud and is illegal. The 3rd and 4th defendants did not even ever show up in court during the hearing of the case.

I accordingly find and hold that the 3rd to 8th defendants have no interest in the suit land as bona fide occupants and are not protected the provisions of **Section 29** of the Land Act as they are illegal occupants of the same.

This issue is hereby resolved in the negative.

Issue 4: what are the remedies are available to the parties?

The plaintiff in the instant case had the duty to prove her case on a balance of probabilities to this court, from the analysis above, the plaintiff has ably proved her case to the satisfaction of this court.

The plaintiff among other remedies prayed for general damages, however, did not satisfy this court that there was any inconvenience she had suffered that warranted this court to make an award of general damages. I therefore, make no order as to general damages.

5 She also prayed for mesne profits however, no evidence was adduced to prove this claim. I am therefore, not persuaded to award the same and do decline to award the mesne profits as prayed for.

Judgment is hereby entered in favor of the plaintiff in the following terms;

- 10 1. A declaration that the registration of the 2nd defendant by the 1st defendant as administrator of the estate of late Mika Kagingo on land comprised in Gomba Block 6 plot 1 land at Kasambya was done fraudulently.
2. An order for cancellation of the name of the 2nd defendant from the special certificate of title at Gomba Block 6 Plot 1 land at Kasambya measuring 640 acres.
- 15 3. An order for entry of the plaintiff as the administratrix to the estate of Daudi Tebyasa on land comprised in Gomba Block 6, plot 1 land at Kasambya measuring 640 acres.
4. An eviction order against the 5th 6th 7th and 8th defendants as illegal occupants on the suit land.
- 20 5. Costs of the suit.

Right of appeal explained.

25

OYUKO. ANTHONY OJOK
JUDGE
17/01/2023