

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**LAND DIVISION**

**CIVIL SUIT NO. 802 OF 2016**

- 1. JJUMBA RONALD**
- 2. JUSTINE MUYANJA KAFEERO**  
(Administrator of late Fred Kafeero) ..... **PLAINTIFFS**

**VERSUS**

- 1. TEOPHIL SEMUYINDE**
- 2. SUZAN NAMUDDU NAKAYIMA**
- 3. THE REGISTRAR OF TITLES ..... DEFENDANTS.**

**BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU**

**JUDGEMENT**

**1. INTRODUCTION:**

This suit is premised on fraud and trespass to land that arose as a result of alleged failure by an administrator to estate of a deceased person to distribute property in accordance with the will of the deceased. The plaintiffs filed this suit as beneficiaries in the said estate, seeking for recovery of land comprised in Kibuga Block 5 Plots 1298 and 1299 at Mulago Kalerwe, plus 50 decimals on land comprised in Kyaddondo Block 222 Plot 2664 at Namugongo, which land formed part of the said estate. The 1<sup>st</sup> defendant was the administrator to the said estate while the 2<sup>nd</sup> defendant was his wife. The 3<sup>rd</sup> defendant was merely sued for purposes of implementing any orders that would be issued by court.

## 2. BACKGROUND:

- a) One Ssezi Musoke Ssalongo died testate on 1<sup>st</sup> February 1999. After his death, the 1<sup>st</sup> defendant together with one Kimuli Christopher acquired letters of probate to his estate. Unfortunately, Kimuli Christopher died before the estate was distributed leaving the 1<sup>st</sup> defendant as the sole administrator. In his will, the late Ssezi Musoke Ssalongo bequeathed properties comprised in Kibuga Block 5 Plot 554 (now plots 1298 & 1299) and Kyaddondo Block 222 Plot 221 (now plot 2264) to his son, one Fred Kafeero. For ease of reference these properties will be referred to as the suit land. Unfortunately, Fred Kafeero also died on 18<sup>th</sup> December 1998 shortly before Ssezi Musoke Ssalongo. However, he was survived by a son (the 1<sup>st</sup> plaintiff) and a widow (the 2<sup>nd</sup> plaintiff). These claimed that as beneficiaries to estate of late John Kafeero they were entitled to his share in the estate as stipulated in the will.
- b) The 1<sup>st</sup> defendant eventually transferred certificates of title to the suit land into his names but refused to distribute or even hand over possession of the same to the plaintiffs. He instead subdivided the land and allegedly dealt with it as he wished contrary to the wishes of the deceased, Ssezi Musoke Ssalongo. The plaintiffs claimed that he did this in connivance with the 2<sup>nd</sup> defendant (his wife and daughter to late Ssezi Musoke Ssalongo). That the acts of the two defendants were fraudulent and that they committed trespass to the suit land. The plaintiffs therefore filed this suit seeking for recovery of the suit land plus several declarations concerning the same.
- c) In their defense, the defendants claimed that they too had an interest in the suit property specifically the land in Kibuga Block 5 plot 554 and it was the reason why they subdivided it into two plots (1298 & 1299) in order to get their share. Consequently Plot 1299 belonged to them. 2<sup>nd</sup>ly, that they were willing and ready to hand over the certificate of title of the remaining plot to the plaintiffs on condition that the plaintiffs paid Ug. Shs. 5.5 million being



the costs spent on subdividing the said land together with Ug. Shs. 15 million as administration expenses incurred in administration of the estate.

- d) Lastly that the grant of probate to estate of late Ssezi Musoke Ssalongo that had been issued to him by court was revoked by the same court and therefore the 1<sup>st</sup> defendant could no longer execute more administration duties in this estate.

### **3. LEGAL REPRESENTATION**

The plaintiffs were represented by Uganda Christian lawyers Fraternity while the defendants were represented by Ms. Lutakome & Co. Advocates.

### **4. ISSUES**

- i. Whether the plaintiffs have an interest in the suit land.
- ii. Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants have an interest in the property comprised in Kibuga Block 5 Plot 1299.
- iii. Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants committed any acts of fraud in relation to the suit land.
- iv. Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants committed any acts of trespass to the suit land.
- v. What are the remedies available?

### **5. LAW APPLICABLE:**

The Constitution of the Republic of Uganda 1995,

The Judicature Act Cap 13

The Land Act Cap 227

The Registration of Titles Act Cap 230

The Civil Procedure Act Cap 71

The Civil Procedure Rules

The Succession Act Cap 162

Common law and decided cases.

## 6. EVIDENCE OF PLAINTIFF

- The 1<sup>st</sup> plaintiff who was PW1 filed a witness statement which was tendered to court on 17/6/2022. He stated as follows:
  - a) That he was a son to late Fred Kafeero who was son to late Ssezi Musoke Ssalongo. That late Ssezi Musoke Ssalongo died testate and by his will he bequeathed the suit properties to his son Fred Kafeero who unfortunately died before him. Nonetheless in his will late Ssezi Musoke Ssalongo specifically stated that if any of his children died without leaving a child then that child's share would be distributed to the remaining children by the executors. That since late Fred Kafero left him as the surviving child then that share should be given to him by the 1<sup>st</sup> defendant who was the executor.
  - b) That the 1<sup>st</sup> defendant acquired letters of probate to estate of late Ssezi Musoke Ssalongo and eventually procured registration of the suit land into his names. He illegally subdivided Kibuga Block 5 Plot 554 into plots 1298 and 1299. He transferred Plot 1298 into 1<sup>st</sup> plaintiff's names but neither informed him nor handed over the certificate of title to him. The 1<sup>st</sup> plaintiff only learnt of this fact when he conducted a search at the land registry.
  - c) The 1<sup>st</sup> defendant refused to transfer plot 1299 into the names of the plaintiffs but continued using it to his benefit. He then signed transfer forms for plot 1299 in favor of the 2<sup>nd</sup> defendant even though the transfer had not yet been effected by the 3<sup>rd</sup> defendant. That this subdivision was fraudulent because according to the deceased's will the entire plot was bequeathed to late Kafero Fred.
  - d) In 2013, 1<sup>st</sup> defendant handed over physical possession of part of plot 1298 to them and they started collecting rent from 2 tenants thereon. However in the same year, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered onto the same plot, forcefully occupied a rental unit thereon, locked up the administrative office, took over

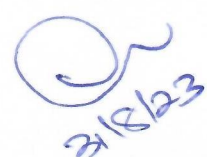


administration of the commercial buildings thereon and the market. These acts of trespass continue to the present day. The 1<sup>st</sup> and 2<sup>nd</sup> defendants continue collecting rent from premises on plots 1298 and 1299.

- e) Plot 1299 is still registered in the names of the 1<sup>st</sup> defendant. Whereas he transferred Plot 1298 into names of 1<sup>st</sup> plaintiff he refused to hand over the certificate of title to him.
- f) Kyaddondo Block 222 Plot 2664 is also still registered in the names of the 1<sup>st</sup> defendant. He refused to hand over the 50 decimals on Kyaddondo Block 222 Plot 221 (now 2664) as indicated in the will.
- g) The grant of probate that was issued to 1<sup>st</sup> defendant was revoked by court on 27<sup>th</sup> May 2014.
- h) He therefore claimed for mesne profits of 216,000,000 being rent collected from the said premises.
- i) In support of his case the 1<sup>st</sup> plaintiff tendered a copy of his birth certificate, copy of the grant of probate to Ssezi Musoke Ssalongo's estate, a copy of the will of late Ssezi Musoke Ssalongo, Search report for Block 5 Plot 1298, plus letter from defendants' advocates directing all tenants to pay rent to 1<sup>st</sup> and 2<sup>nd</sup> defendants and not the 1<sup>st</sup> plaintiff.

- 2<sup>nd</sup> plaintiff who testified as PW2 also made a witness statement which was tendered to court on 17/6/2022. She stated as follows:

- a) That she was widow to late Fred Kafeero with whom she had two children namely Jumba Ronald (1<sup>st</sup> plaintiff) and Kiggundu Derrick now deceased. Fred Kafeero died intestate on 18<sup>th</sup> December 1998 and she acquired letters of administration to his estate on 19<sup>th</sup> May 1999. That she claimed interest in the suit properties as widow, administrator and beneficiary to estate of late Fred Kafeero to whom the said properties were bequeathed.
- b) That in the said will it had been specifically stated that the said properties would revert to the executors if the late Kafeero had died without leaving a

  
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child but since there was a child then the properties would go to them (the plaintiffs). That according to the said will the 1<sup>st</sup> and 2<sup>nd</sup> defendants were given three roomed house on Kibuga Block 5 Plot 554 (now 1299), because of the good work they did in looking after and cleaning the place.

- c) That when 1<sup>st</sup> defendant acquired letters of probate to estate of late Ssezi Musoke Ssalongo, he transferred the properties into his names but refused to transfer or hand over possession of the suit land to the plaintiffs.
- d) In 2013, the 1<sup>st</sup> defendant handed over partial possession of Plot 1298 to the plaintiffs and they started collecting rent from 2 tenants. He then fraudulently subdivided Kibuga Block 5 Plot 554 into plots 1298 and 1299 and his three roomed building was placed on Plot 1299. He then secretly and fraudulently transferred plot 1298 into the names of 1<sup>st</sup> plaintiff without his knowledge. He also fraudulently signed transfer forms for plot 1299 in favor of 2<sup>nd</sup> defendant but the said transfer had not yet been effected by 3<sup>rd</sup> defendant.
- e) He distributed Kyaddondo Block 222 Plot 221 to all other beneficiaries in accordance with the will but did not hand over late Kafero's share of 50 decimals to the plaintiffs. The residue (Block 222 Plot 2664) is still registered in his names.
- f) The 1<sup>st</sup> and 2<sup>nd</sup> defendants then forcefully entered on to plot 1298 without permission of the plaintiffs and forcefully occupied a rental unit thereon, locked up the administrative office, and took over administration of the commercial building and market.
- g) The 1<sup>st</sup> defendant also took advantage of the fact that he was owner of the three roomed structure on plot 1299 and took over the entire plot. He had therefore constructed new structures and lockups on both plots and continued to utilize them to his benefit.
- h) That letters of probate that were issued to 1<sup>st</sup> defendant was revoked by court and therefore the 1<sup>st</sup> defendant no longer has authority to deal with estate of





late Ssezi Musoke Ssalongo. Nonetheless Block 5 Plot 1299 and Kyaddondo Block 222 Plot 2664 (residue on Plot 221) is still registered in his names.

- i) That whereas he transferred Plot 1298 into names of 1<sup>st</sup> plaintiff he refused to hand over the certificate of title to him.
- j) She therefore claimed for mesne profits of 216,000,000 being rent collected from the said premises.

## 7. EVIDENCE OF DEFENDANT

The defendants called only one witness who was the 1<sup>st</sup> defendant. He filed a witness statement which was tendered to court on 31/8/2022. He testified as follows:

- a) That the 2<sup>nd</sup> defendant was his wife and daughter to late Ssezi Musoke Ssalongo. Therefore, the late Ssezi Musoke Ssalongo was his father-in-law. That the suit land formed part of the estate of late Ssezi Musoke Ssalongo and the same was bequeathed to them by will of late Ssezi Musoke Ssalongo dated 18<sup>th</sup> November 1995. That he was executor of the said will.
- b) He subdivided Block 5 Plot 554 into plots 1298 and 1299 and retained plot 1299 as their share. That he together with the 2<sup>nd</sup> defendant are in possession of plots 1298 and 1299 and they erected several structures thereon under the consent and knowledge of late Ssezi Musoke Ssalongo.
- c) That in 2013, he transferred Plot 1298 into the names of the 1<sup>st</sup> plaintiff under a mistaken belief that he was a beneficiary of the estate of late Ssezi Musoke Ssalongo because he had not sought legal advice on the interpretation of the will and the relevant provisions in the law of succession.
- d) That after seeking legal advice he found that 1<sup>st</sup> plaintiff had no interest in the said estate and he declined to hand over the said certificate of title to him. That late Kafeero Fred was son to late Ssezi Musoke Ssalongo and by the time Kafeero died he had no wife.

  
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- e) That consequently the grant issued to 2<sup>nd</sup> plaintiff as widow to late Kafeero was false since since Kafeero had no wife. That the birth certificate that showed that 1<sup>st</sup> plaintiff was son to late Kafeero was equally false since it was issued 9 years after Kafeero,s death. At the time of Kafeero's death he had not recognized the 1<sup>st</sup> plaintiff as his son.
- f) That since late Fred Kafero predeceased his father then bequest in the will to Kafeero lapsed and Kafeero ceased to be a beneficiary in the estate of late Ssezi Musoke Ssalongo. Consequently, the plaintiffs have nothing to claim from the said estate.
- g) In cross examination he stated that he knew the 1<sup>st</sup> plaintiff as heir to Fred Kafeero. and confirmed that he was son to Kafeero.

The court visited locus in this matter.

## 8. SUBMISSIONS.

Both parties were given timelines within which to file written submissions. Whereas the plaintiffs filed written submissions as directed, the defendants did not and no reason was given for their failure to comply. The matter was accordingly fixed for judgment.

I have carefully studied the submissions of the plaintiff that are on court record and I need not reproduce them here.

Briefly counsel for the plaintiff submitted that the 1<sup>st</sup> plaintiff had an interest in the suit property because he was a beneficiary to the estate of late Fred Kafeero who had been bequeathed the suit property by his father, Ssezi Musoke Ssalongo. That PW1 and PW2 had led evidence to show that 1<sup>st</sup> plaintiff was son to late Kafeero Fred and this was confirmed by DW1 in cross examination. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's interest in the suit property was only limited to the three rooms on Block 2 Plot 1299 which were given to them in the will. That the 1<sup>st</sup> and 2<sup>nd</sup> defendant willfully and with intent to deceive or cheat had transferred the suit



properties into their names and had refused to hand over certificates of title to the suit properties to the plaintiffs. That following the decision of court in *Frederick Zaabwe*<sup>1</sup>, this court should find that they were fraudulent.

## 9. DECISION OF COURT

### Issue 1

**Whether the plaintiffs have an interest in the suit property.**

- a) From the evidence on record, it is clear that the suit property formed part of the estate of the late Ssezi Musoke Ssalongo to which the 1<sup>st</sup> defendant was granted letters of probate. However, the said grant was eventually revoked by court in 2014.
- b) It is also clear that late Fred Kafeero was son to late Ssezi Musoke Ssalongo and the suit properties were bequeathed to late Fred Kafeero who unfortunately died before his father. In his will specifically page 8 of the translated will which was tendered to court as PEX 2 it was stated thus;

*“If there is any child who will die but who has a share in this will, but without leaving any child that share should be distributed to you by the executors”.*

This statement was directed to the children of Ssezi Musoke. Apparently, the children of Ssezi Musoke could only get the suit land that was bequeathed to late Fred Kafeero if he had died without leaving behind any child.

- c) From the evidence on record, it is clear that 1<sup>st</sup> plaintiff was a child to late Fred Kafeero. This fact is proved by the birth certificate which was tendered to court as PEX 3, the evidence of PW1 and PW2 together with that of DWI

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<sup>1</sup> Fredrick Zaabwe vs. Orient Bank Ltd & 5 others Civil Appeal No. 4 of 2006.

  
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who confirmed this fact during cross examination and further clarified that 1<sup>st</sup> plaintiff was son and heir to late Fred Kafeero.

Since Kafeero left a child, the children of Ssezi Musoke, cannot claim this property because this was not the intention of the testator. His intention was that it only reverts to them if there is no surviving child. And by implication if there is a surviving child then it goes to the child.

In addition, *S.92 of the Succession Act provides.*

*“If a legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator’s property, unless it appears by will that the testator intended that it should go to some other person.”*

- d) In the case before court it is clear that the testator only intended the suit property to revert back to the estate if late Kafeero had not left any children behind. Since he left a child behind the situation is different and the property should be given to his child.
- e) I therefore find that the 1<sup>st</sup> plaintiff has interest in the suit property by virtue of the fact that he was a child to whom the late Ssezi Musoke Ssalongo intended that property be given in case any of his biological children died before him.
- f) As regards the 2<sup>nd</sup> plaintiff, whereas I appreciate that she was a widow and administrator to estate of late Fred Kafeero, I must note that the suit property was not the kind of property that she was expected to administer or even have a share. This is because the said property was properly dealt with under the will of Ssezi Musoke Ssalongo which clearly stated that it would go to children of his biological children who predeceased him but not widows. The 2<sup>nd</sup> plaintiff thus has no interest in the suit property. She is free to administer and claim interest in any other properties of late Kafeero that did not emanate from the estate of late Ssezi Musoke Ssalongo.

  
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- g) I therefore find that the 1<sup>st</sup> plaintiff has an interest in the suit land as child and beneficiary to estate of late Kafeero John to whom the said property was bequeathed by late Ssezi Musoke Ssalongo.

## Issue 2.

Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendant have an interest in the property comprised in Kibuga Block 5 Plot 1299.

- a) DW1 testified that he and the 2<sup>nd</sup> defendant retained Block 5 Plot 1299 as their share in the estate of late Ssezi Musoke Ssalongo. Further that they are in possession of plots 1298 and 1299 where they erected several buildings with the knowledge and consent of late Ssezi Musoke Ssalongo.
- b) PW1 on the other hand testified that according to the will of late Ssezi Musoke Ssalongo, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were given the three roomed house sitting on Kibuga Block 5 Plot 554 (now plot 1299) but that the entire 50 decimals were bequeathed to his late father Fred Kafeero.
- c) According to the will part 12 thereof, it was stated as follows:

*“ this land at Mulago – Kampala (Kalerwe) Block 5 Plot 554; 50.21 Dec (fifty decimals. All the 50 decimals I have given them to Fredrick Kafeero Mugagga- my customary heir – and all the buildings thereon. The commercial building (shops) plus servants’ quarters- I have given all of them to him – but the other three rooms I have given it to my children namely; my son in law, Teophil Ssemuyinde and Susan Namuddu Nakayima ...”*

- d) It is therefore clear that the late Ssezi Musoke Ssalongo intended to give the 1<sup>st</sup> and 2<sup>nd</sup> defendants only three rooms on the land in Plot 554 (currently 1299) but not the entire land. He gave the entire land to late Fred Kafeero. It was thus not right for 1<sup>st</sup> and 2<sup>nd</sup> defendants to claim the entire land. At most the 1<sup>st</sup> and 2<sup>nd</sup> defendants can enjoy rights of occupancy of the three rooms on the said land but not registrable interest in the said land.

e) I therefore find that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are only entitled to the three roomed house on Block 5 Plot 1299 as lawful occupants of the same and can only exercise rights that accrue to a lawful occupant i.e. security of occupancy, first option to purchase in case the registered owner wishes to sell, and compensation in case of eviction. Otherwise, the proprietorship of the said land was bequeathed to Fred Kafeero and should now go to 1<sup>st</sup> plaintiff.

### Issue 3

Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants committed any acts of fraud in relation to the suit land.

- a) Counsel for the plaintiffs submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were involved in fraudulent transactions when the 1<sup>st</sup> defendant as executor, subdivided Block 5 Plot 554 into plots 1298 and 1299 without the knowledge or involvement of the 1<sup>st</sup> plaintiff who was entitled to that land. He then connived with the 2<sup>nd</sup> defendant and signed transfer form in her favor, a process which was only interrupted by the plaintiffs.

The 1st defendant also subdivided Kyaddondo Block 222 Plot 221 into plots 2663 and 2664 and transferred 50 decimals to one Lukwago Moses a beneficiary but refused to give late Kafeero's share to 1<sup>st</sup> plaintiff.

- b) Fraud relates to acts of dishonesty by a party. In the case of *Fredrick Zaabwe (Supra)* the supreme court defined fraud as

*“an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury”.*



In **Kampala Bottlers Ltd<sup>2</sup>**, the supreme court guided that for one to succeed in case of fraud, the plaintiff must prove that there acts of dishonesty, attributable to the defendant or that the defendant knew of such acts and took advantage of them.

- c) From the evidence on record it is clear that all along the 1<sup>st</sup> defendant knew that the suit land was never bequeathed to him. The will specifically stated that Block 5 plot 554 (now 1298 and 1299) was bequeathed to Fred Kafeero and he and the 2<sup>nd</sup> defendant were only entitled to the three roomed house on the land. I therefore failed to appreciate why the 1<sup>st</sup> defendant decided to take the entire land . Much as he claimed that with the death of Kafeero the bequest lapsed, the will did not authorize him to take Kafeero's bequest.
- d) His actions of secretly transferring plot 1298 into 1<sup>st</sup> plaintiff's names and not even informing him shows that he was dishonest. Even when 1<sup>st</sup> plaintiff demanded for the said title, he put up flimsy excuses requesting the 1<sup>st</sup> plaintiff to pay him huge sums of money before he could release the title to him. All this shows that he was not truthful.
- e) When court visited locus it was ascertained that apart from the three roomed house on plot 1299 which appeared to be very old, the rest of the plot was fully developed with several structures and market stalls. The 1<sup>st</sup> defendant confirmed that he was the one collecting rent from the stalls. He also confirmed that the plaintiffs were collecting rent from only 2 structures on plot 1298 i.e. a pharmacy and supermarket. The 1<sup>st</sup> defendant was the one collecting rent form the rest of the premises on plot 1298.
- f) I still failed to appreciate why even after transferring plot 1298 into the names of the 1<sup>st</sup> plaintiff he continued collecting rent from premises on the said plot. All this further shows that he was dishonest in his dealings with the estate of late Ssezi Musoke Ssalongo.

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<sup>2</sup> Kampala Bottlers Ltd. Vs. Domanico (U) Ltd. SCCA No. 22 of 1992



- g) The 1<sup>st</sup> and 2<sup>nd</sup> defendant therefore fraudulently dealt with the land comprised in Kibuga Block 5 Plot 554 in as far as they fraudulently subdivided the land with the intention of taking plot 1299 as their own well aware that they were merely lawful occupants of the three roomed house thereon. The 1<sup>st</sup> defendant also fraudulently dealt with plot 1298 when he refused to hand over certificate of title to the same to 1<sup>st</sup> plaintiff by putting up flimsy excuses and demanding for payment of huge sums of money before he could release the title to him.
- h) As regards Kyaddondo Block 222 Plot 221 (currently plots 2663 & 2664) the will be stated thus;
- “at Namugongo, Block 222 Plot 221 I have given it to the following people*
- i) My customary heir, Fredrick Kafeero Muggaga 50 decimals on the side of the road which goes to the late Katenda Natigo.*
  - ii) Abiri James Kiggundu – 50 decimals where he built his residential house*
  - iii) The remaining one acre is for ancestral ground to be used for burial ....”*
- i) Apparently the 1<sup>st</sup> defendant as administrator did not give the 50 decimals that were bequeathed to late Kafeero Fred were not given to his son (1<sup>st</sup> plaintiff). When court visited locus, it observed that Plot 2664 was partly occupied by a grave yard, car parking, market stalls and a road. The 1<sup>st</sup> defendant informed court that the land initially measured two acres but he carved out 1 acre as burial grounds. However, the court also observed that the portion which was left as burial ground was largely developed with market stalls and shops. The 1<sup>st</sup> defendant informed court that he was the one collecting rent from these shops and stalls. He further informed court that the 50 decimals which were supposed to go to late Kafeero were sold by Jimmy's sons.



- j) Given the fact that the 1<sup>st</sup> defendant was the administrator to Ssezi Musoke Ssalongo's estate and the person registered on the certificate of title as a such, there is no way Jimmy' sons could have sold off the land without his involvement. The only plausible explanation was that he intentionally participated in the sale of this land to the detriment of 1<sup>st</sup> plaintiff and with an intention of defrauding him. He fraudulently participated in the transaction involving sale and transfer of the 50 decimals bequeathed to late Kafeero Fred to one Lukwago Moses.
- k) The 1<sup>st</sup> defendant took advantage of the fact that he was an executor of Ssezi Musoke's estate and instead of distributing the properties to the rightful, owners he converted them to his own use, which was fraudulent on his part.
- l) I therefore find that the 1<sup>st</sup> and 2<sup>nd</sup> fraudulently dealt with the suit property as discussed above.

#### Issue 4

**Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants committed any acts of trespass to the suit land.**

- a) Trespass to land occurs when a person makes an unauthorized entry upon another's land and thereby interfering with another person's lawful possession of the land<sup>3</sup>. In Onega Obel<sup>4</sup> trespass to land was said to consist of the following unjustifiable acts namely – entering upon the land in possession of another; remaining upon such land; or placing any material object upon it. Therefore, for a plaintiff to bring an action of trespass he/ she must show that that he/she was in possession of the suit land. In Tayebwa<sup>5</sup>, court guided that one's physical presence on the land or use or de facto control of it does not amount to possession sufficient to bring an action of trespass as one is

<sup>3</sup> Justine E.M. Lutaaya vs. Sterling Civil Eng. Civil Appeal No. 11 of 2002.

<sup>4</sup> Onega Obel & Anor vs. The Attorney General HHCS. No. 006 of 2002

<sup>5</sup> Tayebwa Godfrey & Besigomwe Edison vs. Kagimu Ngudde Mustafa HHCS. No. 118 of 2012

required to have an interest in the subject land as well. In *Katarikawe*<sup>6</sup> it was stated that interests in land include registered and unregistered interests.

- b) In the instant case, evidence shows the 1<sup>st</sup> plaintiff had a registered interest in Kibuga Block 5 Plot 1298. The 1<sup>st</sup> defendant gave him actual possession of this plot in 2013 and he allowed him to start collecting rent. However, the 1<sup>st</sup> defendant later interfered with this possession when he directed tenants to stop paying rent to plaintiffs, and closed the administration offices. He also put up several structures (shops, market stalls,) on the said plot and he together with the 2<sup>nd</sup> defendant were the ones collecting rent from these structures. All this was done without the consent of the 1<sup>st</sup> plaintiff who had an interest in the said suit land. He therefore committed acts of trespass to the suit land specifically on Block 5 Plot 1298.

## Issue 5

### What are the remedies available?

The plaintiffs prayed for several remedies including permanent injunction, mesne profits, general damages, and costs of the case.

#### a) Mesne profits

These are profits which the person who is in wrongful possession property received or might have received. In *Robert Cuossens*<sup>7</sup>, it was observed that mesne profits have to be specifically proved to court. The plaintiffs claimed for mesne profits of 216 million as rent that had been collected by the 1<sup>st</sup> and 2<sup>nd</sup> defendants from 30 market vendors for the period 2013 to 2016. In support of this they tendered to court letters written by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the tenants to continue paying rent. Although 12 names of the tenants are listed in one of the letters (PEX 12), it is not clear how much each of the tenant had been paying. The receipts that were

<sup>6</sup> *John Katarikawe vs. William Katwiremu* 1977 HCB 210 at 214

<sup>7</sup> *Robert Cuossens vs. Attorney General* SCCA No.8 of 1999

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tendered to court were in regard to the pharmacy and the super market which the 1<sup>st</sup> plaintiff was in charge. These receipts cannot be used to compute any amount since the rates for each tenant were not uniform. The plaintiffs did not call any tenant to ascertain how many tenants were on the land and how much each was paying. I therefore failed to appreciate how the plaintiffs arrived at the claim of 216 million as mesne profits. Since these were not specifically proved, I shall not grant them.

b) General damages.

From the evidence it is clear that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have enjoyed prolonged and fraudulent use of the suit land to the annoyance and inconvenience of the plaintiffs. The plaintiffs have definitely suffered a lot of inconvenience as a result of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, continued trespass and fraudulent dealing with the land. I therefore hereby grant the plaintiffs general damages of Ug. Shs. 30 million.

- c) As regards the suit property, this court has already found that the 1<sup>st</sup> plaintiff is the rightful owner of the said properties. The 1<sup>st</sup> defendant is therefore hereby ordered to hand over certificates of title to the said properties to the 1<sup>st</sup> plaintiff to enable him carry out the necessary transfers into his names.

This court is aware that the 1<sup>st</sup> defendant no longer has powers to execute transfers in relation to the suit properties since the grant that was issued to him was revoked by court. Even then no executor has been appointed to replace him since the court that revoked the grant expected him to conclude the distribution within three months from the date of judgment. Under S. 33 of the Judicature Act and S. 98 of the Civil procedure Act, this court is vested with powers to grant any orders and remedies that it deems fit for the ends of justice to be met.

Therefore the 3<sup>rd</sup> defendant is hereby ordered to cancel the names of the 1<sup>st</sup> defendant from the Certificate of title to Kibuga Block 5 Plot 1299 and register the 1<sup>st</sup> plaintiff Jumba Ronald as the registered proprietor thereof.

- d) The 3<sup>rd</sup> defendant is also hereby ordered to cause a subdivision of land comprised in Kyaddondo Block 222 Plot 2664 and effect a direct transfer of 50 decimals of this land to the 1<sup>st</sup> plaintiff, Jumba Ronald.
- e) A permanent injunction is also hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents, servants, employees or any body claiming under them from collecting any rent from any tenants on the suit property at Kibuga Block 5 Plot 1298 and 1299 apart from the three roomed house, interfering, harassing, intimidating or interfering with the 1<sup>st</sup> plaintiff's possession, use occupation and quiet enjoyment of the said property.
- f) The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall pay costs of this case to the plaintiffs.

#### 10. FINAL ORDERS.

Judgement is therefore entered as follows.

- a) The 1<sup>st</sup> Plaintiff is the rightful owner of land comprised in Kibuga Block 5 Plots 1298 and 1299 at Mulago Kalerwe.
- b) The 1<sup>st</sup> and 2<sup>nd</sup> defendants are lawful occupants of a three roomed house on Kibuga Block 5 Plot 1299.
- c) The 1<sup>st</sup> plaintiff is the rightful owner of 50 decimals of land comprised in Kyaddondo Block 222 Plot 2664 at Namugongo.
- d) The 1<sup>st</sup> defendant should hand over certificates of title to the above-mentioned land to the 1<sup>st</sup> plaintiff forthwith.
- e) The 3<sup>rd</sup> defendant (Registrar of titles) should cancel names of 1<sup>st</sup> defendant from certificate of title to land comprised in Kibuga Block 5 Plot 1299 and register the names of the 1<sup>st</sup> plaintiff Jjumba Ronald as proprietor.
- g) The 3<sup>rd</sup> defendant (Registrar of titles) should cause a subdivision of land comprised in Kyaddondo Block 222 Plot 2664 and effect a direct transfer of 50 decimals of this land to the 1<sup>st</sup> plaintiff, Jumba Ronald.



- f) A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents, servants, employees or anybody claiming under them from harassing, intimidating or interfering with the 1<sup>st</sup> plaintiff's possession, use, occupation and quiet enjoyment of property comprised in Kibuga Block 5 Plot 1298, or even collecting any rent from any tenants on the said property.
- g) A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents, servants, employees or anybody claiming under them from harassing, intimidating or interfering with the 1<sup>st</sup> plaintiff's possession, use, occupation and quiet enjoyment of property comprised in Kibuga Block 5 Plot 1299, or even collecting any rent from any tenants on the said property apart from the three roomed house thereon.
- h) The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall pay general damages of Ug. Shs. 30 million to the 1<sup>st</sup> plaintiff.
- i) The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall pay interest on (h) above at court rate from date of judgment till payment in full.
- j) The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall pay costs of the case to the plaintiffs.

DATED at Kampala this .....21<sup>st</sup>..... day of .....August..... 2023

  
FLAVIA NASSUNA MATOVU  
JUDGE.