The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Suit No. 43 of 2014

1. Igonyo Grace
2. Agwang Hellen
3. Alaka Pamela

:: Plaintiffs

Versus

1. Arnold Bernard Ongecu
2. Registrar of Titles

::: Defendants

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

1. Introduction:

The plaintiffs filed this suit against the defendants seeking for cancellation of a Certificate of Tile of Land comprised in FRV 1034, Folio 15, situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately 3.40 hectares, which was allegedly fraudulently issued to the 1st defendant by the 2nd defendant.

The plaintiffs seek the following remedies and reliefs:

a) An Order to the 2nd defendant to cancel the Certificate of Title for the land comprised in Leasehold Register Volume 1034, Folio 15, land situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately 3.40 hectares.

5 b) Permanent injunction restraining the defendants or their agents from interfering with the plaintiffs' ownership of their property.

c) General/exemplary damages

d) Costs of the suit

e) Any other relief.

10 It is an agreed fact between the parties that the defendant levies loading and offloading fees against the plaintiff.

2. <u>The Plaintiff's case:</u>

This suit was filed by the late Zerida Alaka (1st defendant's stepmother) jointly with the current plaintiffs. However, upon the death of Alaka Zerida, who was the 15 1st plaintiff, the current plaintiffs continued with the suit by amended plaint filed on 15 October 2020.

The plaintiffs' case is that they owned 3.40 hectares of customary land situated at Madera Central Cell, Madera Ward, Northern Division, Soroti Municipality.

In March 2013, the 1st defendant started demarcating the plaintiffs' land, creating 20 plots which totaled ten and thereafter disposed of one, which caused the plaintiffs to call for a clan meeting that preceded several others, which is within the 1st defendant's knowledge.

The 1st defendant, without prior consent/knowledge of the plaintiffs, fraudulently and wrongfully decided to obtain a Certificate of Title issued by the 2nd defendant 25 in favour of the 1st defendant for land comprised in FRV 1034, Folio 15, land situate at Plot No. 31, Soroti Block 7 Madera of approximately 3.40 hectares.

5 The plaintiffs also aver that the suit land originally belonged to the late Zerida Alaka, where she lived with the plaintiffs, whom she treated as her own children and upon her death, she was buried on the suit land.

The plaintiffs, among others, pray that they are the rightful owners of the suit land after acquiring the same by way of inheritance from their late father and

10 mother.

The plaintiffs contend that they have stayed on the suit land from the time of Alaka's marriage to her late husband, for the 1st and 2nd plaintiffs, from their childhood and for the 3rd plaintiff from his date of birth without any interference till March 2013 when the 1st defendant came and purported to create plots and

15 disposed of one without the consent of the plaintiffs.

3. The Defendant's case:

The 1st defendant contends that the suit land belonged to his late father, Gabriel Aomu, who died testate and left a Will appointing him the heir and executor.

Later, the family appointed him as sole administrator of the estate of his late

20 father, but this got burnt before the application for administration.

The 1st defendant contends that the plaintiffs were domestic servants of the late Alaka Zeridah and are not relatives and/or dependants of the late Gabriel Aomu, who was the original owner of the suit land.

That they are also from another clan with no plausible claim or legal propriety

25 rights over the suit land.

The 1st defendant contends that the family sat several times between 2001 and 2002 and agreed that the 1st defendant, in his capacity as the heir and

5 administrator of the estate, secures a lease of the said land to which an application was made and title vide LRV 3024, Folio 20 known as Plot 31, Block 7 at Madera, measuring 3.40 hectares which was later transformed into a freehold and a new Certificate of Title issued comprising of FRV 1034 Folio 15 known as Plot 31 Soroti, Block 7 land at Madera.

10 The 1st defendant contends that the application for a lease offer and freehold was done transparently, and the family consented to it, and the chiefs, neighbours, and Area Land Committee members participated, and the 1st plaintiff hosted all people who participated in the exercise without reservations.

The 1st defendant contends that in April 2014, he attempted to distribute the 15 estate to the beneficiaries, but the plaintiffs disrupted the exercise, threatened violence and the distribution aborted.

The 1st defendant contends that he has never engaged in acts of fraud as alleged or at all in the administration of the suit property.

The 1st defendant avers that the plaintiffs' claim arises out of the late Alaka's 20 share out of the late Aomu's estate to which they are only entitled to, but that that share was not divided and, therefore, is not inheritable.

The 1st defendant prays that this court dismisses the suit against him with costs.

The 2nd defendant did not participate in the suit. Therefore, the suit proceeded ex-parte against him.

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4. Representation:

In this suit, M/s Ogire & Co. Advocates and M/s Engulu & Co. Advocates jointly represented the plaintiffs, while M/s Omongole & Co. Advocates represented the 1st defendant.

The plaintiffs, in proof of their case, led evidence of three witnesses: Igonyo Grace as PW1, Okodet Charles as PW2 and Anatu Patrick (neighbour) as PW3.

The defendant led the evidence of two witnesses, Arnold Bernard Ongecu as DW1 and Opolot Fastine Oule as DW2

5. Evidence:

The plaintiffs tendered to the court the following:

a) A copy of the Certificate of Title in the name of Arnold Bernard Ongecu of land comprised in FRV 1034, Folio 15, Soroti measuring approximately 3.40 hectares, also known as Plot 31 Soroti Block 7 at Madera was identified as **PID1.**
b) A copy of the Minutes of the meeting held on 14th July 2013 at Amojong Zerida Alaka's home identified as PEX1.
c) Minutes dated 10 August 2013 as PEX2
d) Minutes dated 24th November 2013 as PEX3
e) Minutes dated 6th April 2014 as PEX4
f) Letter dated 16th August 2014 as PEX5.

The 1st defendant adduced in evidence the certificate of title of the suit land and other documents relating to the process of application of leasehold of the suit land from Soroti District Land Board and thereafter conversion of the leasehold

5 into freehold into his name and that of his child, the minutes of various family meetings among others.

6. Issues:

In the Joint Scheduling Memorandum dated 4 June 2021, five were proposed. These have been considered and adopted by the court for the resolution of the
10 dispute. These are;

a) Whether the plaintiffs have the locus to institute this suit?
b) Who is the rightful owner of the land in issue?
c) Whether the 1st defendant's title was fraudulently acquired and, if so, whether it can be cancelled.
15 d) What remedies are available to the parties?

7. Burden of proof and standard of proof:

Section 101 of the Evidence Act, Cap 6, provides that

1) Whoever desires any court to give judgment as to any legal right or
20 liability dependent on the existence of facts which he or she asserts must prove that those facts exist.
2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 of the Evidence Act states that the burden of proof in a suit or
25 proceeding lies on that person who would fail if no evidence at all were given on either side.

Also, Section 103 of the Evidence Act provides that the burden of proof as the burden of proof as to any particular fact lies on that person who wishes the court

5 to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

This being a civil suit, the burden of proof lies with the plaintiff (**sections 101 and 102 of the Evidence Act, Cap 6)**. It is trite law that the standard of proof in civil cases is on a balance of probabilities ***(Nsubuga vs Kawuma [1978] HCB 307).***

10 In the case of ***Erumiya Ebyetu v. Gusberito [1985] HCB 64,*** it was held that

> **"where *the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."***

8. Submissions:

15 The plaintiff and the 1st defendant filed written submissions, which are on the court record; the court is thankful to the counsel of each party for the same. The submissions have been considered herein accordingly.

9. Court's findings and decision:

a) Whether the plaintiffs have the locus to institute this suit?

20 The plaintiffs' counsel cited the case of ***Dima Dominic Poro Versus Godfrey and Apiku Martin, Civil Appeal No. 0017 of 2016,*** where Stephen Mubiru, J, explained the meaning of the word ***"Locus Standi"*** and held that for any person to have *locus standi*, such person must have ***"sufficient interest"*** in respect of the subject matter of a suit, which is constituted by having, an adequate interest, not merely

25 a technical one in the subject matter of a suit, the interest must not be too far removed (or remote), the interest must be actual, not abstract or academic, and the interest must be current, not hypothetical. For this position, the plaintiffs' counsel submitted that there is no doubt that the plaintiffs and the late Alaka

5 Zerida had an interest in the suit land, having lived on the same for more than 40 years uninterrupted and also because the instant suit was filed by the late Zerida Alaka, a stepmother to the 1st defendant and wife to the late Gabriel Aomu from whom the 1st defendant traces his inheritance together with the three plaintiffs now.

10 On the other hand, counsel for the 1st defendant contends in his submissions that the 1st defendant led evidence to the effect that the plaintiffs are not related to him because they are strangers from another clan who were only brought by the late Zerida Alaka to stay with her. DW1 testified that the 1st and 2nd plaintiffs are children of Odeke of Mukura in Ngora, while the 3rd plaintiff is a child of the 2nd
15 plaintiff.

Counsel for the 1st defendant further submitted that while the then 1st plaintiff was the 1st defendant's father's wife, she did not bear any child and that the plaintiffs are not beneficiaries of the estate of the late Aumo Gabriel because they are not blood relatives of the 1st defendant who is an heir and administrator
20 of the Estate. Counsel submits that after the death of Zerida Alaka, the plaintiffs continued to stay on the suit land, knowing that it does not belong to them and neither are they beneficiaries of the late Aomu Gabriel's Estate.

Counsel for the 1st defendant also contends that the plaintiffs did not disclose the capacity in which they sued but that PW2 admitted not being fathered by the late
25 Aomu Gabriel.

Counsel for the 1st defendant cited a number of authorities for the position that a beneficiary to an estate requires letters of administration before they can sue, which he argued that the plaintiffs did not have, and on top of not being relatives

5 to the late Aomu Gabriel, they did not have locus standi because they also did not plead the capacity in which they sued the 1st defendant.

i. The Court's analysis and conclusions:

It is a common and an undisputed fact evident from the pleadings and testimonies of both the plaintiff and the 1st defendant that the late Zerida Alaka
10 lived on the suit land with the current plaintiffs who are even still resident on the suit land through and beyond 1980 when the late Aomu Gabriel died and even after the death of the late Zerida Alaka who was also buried there on the suit land.

The Black's Law Dictionary, 9th Edition, Page 1026, defines ***"Locus Standi"*** as [Latin
15 ***"place of standing"]*** (1835), which is the right to bring an action or to be heard in a given forum.

This instant matter was first filed by the late Zerida Alaka together with the current plaintiffs. It was only amended when the late Zerida Alaka, who was the then 1st plaintiff, died. This means that the matter continued with the current
20 plaintiffs and was never decided on its merits with respect to the then 1st plaintiff, he late Zerida Alaka.

In the case of ***Dima Dominic Poro Versus Godfrey and Apiku Martin, Civil appeal No. 0017 of 2016*** Stephen Mubiru, J explained the meaning of the word ***"locus standi"*** that for any person to have ***locus standi***, such person must have ***"sufficient***
25 ***interest"*** in respect of the subject matter of a suit, which is constituted by having, an adequate interest, not merely a technical one in the subject matter of a suit, the interest must not be too far removed (or remote), the interest must be actual, not abstract or academic, and the interest must be current, not hypothetical.

5 In the instant matter, the perusal of the pleadings coupled with the testimonies of the plaintiffs, there is shown that the interest of the plaintiffs in the suit land which is said to belong to the estate of the late Aomu Gabriel stems from their familial relationship to the late Zerida Alaka who was married to the late Aomu Gabriel as a wife and then later his widow.

10 Furthermore, the plaintiffs themselves undisputedly lived on the suit land with the late Zerida Alaka, who was their aunt for a long time including when the late Aomu Gabriel was still alive. The late Aomu Gabriel even according to the testimony of PW1 took her to school from Primary 1 up to Primary 7.

Further even after the death of death Aomu Gabriel to date PW1 remained 15 resident with the late Zerida Alaka without any interruption and challenge even after when Zerida Alaka died and was buried.

Given the above very strong connectivity scenario, it thus can be safely concluded that the interest of the plaintiffs in the estate of the late Aomu Gabriel stems from their nurturing relationship with the late Zerida Alaka who was a wife to the 20 late Aomu Gabriel and who was a beneficiary to the estate of the late Aomu Gabriel and their being in actual occupation of the suit land.

The is conclusively clear in that Arnold Bernard Ongecu who is the first defendant does not dispute the fact that the late Aomu Gabriel was husband to the late Zerida Alaka and was his father though he now holds title to the suit land in his 25 own and his son's names.

Arnold Bernard Ongecu in his pleadings allude to the fact of his late father dying testate and naming him the heir of his estate with respect to the suit land. This assertion is not anchored by evidence led in proof of this assertion as the will which he presented does not support this assertion that the suit land was part of

5 the estate. So this means that the suit land remained an intestate property subject to distribution in accordance with the Succession Act.

The Succession Act, Cap 162 which though has been significantly amended since this suit was filed in 2014 is indeed still applicable to this instant case. This is because while under Section 191 of the then Succession Act Cap gives guidance
10 on as to when the right to an intestate property is established, it provides that subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

15 Though this provision in principle supports the view of the 1st defendant's counsel that unless letters of administration have been obtained by the plaintiffs, then the plaintiffs would have no ***locus standii*** in this instant case, this position was clarified by the Supreme Court of Uganda in the case of ***Israel Kabwa vs. Martin Banoba SCCA. No. 52 of 1995*** that a beneficiary of an estate of an intestate has
20 the capacity to sue in his own name to protect the estate for his own benefit without first taking out letters of administration. In effect, the Supreme Court resolved that a beneficiary can sue to protect the estate without first taking out letters of administration in spite of the provisions of section 191 of the Succession Act.

25 Given this very clarifying position of the Supreme Court which I find reasonable and which I am bound to follow, it is my considered view that the late Zerida Alaka together with the current plaintiffs had the locus to sue the defendants as beneficiary to the estate of the late Aomu Gabriel. This right extends even to the current plaintiffs who were and have been part of the family of the late Aomu
30 Gabriel though not children of the deceased late Aomu Gabriel. They also have

5 shown by undisputed evidence to date that they have been in occupation of the suit land uninterrupted.

Accordingly, I am satisfied that the plaintiffs have shown by evidence that they have sufficient interest in the instant matter which interests gives them the ***locus standi*** to sue so as to protect their interests in the intestate estate.

10 The above being so, my answer to the issue of whether the plaintiffs have the *locus in quo* to institute this suit is in the positive and in the favour of the plaintiffs as they have shown that were part and parcel of the late Aomu Gabriel's family and as such are beneficiaries to his intestate estate and secondly upon the death of the then 1st plaintiff, Zerida Alaka, they also became possible beneficiaries to 15 her estate.

b) Who is the rightful owner of the land in issue?

The plaintiffs' counsel contends that there was joint tenancy of the suit land between the late Alaka Zerida and the late Aomu Gabriel, the father to the 1st defendant.

20 In support of this argument, counsel contended that from the evidence on record, it is confirmed that the late Aomu Gabriel, the father to the 1st defendant, was married to more than one wife and each of his wives owned a separate piece of land and a home with the late Zerida Alaka having a home on the suit land where the current plaintiffs live to date while the home for the 1st defendant's 25 mother was in Serere and each of these respective wives is buried in their respective portion of land.

Counsel for the plaintiffs contended that because both the plaintiffs and the 1st defendant agree that the late Aomu Gabriel and Alaka Zerida were husband and

5 wife, there is no evidence to show that they each owned separate portions of the suit land therefore, the law presumes joint tenancy.

To that end, counsel contended that when Gabriel Aomu died in 1980, the suit land automatically became that for Zerida Alaka as the surviving co-owner and therefore, it was wrong for the 1st defendant to interfere in the suit property,
10 which had evolved into being that of the late Zerida Alaka.

In the alternative, the plaintiffs' counsel contended that even if the suit land formed part of the estate of the late Aomu Gabriel, to which the 1st defendant would be entitled as a beneficiary, that whereas the 1st defendant stated that his late father died in 1980, the evidence shows that the 1st defendant only turned
15 up in 1994 which was about fourteen years from the time his father death to lay claim the suit land which was unconscionable since Section 20 of the Limitation Act Cap 80 provides that ***"beneficiaries of an estate are barred from claiming an estate of a deceased person after 12 years from the time their interest accrues because interest accrues to a beneficiary upon the death of the owner of the***
20 ***estate."***

To this end, counsel avers that by 1993, when the 1st defendant started claiming for the suit land, 13 years had since then passed from the time of death of Aomu Gabriel and as such he was barred from claiming for any interest in the estate of the late Aomu Gabriel.

25 In rebuttal of this contention, counsel for the 1st defendant's submitted that it cannot be presumed by this court that the plaintiffs are the owners of the suit land by the allegation of joint tenancy between the late Gabriel Aomu and the late Zerida Alaka because the suit land was not acquired jointly as alleged by the plaintiffs.

5 Also, that the plaintiffs even though averring that the suit land was acquired by the late Zerida Alaka through inheritance and purchase had not led any evidence to prove the same.

According to counsel for the 1st defendant, DW1 in his testimony maintained that the suit land was bought by his father and could not have been jointly owned
10 under joint tenancy because it lacked the four peculiarities of such as was pointed out in the case of ***Auma Lillian vs David Livingstone Lakony Civil Appeal No. 12 of 2019*** where it was held that ***"... a joint tenancy requires the presence of the so-called "four unities" in order to exist*** and these are;

- Possession (they must have the right of possession for the whole
15 estate),
- Interest (it must be the same estate or interest),
- Title (they must receive interest from the same document), and;
- Time (meaning that the tenants must obtain their interest at the same time."

20 According to counsel for the 1st defendant, upon registration and issuance of the Certificate of Title for Plot No B1, Block 7 at Madera, the 1st defendant became the absolute owner of the suit land as provided by Sections 59, 64(1), 92(2), 13 and 176 of the Registration of Titles Act and as such the plaintiffs ceased to have ant claims over the same as was held in the case of ***John Katarikawe versus***
25 ***Katwiremu & Another [1977] HCB 187***once a person is registered as proprietor of the land, his title is indefeasible except for fraud. Counsel then urged this Honourable court to find so.

5 i. Court's analysis and decision:

The plaintiffs in this matter pleaded that the suit land belonged to the late Zerida Alaka, their aunt who lived on the disputed land together with the plaintiffs whom she treated as her own children and upon her death, she was buried there. The plaintiffs plead that this Honourable Court finds them as the rightful owners 10 of the suit land since they acquired the same by way of inheritance from their late putative father and mother which suit land was also partly purchased by their late mother Zerida Alaka.

From the evidence, PW1 agreed that the suit land was for the Aomu Gabriel and upon his death it became that for his widow, the late Zerida Alaka. This position 15 was echoed by PW2 who also confirmed that the suit land was for the late Aomu Gabriel and the late Zerida Alaka.

PW2 further told court that the late Zerida Alaka further told her that she had purchased the land while he was not present and did not show him any purchase agreement.

20 PW3, a neighbour to the suit land, stated that the late Zerida Alaka did not have children, but the suit land belonged to late Aomu Gabriel, who was the husband to Zerida Alaka and that he had known the plaintiffs for over 35 years.

PW3 correspondingly testified that he did not know how Alaka Zerida acquired the suit land but that he came to know her as the owner of the land because she 25 had been there for over 35 years since she got to know them.

PW3 testified that the 1st defendant came onto the land in 2012 and disturbed Zerida Alaka.

5 According to Arnold Bernard Ongecu who is the 1st defendant, he told court testified that their home used to be in Serere where his mother Akello Juliana, resided and was later buried.

Arnold Bernard Ongecu further said that his late father, who died in 1980, left a will which was burnt in his elder brother's house during the insurgence, and he
10 did not remember whether he made a Police Report on the burning of the will.

Arnold Bernard Ongecu, however, confirmed the fact that upon the death of his late father Gabriel Aomu, the late Zerida remained on the suit land and he used to visit her on the suit land sometimes.

Arnold Bernard Ongecu confessed to the fact of the late Zerida Alaka, who was a
15 family member, being left out of a meeting held by the children of the late Gabriel Aomu regarding the suit land where it was decided that an application for the lease of the suit land be made.

Arnold Bernard Ongecu further confessed that at the time he applied for the lease of the suit land he did have letters of administration to the estate of his late
20 father. That by 2002 when he got a lease offer in his and his son's name, the late Zerida Alaka was still living on the suit land with the plaintiffs and that the plaintiffs were still living on the suit land to date.

Arnold Bernard Ongecu agreed that while the other wives of his father all lived on their own personal land, the suit land was the only land that his father had
25 and that he did not know of any land belonging to Zerida Alaka. He insisted on the fact that the late Zerida Alaka was not entitled to any part of the suit land.

During re-examination, Arnold Bernard Ongecu testified that he was the only beneficiary of the lease of 15/01/2002. He testified that they used to go to the

5 suit land with the late Zerida Alaka would tell them that the land was hers, although for him he knew that it was for his father.

Arnold Bernard Ongecu testified further that his father's will got burnt at his elder brother's home, Ojera Kidetok during the insurgency in Teso while he was at school but that he did not report the loss of the same to any authority, which.

10 During cross-examination by the court, Arnold Bernard Ongecu confirmed that though the other two wives of his late father had ceased to be his wives but when they died they were buried on their own land which they had bought.

DW2 who was the clan head in 1981 testified that when the late Aomu Gabriel passed on in 1981 he had three wives who each had separate houses. He told 15 court that the late Aomu was mostly staying in Madera with his children while Juliana Akello, who was the mother of the 1st defendant, was staying in Serere.

He confirmed that Alaka Zerida is buried in Madera where her home used to be. He also insinuated that the late Aomu Gabriel left a will leaving the suit land belonging to Arnold Bernard Ongecu who he told court was the heir of the late 20 Aomu Gabriel but that according to his clan, Arnold Bernard Ongecu would be required to share the estate of his late father and that it would not be correct for him to have the land alone.

DW2 further testified that the late Zerida Alaka tried to get letters of administration but failed it was his view of that since the late Zerida Alaka was a 25 married woman she belonged to the family and had rights to the land she was staying in.

From the foregoing, it is an undisputed fact that the late Zerida Alaka was a wife to the late Aomu Gabriel because according to DW2 the bride price was paid for

5 her and the late Aomu Gabriel and Zeridah Alaka lived together on the suit land with the plaintiffs and even the other children of the late Aomu Gabriel.

It is also agreed fact that the late Zerida and the late Aomu Gabriel as per the testimonies of PW1, PW2 and PW3 lived with the plaintiffs. A fact which was further cemented by the testimony of Arnold Bernard Ongecu (DW1) who 10 testified that even at the time when he got a lease in relations to the suit land in 2002 in his and his son's name, the plaintiffs and the late Zeridah Alaka were still living on the disputed land.

It is also an undisputed fact that the late Alaka Zeridah did not bear any children but lived with the plaintiffs on the suit land and that she is buried on the suit land 15 as testified to and confirmed by both the plaintiffs and 1st defendant witnesses.

The plaintiffs, however, failed to lead evidence to the effect that the suit land personally belonged to Zerida Alaka though they averred that she partly purchased the suit land.

On the other hand, PW3told court that the land belonged to both the late Aomu 20 Gabriel and the late Zerida Alaka in consonance with the testimony of PW1 who told court that the suit land belonged to the late Aomu Gabriel and upon his demise, the late Zerida Alaka took over.

The 1st defendant testified insisted that the suit land belonged to the late Aomu Gabriel, his father through the late Zerida Alaka used to state that it belonged to 25 her.

No evidence was adduced that that the suit land i was bequeathed to anyone. However, evidence was led to show that the late Zerida Alaka lived on the land for over 35 years together with the plaintiffs who still stay there up to date. The

5 late Zerida is also buried on the suit land yet the late Aomu Gabriel was buried in Serere.

While the 1st defendant asserted that the land belonged to the late Aomu Gabriel alone, he did not lead any evidence to prove this fact yet the law is to the effect that he who alleges must prove.

10 The only concrete and acceptable evidence to me is that indeed the late Aomu Gabriel and the late Zerida Alaka stayed on the land together as husband and wife though no evidence was provided as to how it was acquired and by when by any of the witnesses and even the clan leader in 1981 who testified as DW2 did not provide any evidence to prove that the land belonged to their clan through 15 customary holding.

While Counsel for the plaintiffs contended that the late Aomu Gabriel and Zerida Alaka owned the suit land as joint tenants, no the evidence was in proof all the four unities that must exist for this court to find so in accordance with the holding in the case of (cited above)

20 Many witnesses testified to the suit land belonging to the late Aomu Gabriel with even DW1 alluding to a will left by the late Aomu Gabriel bequeathing the same to him. However, the will of Aomu Gabriel testified to the 1st defendant (DW1) and DW2 was not proved in court.

Consequently, since there is adequate evidence which proves that the land in 25 dispute belonged to the late Aomu Gabriel who died intestate as no will was proved and the late Zerida Alaka, the plaintiffs and the 1st defendant are all beneficiaries of the estate of the late Aomu Gabriel and since the late Aomu Gabriel and the late Zerida Alaka lived as husband and wife with the plaintiffs as part of his family and all of them lived on the suit land together, then the

5 conclusion would be that the late Zerida Alaka and the plaintiffs are all beneficiaries of the estate of the late Aomu Gabriel.

c) Whether the 1st defendant's title was fraudulently acquired and, if so, whether it can be cancelled.

In respect to this issue, it was the submission of counsel for the plaintiffs' that
10 fraudulent actions were committed by the 1st defendant who secured a title in respect of the suit land after sidelining the late Zerida Alaka and the current three plaintiffs in the entire process of acquiring it.

Counsel further submitted that the lease offer marked as DID1 which was obtained in 1994 contained only the names of Arnold Bernard Ongecu, the 1st
15 defendant, Anthony Ageru, F. Opolot Acakara T. and Osege Everest as owners but conspicuously lives out the names the late Zerida Alaka and the current plaintiffs who were in use and are still occupation of the suit land to date.

Furthermore, DID 3, which is a lease offer form obtained in 2002 in respect of the suit land, only has the 1st defendant as the owner of the suit land, yet the 1st
20 defendant did not adduce evidence to prove that he followed the due process of the law in acquiring the land title in respect of the suit land.

The plaintiffs' counsel also submits that since the 1st defendant's position is that the suit land was for the late Gabriel Aomu then if that is the correct position then then anyone purporting to have dealt with the suit land ought to have
25 obtained letters of administration first before dealing in the land.

Counsel further submitted that the 1st defendant, having maneuvered his ways without letters of administration, confirms his acts as fraudulent.

5 On the other hand, the 1st defendant's counsel submitted that according to the 1st defendant's pleading and document (DEX 1) therein is indicated that the 1st defendant is currently the registered as the proprietor of the suit land and the 1st defendant in his evidence explained how he became registered on the Certificate of Title to the suit land.

10 Counsel submitted that no evidence of fraud was adduced in court by the plaintiffs against the 1st defendant.

In conclusion, counsel submitted that the 1st defendant thus could not have fraudulently acquire the title to the suit land since he had been appointed as his father's heir and that he obtained Letters of Administration to his father's Estate
15 which gave him the legal right to acquire the title.

i. Court's analysis and Findings:

The plaintiffs' averments are that the 1st defendant fraudulently suppressed the truth of the fact that the plaintiffs and the late Zerida Alaka were occupants of the suit land yet he stealthy went ahead and obtained the land title to gain an
20 advantage over them in respect of the suit land. To the plaintiffs the acts of the 1st defendant was fraudulent. The plaintiffs pleaded fraud of the 1st defendant and also listed these particulars thus;

Particulars of fraud

a) ***Wrongfully making false statements or declarations and misrepresentations***
25 ***in the 1st defendant's application to bring the suit land under the operation of the Registration of Titles Act, Cap 230.***

b) ***Surveying, applying, leasing and obtaining the land title of the suit land in the 1st defendant's name without notice of the plaintiffs in order to defeat***

5 *the plaintiffs' unregistered interest in the suit land, which the 1st defendant is aware of.*

c) *Suppressing and concealing or assisting or joining or being privy to the suppression or withholding of the above-mentioned material facts or information from the Uganda Land Commission.*

10 d) *Surveying the suit land without prior knowledge of the area authorities and immediate neighbors.*

e) *Causing the inclusion of the 1st defendant's name into the title of the suit land.*

f) *Failure or neglect of the 2nd defendant to notice the above-mentioned glaring*

15 *irregularities and halt the issuance of the said title.*

Fraud is a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or concealment of that which deceives, and it should deceive another so that he or she will act upon it to his or her legal injury.

20 **Black's Law Dictionary, 9th Edition, page 731** defines **"fraud"** as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.

The word **"Fraud"** has been defined by the courts in **a number of cases.** In ***Elizabeth Nanteza Nabeta vs Dr Anthony Konde HCCS No. 391 of 2010,*** fraud was

25 defined as the intentional perversion of the truth or false representation of a matter of fact by words, a conduct aimed at deceiving another, concealment or to unfairly cheat another.

In the case of ***Fredrick Zaabwe vs. Orient Bank and Others, SCCA No. 4 of 2006***, the Supreme Court defined **"fraud"** as the intentional perversion of the truth by a

person to induce another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right.

Furthermore, the leading authority regarding the requirements when pleading fraud is the *dicta* of Lord Millet in ***Three Rivers District Council Vs Bank of England [2001] UKHL 16***, where he said:

> *'[184] It is well established that fraud or dishonesty [...] must be distinctly alleged and as distinctly proved; that it must be sufficiently particularized; and that it is not sufficiently particularized if the facts pleaded are consistent with innocence [...]. This means that a plaintiff who alleges dishonesty must plead the facts, matters, and circumstances relied on to show that the defendant was dishonest and not merely negligent and that facts, matters, and circumstances which are consistent with negligence do not do so.*
>
> *[185] It is important to appreciate that there are two principles at play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means' dishonestly 'or' fraudulently ', it may not be enough to say' willfully 'or' recklessly'. Such language is equivocal. [...]*
>
> *[186] The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted*

5 *dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial, the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud.*

It is not open to the court to infer dishonesty from facts which have not
10 *been pleaded or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.'*

In ***Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992,*** it was held that
15 fraud must be strictly proved, the burden being heavier than one on the balance of probabilities generally applied in civil matters. It was further held that the party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication; that is; the transferee must be guilty of some fraudulent act or must have known of such an act by
20 somebody else and taken advantage of such act.

Consequently, the tenets of fraud are that there must be the intentional perversion of the truth or false representation of a matter of fact by words; conduct aimed at deceiving another; concealment or unfairly cheating another; and it must be attributable to the transferee.

25 In this instant matter, it is the testimony of the 1st defendant that he did not involve the late Zerida Alaka and the plaintiffs in the processes of application for leasehold in 1994 and later for freehold in 2002, yet he acknowledges in his testimony that the suit land belonged to his late father who was married to the late Zerida Alaka and he does not dispute the fact that the late Zerida with the

5 plaintiffs were in use and occupation of the land, in 2002 and prior and that the plaintiffs up to date are still in occupation.

Despite all that, the 1st defendant, who appears to have instituted the meetings in regard to the suit land did not involve the late Zerida Alaka and the plaintiffs in those meetings which lead up to the application for leasehold and later
10 conversion of the leasehold into freehold yet they were resident on the suit land.

Furthermore, while (PW3) testifies that he was also a neighbour to the suit land told court that DW1 did not involve him in the process of titling of the suit land yet he is a neighbour to the suit land.

It is also very surprising that the 1st defendant, who knew the late Alaka Zerida as
15 his stepmother and also confirmed to court that she was indeed part of the family of the late Aomu Gabriel went ahead and did not involve her in any way in the process of securing the land title yet she was on the land with the plaintiffs. He merely casually mentions that during the said meetings the late Zerida Alaka's involvement was restricted to cooking lunch for the members of the area land
20 committee which acceptance would baffle anybody's mind.

While the 1st defendant's lawyers contend that the plaintiffs have not proved any fraud against the 1st defendant and that since the 1st defendant also had letters of administration which enabled him to get the land, then no action of fraud could be found against him.

25 I find this assertion by counsel not grounded on any legal basis for firstly the 1st defendant had no letters of administration, he himself only mentions that he an attempted to apply for them but does not confirm whether he got it or not. Actually, it is only DW2 who testified that he heard that the late Zerida obtained letters of administration to the said estate. Conclusively thus I find the

5 submissions of the 1st defendant's lawyers in this respect as uninformed which is very unfortunate.

Be that as it may, it is evident that the 1st defendant engaged in the process of acquiring title to the suit land without the involvement of the occupants of the suit land who were the plaintiffs who were part of the late Zerida Alaka family.
10 The 1st defendant went on to obtain title in respect of the suit land his and his child's name without even having obtained letters of administration to the estate of the late Aomu Gabriel which fact is confirmed from the wordings of the names on the title.

Conclusively thus, it is my finding that on top of the fraud which was manifested
15 in the process of titling the suit land, the 1st defendant additionally intermeddled in the estate of the late Aumo Gabriel by obtaining title to the suit land in his name and suppressing the interests of other beneficiaries including the late Zerida Alaka and the current plaintiffs during the process of acquiring the title to the suit land and this conduct alone is fraudulent.

20 Further, it is also evident that the plaintiffs and the late Zerida were not involved in the process of acquisition of the title to the suit land yet they were in actual occupation of the suit land at the point in time when the 1st defendant had no have letters of administration in the estate of the late Aomu Gabriel so as to deal with the suit property which clearly formed part of the estate of the late Aumo
25 Gabriel.

Even if the 1st defendant had letters of administration, he was required under the Succession Act to administer the estate in accordance with the law based on duties of an administrator as was pointed by my learned brother Stephen Mubiru, J in the case of ***Hellen Okello vs. Akello Jennifer Ocan High Court Civil Appeal No.***

5 ***0084 of 2019,*** who noted that under the law, an administrator of an estate had the fiduciary duties primarily owed to the beneficiaries of the estate and these duties include;

i. To gather the assets of the deceased and;

ii. To pay all outstanding liabilities that may be due. Once this is complete,
10 it is the duty of the administrator to divide the assets of the estate in accordance with the provisions of the law of intestacy, striving at all times to achieve fairness in the distribution of the estate and meeting social expectations of estate distribution.

iii. To keep and render a full and accurate record and accounting of his or
15 her management of the estate to the beneficiaries of the estate, and the duty is strictly enforced by the courts.

According to the law, the slightest interference with the goods or property of the deceased by an executor ***de son tort*** is indicative of an intention to usurp the functions or authority of an administrator, is sufficient to create such liability.

20 **Section 268 of the Succession Act, Cap 162,** which provides for the offence of intermeddling, states that a person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor of his or her own wrong, except that—

25 i. Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property, or

ii. Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his or her own wrong.

5 From the above, it is clear to me that the 1st defendant did not obtain the certificate of title to the suit land within the exceptions of Section 268 of the Succession Act and having not done so, then he clearly was at fault with the law which evidently implies that he intermeddled with the estate of the late Aomu Gabriel.

10 And as I have also rightly held in the cases of ***Okiror Joseph vs. Oyonga Julius High Court Civil Appeal No. 66 of 2019*** and in ***Fatuma Shambe Issa vs. Edatu Joseph High Court Civil Appeal No. 12 of 2022*** that were cited by the plaintiffs' counsel, the properties of deceased persons are only vested in legal administrators of their estate and must be handled or disposed of on accordance with the law and not 15 otherwise. I find no reason in this instant matter to depart from the position I held in the above two cases herein.

Consequently, given the fact that the 1st defendant acted outside the law in acquiring the land title to the estate of a deceased person, then he did so was fraudulently.

20 The second limb of this issue is whether the certificate of title to the suit land should be cancelled.

Section 59 of the Registration of Titles Act Cap 230 provides for conclusiveness of the certificate of title. It provides that;

No certificate of title issued upon an application to bring land under this Act shall 25 be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that

5 **the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.**

However, a certificate of title can be impeached for fraud (see ***John Katarikawe versus Katwiremu & another [1977] HCB 187***).

10 I have already determined that the certificate of title for the suit land was obtained by the 1st defendant fraudulently and therefore in line with Section 77 of the Registration of Titles Act, Cap 230, the Certificate of Title under instrument No. 448635, for the suit land comprised in FRV 1034 Folio 15 Area 3.40 hectares, Soroti, Soroti district also known as Plot 31 Soroti Block 7 at Madera in the name
15 of Arnold Bernard Ongecu of P.O. Box 40037, Kampala is hereby impeached for having been fraudulently obtained by Arnold Bernard Ongecu, the 1st defendant.

All the other titles and processes leading up to the obtaining of the impeached title prior to 2011 are hereby impeached, too, as a result.

d) <u>What remedies are available to the parties</u>?

20 The plaintiffs prayed for the following;

a) An order to the Registrar of Titles to cancel the certificate of land title comprised in Free Hold Register 1034 Folio 15 in the names of the 1st defendant, also situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately 3.40 hectares.

25 In support of this prayer, counsel for the plaintiffs submits that section 77 of the Registration of Titles Act cap 230 provides that;

5 **Any certificate of title, entry of incumbrance, or cancellation, in the register book, procured by fraud, shall be void against all parties or privies to the fraud.**

Counsel for the plaintiffs also asserts that Section 177 of the same Act grants this Honourable Court the powers to cancel certificates of title in certain cases.

b) The plaintiffs also prayed for a permanent injunction restraining the
10 defendants or their agents from interfering with the plaintiffs' ownership of the suit land.

c) The plaintiffs also prayed for general damages.

Counsel cited the case of ***Waiglobe (U) Limited vs. Sai Beverages Limited Civil Suit No. 006 of 2017*** that defined general damages as the direct, natural or probable
15 consequence of the defendant's breach.

To this end, counsel for the plaintiffs submits that the 1st defendant fraudulently obtained a land title over the suit land and used the same to threaten the plaintiffs with eviction, which has caused the plaintiffs untold pain and suffering as they had known no other home that the suit land.

20 Counsel contended that the plaintiffs have lived in constant fear of eviction from the time they got knowledge of the 1st defendant's title to date and that this pain, suffering and economic loss that the plaintiffs went through for the period that the 1st defendant started waving a round a land title can only be atoned by an award of general damages.

25 In this respect, the plaintiffs' counsel proposed the sum of UGX 40,000,000 (Uganda Shillings Forty Million) as sufficient to atone for the suffering and loss that the plaintiffs have been put through by the actions of the 1st defendant in the suit land.

5 d) The plaintiffs also prayed for the costs of the suit.

On the other hand, the 1st defendant's counsel submits that the plaintiffs sought several remedies in their plaint and submissions, which they, having failed to prove on a balance of probabilities, are therefore not entitled to any of the remedies prayed for to which the 1st defendant prayed that this Honourable
10 Court dismisses this suit with costs to the 1st defendant.

i. Court's analysis and conclusions:

a) An order to the Registrar of Titles to cancel the certificate of land title comprised in Free Hold Register 1034 Folio 15 in the names of the 1st defendant.

15 I already found that the 1st defendant fraudulently obtained the Certificate of Title under instrument No. 448635 for the suit land comprised in FRV 1034 Folio 15 Area 3.40 hectares, Soroti, Soroti district also known as Plot 31 Soroti Block 7 at Madera in the name of Arnold Bernard Ongecu of P.O. Box 40037, Kampala. The said certificate of title is impeached for fraud pursuant to Section 77 of the
20 Registration of Titles Act cap 230, which provides that;

Any certificate of title, entry of incumbrance, or cancellation, in the register book, procured by fraud, shall be void against all parties or privies to the fraud.

By the powers conferred to this Court under Section 177 of the Registration of Titles Act, an order is hereby directed to the 2nd defendant - the Registrar of Titles
25 to cancel the impugned Certificate of Title of the suit land with immediate effect.

b) A permanent injunction restraining the defendants or their agents from interfering with the plaintiffs' ownership of the suit land.

5 The suit land having been found to belong to the estate of the late Aomu Gabriel, to which the late Zerida Alaka, among others, was entitled, and the court having found undisputed evidence that the plaintiffs are still in occupation of the land, a temporary injunction is hereby issued restraining the 1st defendant from interfering with the plaintiffs' actual occupation of the land until the same is 10 sorted through distribution of the estate property to its rightful beneficiaries.

I have not awarded a permanent injunction because I found that the suit land belongs to the estate of the late Aomu Gabriel instead of solely for the plaintiffs; therefore, that issue of ownership was partly answered, and because the estate has to be distributed, I shall only grant a temporary injunction till the 15 commencement of the process of the getting Letters of Administration in the estate of the late Aomu Gabriel and final inventory filed in court on how the estate of the late Aomu Gabriel was distributed or until this order shall be varied by the court.

The plaintiffs prayed for general damages. The plaintiffs' counsel proposed the 20 sum of UGX 40,000,000 (Uganda Shillings Forty Million) as sufficient to atone for the suffering and loss that the plaintiffs have been put through by the actions of the 1st defendant in the suit land. It is trite law that an award of general damages is discretional. ***(see Harry Ssempa vs. Kambagambire David Civil Suit No. 408 of 2014).***

25 In the premises, I award UGX 8,000,000 (Uganda Shillings Eight Million)

c) The plaintiffs also prayed for the costs of the suit.

It is trite that costs follow the event. The issues having partly been determined in favour of the plaintiffs, three-quarters of the costs of this suit are to be paid by the 1st defendant only.

5 10. Findings and Orders:

(a) The plaintiffs have the locus in quo to institute this suit in the positive and in the favour of the plaintiffs for they were part and parcel of the late Aomu Gabriel's family.

(b) The land in dispute belonged to the late Aomu Gabriel who died intestate
10 as no will was proved and the late Zerida Alaka, the plaintiffs and the 1st defendant are all beneficiaries of the estate of the late Aomu Gabriel.

(c) The certificate of title for the suit land which was obtained by Arnold Bernard Ongecu was fraudulently and therefore in line with Section 77 of the Registration of Titles Act, Cap 230, the Certificate of Title under
15 instrument No. 448635, for the suit land comprised in FRV 1034 Folio 15 Area 3.40 hectares, Soroti, Soroti district also known as Plot 31 Soroti Block 7 at Madera in the name of Arnold Bernard Ongecu of P.O. Box 40037, Kampala is hereby impeached.

(d) Registrar of Titles is ordered to cancel the certificate of land title comprised
20 in Free Hold Register 1034 Folio 15 in the names of the 1st defendant, also situate and styled as Plot No. 31, Soroti Block 7 at Madera, approximately 3.40 hectares.

(e) The suit land having been found to belong to the estate of the late Aomu Gabriel, to which the late Zerida Alaka, among others, was entitled, and
25 the court having found undisputed evidence that the plaintiffs are still in occupation of the land, a temporary injunction is hereby issued restraining the 1st defendant from interfering with the plaintiffs' actual occupation of the land until the same is sorted through distribution of the estate property to its rightful beneficiaries.

30 (f) The suit land belongs to the estate of the late Aomu Gabriel and as such a temporary injunction is issued till the commencement of the process of

5 the getting Letters of Administration in the estate of the late Aomu Gabriel and final inventory filed in court on how the estate of the late Aomu Gabriel was distributed or until this order is varied by the court.

(g) The plaintiffs are awarded UGX 8,000,000 (Uganda Shillings Eight Million) as general damages to be paid by the 1st defendant.

10 (h) The plaintiffs being the successful parties here are also awarded the costs of this suit to be paid by the 1st defendant.

I so order.

15 .....

Hon. Justice Dr Henry Peter Adonyo

Judge

3rd October 2023