

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

**CIVIL SUIT NO. 550 OF 2014**

**DUMBA YEKOSOFATI KABERENGE :::::::::::::::PLAINTIFF**

**VERSUS**

**1. NABYONGA SOLOME**

**2. ZION CONSTRUCTION LIMITED:::::::::::::DEFENDANTS**

**BEFORE HON. JUSTICE JOHN EUDES KEITIRIMA**

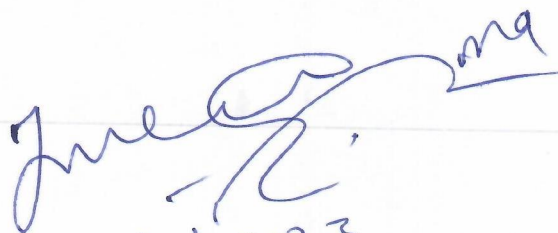
**JUDGMENT**

1. The Plaintiff's claim against the defendants jointly and severally is that;

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a) The Plaintiff was for all time before a kibanja holder on the 1<sup>st</sup> defendant's father's land and paid "busulu" for that purpose.

b) That on or about the 20<sup>th</sup> of September 2005, the Plaintiff entered in to a purchase agreement wherein he made part payment for purposes of purchasing his interest over land comprised in **Block 53 Plot 24 Mengo**.

  
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- c) The Plaintiff bought the kibanja in issue from one Namukasa Rosali on the 10<sup>th</sup> day of January 2004 in the presence of the Local Council 1 Chairman.
- d) That on the 15<sup>th</sup> day of April 2008 the Plaintiff bought an additional “kibanja” of three acres and paid cash.
- e) At that time the Plaintiff had bought 5 acres of kibanja in that area and he entered into oral negotiations with the 1<sup>st</sup> defendant and on the 26<sup>th</sup> day of June 2009, the Plaintiff purchased his interest from the 1<sup>st</sup> defendant for all the five acres.
- f) The 1<sup>st</sup> defendant undertook to sign transfers and other related documents.
- g) Surprising in 2010, the 1<sup>st</sup> defendant sold all her land comprised in **Block 53 Plot 24 Mengo** to the 2<sup>nd</sup> defendant without surveying off and transferring the five acres into the Plaintiff's names hence breaching the contract.
- h) The 2<sup>nd</sup> defendant sent people on ground who hurried and moved around with guns threatening people including the Plaintiff.
- i) The Plaintiff contends that the 2<sup>nd</sup> defendant illegally acquired the extra 3.5 acres of land the Plaintiff had purchased from the first defendant and only brought to him a title equivalent to 1½ acres.
- j) The Plaintiff contended that he suffered tremendous loss and damage as a result of the actions of the defendants.

2. The Plaintiff listed the particulars of the damages as follows;

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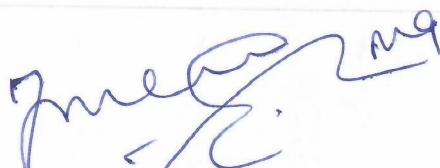
- i. That the 2<sup>nd</sup> defendant erased down 1½ acres of banana plantation that contained over 700 stems which had reached harvest stage. Each cost 1000 shillings and the total cost was 700,000/=.
- ii. Chicken waste used to fertilize which was about one truck. The cost was two hundred thousand shillings (200,000/=).
- iii. Costs for pruning and digging at 320,000/=.
- iv. Each banana cost 15,000/= and the estimate harvest would cost 36,000,000/=.
- v. Half an acre of Cocoa was also cut down wherein he expected to harvest cocoa worth 15,360,000/=.
- vi. Corona coffee trees equivalent to 450 which cost 225,000/=.
- vii. Barbed wires and polls which cost 120,000/=.
- viii. An acre of tomatoes which costed 4,000,000/=.
- ix. 2 acres of sweet potatoes which costed 15,000,000/=.

The total cost in special damages was 58,425,000/=.

3. The Plaintiff further stated that he claims compensation for another Kibanja which the 2<sup>nd</sup> defendant took which was 5 acres in acreage.

The Plaintiff further contended that he always cultivated and did other farming activities on his said Kibanja which he had purchased from a one Joseph Male on the 26<sup>th</sup> August 2004.

4. The Plaintiff further contends that the suit land belonged to Kaddu Mukasa, N. Josephine and Mwebe Patrick Collins as administrators and

  
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that he had bought the said Kibanja separately and was in the process of obtaining a title for it.

5. The Plaintiff contended that the agreement signed on 24<sup>th</sup> September 2010 was signed under fear since the Plaintiff had nowhere to go and take his children and members of his house hold.

6. The Plaintiff is seeking for the following declarations /orders;

- i. That the 1<sup>st</sup> defendant specifically performs her obligations under the sale agreement dated 26<sup>th</sup> June 2009.
- ii. The Court orders the surrender of title for the 3.5 acres of land the Plaintiff purchased.
- iii. The defendant returns to the Plaintiff's 5 acres of kibanja he unlawfully grabbed from him.
- iv. The 2<sup>nd</sup> defendant makes good all the loss and damage caused with exemplary and punitive damages.
- v. The 2<sup>nd</sup> defendant pays special damages to the amount of 58,425,000/=.
- vi. Interest on the decretal sum.
- vii. Costs of the Suit.

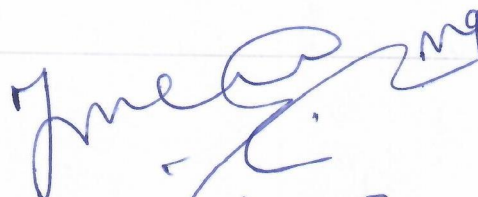
The 1<sup>st</sup> defendant never filed a written statement of defence.

7. In their written statement of defence, the 2<sup>nd</sup> defendant states inter alia;

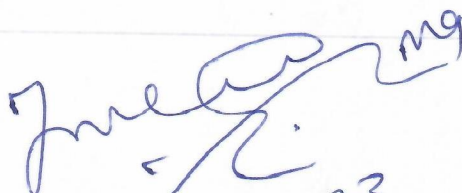
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- i. That the 1<sup>st</sup> defendant's father (Muyise Mwebe) last owned the land comprised in **Block 53 Plot 24** on **7<sup>th</sup> October 1994 at 9:35 a.m.**, when it was transferred to Apollo Kalibbala Guremye and as such the alleged purchase of the Mailo interest from the 1<sup>st</sup> defendant on 20<sup>th</sup> September 2005 was null and void.
- ii. That the Plaintiff's alleged purchase of the kibanja in issue from a one Namukasa Rosali on 10<sup>th</sup> January 2004 was illegal as it offended the provisions of the land Act in that no reference was made to and or no consent of the registered proprietor was sought prior to the purchase.
- iii. That neither the sale agreement of 10<sup>th</sup> January 2004 nor that of 15<sup>th</sup> April 2008 mentions the area /extent of acreage purchased in the Plaintiff and hence the claim to that effect is speculative.
- iv. That the 1<sup>st</sup> defendant has never sold the land in issue to the 2<sup>nd</sup> defendant but was purchased from a one **Michael Kalibbala Nteyafa** on 3<sup>rd</sup> August 2010 and who was at the time the registered proprietor of the suit land.
- v. That the sale agreement with the 1<sup>st</sup> defendant dated 26<sup>th</sup> June 2009 was null and void in as much as the 1<sup>st</sup> defendant had no interest in the land at all as it never belonged to her father the late Muyise Mwebe as on that date and even if it did, she had no letters of administration to his estate.

  
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- vi. That paragraph five of the Plaint is denied in total in as much as it is exaggerated with allegations of threats, guns given that the 2<sup>nd</sup> defendant and its directors/servants are private people who do not trade with guns but on mutual consent and hence the allegations of gun threats are used to attract sympathy from this Court.
- vii. That the contents of paragraph 6,8 and 12 of the Plaint are made as an afterthought as the Plaintiff readily and in sound mind consented to the arrangement to cede and take part of the Kibanja in exchange for a mailo interest and the same was reduced into writing. That the allegation that it was made in fear is therefore false.
- viii. That the Plaintiff never rescinded the agreement and eventually picked his title now **Plot 270** ten months later on **27<sup>th</sup> July 2011**.
- ix. In the alternative, the 2<sup>nd</sup> defendant contends that since the big portion of the Kibanja was obtained illegally, the Plaintiff was not a bonafide/lawful occupant and is estopped from claiming or cannot claim any interest therein. That the 2<sup>nd</sup> defendant dealt with the Plaintiff under the honest belief that he was a lawful bonafide occupant.
- x. In reply to paragraphs 8, 9, 10 and 13 the 2<sup>nd</sup> defendant contends that if the Plaintiff ever lawfully bought a kibanja from Joseph Male on 26<sup>th</sup> August 2004, then it was legally covered by the mutual agreement of 24<sup>th</sup> September 2010 between himself and the 2<sup>nd</sup> defendant.

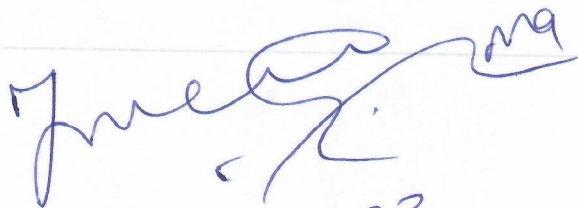
  
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xi. The 2<sup>nd</sup> defendant prayed that the suit should be dismissed with costs.

8. In their joint scheduling memorandum, the parties framed the following issues for determination;

- i. Whether the Plaintiff's purchase transactions of the respective bibanjas were lawful.
- ii. Whether the Plaintiff occupied the extent of 10 acres as he claims.
- iii. Whether the transactions for purchase of the mailo interest by the Plaintiff was lawful.
- iv. Whether the 2<sup>nd</sup> defendant illegally acquired land occupied by the Plaintiff.
- v. Whether the 2<sup>nd</sup> defendant maliciously destroyed the Plaintiff's plantations and gardens.
- vi. Whether it was the 1<sup>st</sup> defendant who sold the mailo interest to the 2<sup>nd</sup> defendant.
- vii. Whether the transaction between the 2<sup>nd</sup> defendant and Michael Kalibbala was valid.
- viii. Whether the Plaintiff has suffered any damages.
- ix. Remedies available to the Parties.

  
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9. The parties proceeded by way of witness statements and later on filed written submissions the details of which are on record and which I have considered in determining this matter.

**Issue1: Whether the Plaintiff's purchase transactions of the respective bibanjas was lawful.**


**Plaintiff's Evidence**

10. The Plaintiff stated that he purchased a kibanja measuring 2.10 acres from Namukasa Rosali. The sale agreement was tendered in Court and marked as exhibit P.1.

11. The Plaintiff further contended that before he purchased the said kibanja he carried out a search from neighbours and the LC1 Chairperson to find out who was the landlord and he was informed that the land lord was the late Mwebe. The Plaintiff stated that the LC.1 Chairperson a one Mr. Ssentongo Erisa was the one who wrote and witnessed the said agreement.

12. The Plaintiff also stated that on the 26<sup>th</sup> day of August 2004, he bought another Kibanja which was 5 acres in acreage from Male Joseph and this particular land belonged to the estate of the late Kaddu Mukasa Senteza. The sale agreement was tendered in Court and marked as Exhibit P.2.

13. The Plaintiff also stated that in 2008 he bought Kibanja worth three acres from one Joyce Nasege. The agreement was tendered in Court and marked as exhibit P.3. He stated that the said land also belonged to the 1<sup>st</sup>

  
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defendant's father called Mwebe. The Plaintiff contended that he used to pay busulu to the 1<sup>st</sup> defendant. A copy of the receipt was tendered in Court and marked as Exh. P.4.

14. The Plaintiff further stated he purchased all the 5 acres as his interest and paid two million shillings (2000,000/=). The sale agreement was attached and marked as P.5.

15. The Plaintiff further contended that he then demanded for his transfer forms from the 1<sup>st</sup> defendant but she was not forthcoming. He stated that one day to his surprise, he saw a grader of the 2<sup>nd</sup> defendant grading the suit land and the 2<sup>nd</sup> defendant in the company of the LC1 Chairperson claimed that the suit land belonged to the 2<sup>nd</sup> defendant. That the 2<sup>nd</sup> defendant used to talk to people during negotiations while at the same time grading the suit land in the company of Policemen with guns. That due to duress, panic and fear of where to take his family, he accepted the little he was given. The Plaintiff contended that he was given 1 ½ acres out of the ten acres.

### **2<sup>nd</sup> defendant's Evidence**

16. The Managing Director of the 2<sup>nd</sup> defendant (DW1) stated that he was introduced to the suit land comprised in **Kyadondo Block 53 Plot 24** at Mbugu. That the certificate of title was registered in the names of Michael Kalibbala Nteyafa as the administrator of the estate of the late Apollo

*James M. Mwa*  
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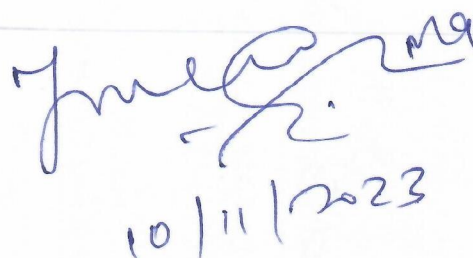
Kalibbala Gulemye Nteyafa. The certificate of title was tendered in Court and marked as Exh D.1.

17. DW1 also stated that he received a copy of Letters of Administration held by Michael Kalibbala Nteyafa in respect of the estate of Apollo Kalibala Nteyafa dated 26<sup>th</sup> October 2000 from the High Court of Kampala. The copy of the Letters of Administration was tendered in Court and marked as exhibit D.3.

18. DW1 further stated that after inspecting the land and verifying its ownership, he negotiated with the administrator of the estate for its purchase. He then got funds and executed a sales agreement. The sales agreement was tendered in Court and marked as Exh. D.4.

19. DW1 further stated that in the process of inspecting the suit land he met the Plaintiff and they agreed on sharing the part he was occupying in exchange for the mailo interest in case he purchased the mailo interest. That he then executed with the Plaintiff a memorandum of sharing and compensation for his Kibanja that was near a one Sentongo Joseph and Kawe. The Memorandum of understanding was tendered in Court and marked as exhibit D.7.

20. DW1 further stated that by a document dated 9<sup>th</sup> October 2010 the Plaintiff willingly agreed to cede and return an acre which he had acquired from a one Lule. The agreement was tendered in Court and marked as exhibit D.6.



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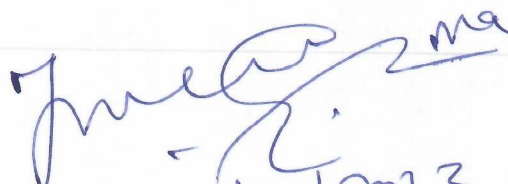


21. DW1 further contended that he never harassed the Plaintiff or sent armed forces to him. That the Plaintiff then received and took a certificate of title for the part of the land he retained and stated that he had no more claim in respect of any land not included in the title. The acknowledgment was tendered in court and marked as exhibit D.7.

22. DW1 further contended that he never purchased the mailo interest from the 1<sup>st</sup> defendant Nabyonga Solome but purchased it from Michael Kalibbala Nteyafa in whose names the suit land was registered. That from the documents/certificate of title for the suit land, the 1<sup>st</sup> defendant's father Mwise Mwebe last owned the suit land on 7<sup>th</sup> October 1994 when it was transferred to Apollo Kalibbala Guremye whose estate was administered by his vendor Michael Kalibbala Guremye.

23. DW1 contended that at all times since 31<sup>st</sup> October 2002 the Mailo interest in the suit land has been registered in the names of the said Michael Kalibbala Guremye and accordingly all consents/permissions necessary under the land Act had to be issued by him.

24. DW1 further contended that the Plaintiff purchased bibanja interests on the suit land from a one Namukasa Rosali on 10<sup>th</sup> January 2004; a one Joyce Nassejje on 15<sup>th</sup> April 2008 and from Joseph Male on 26<sup>th</sup> August 2004 without the consent of the registered proprietor, Michael Kalibbala Nteyafa.

  
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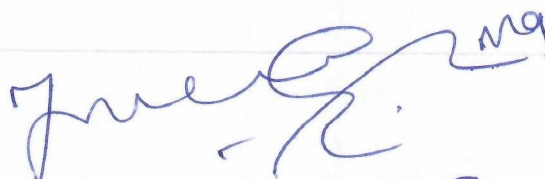
25. That upon executing a memorandum of sharing with the Plaintiff, the Plaintiff gave him a go ahead to utilize his part and he then went ahead to partition the same for sale and hence any claim by the Plaintiff was an afterthought.

**Decisions of Court on issue one:**

26. It was an agreed fact that the Plaintiff purchased bibanja from Namukasa Rosila on 10<sup>th</sup> January 2004; Joyce Nsenga on 15<sup>th</sup> April 2008 and Joseph Male on 26<sup>th</sup> August 2004.

27. It was also an agreed fact that the said bibanja were on a mailo interest comprised in **Kyadondo Block 53 Plot 24 at Mbugu**. According to the evidence tendered in court vide exhibit D.1 which is certificate of title for the land comprised in **Block No. 53 Plot 24 land at Mbugu**, the same was registered in the names of Michael Kalibbala Nteyafa the administrator of the estate of the late Apollo Kalibala Gulemye Nteyafa.

28. Apparently when the plaintiff was buying the said bibanja, he never obtained the consent of the registered owner as required by law. In his submissions the Plaintiff claims that the said transactions were approved by the 1<sup>st</sup> defendant and that he used to pay busulu to the 1<sup>st</sup> defendant who had been approved by the whole village and the local Council Chairman as the mailo owner for land comprised in **Block 53 Plot 24 at Mbugu**.

  
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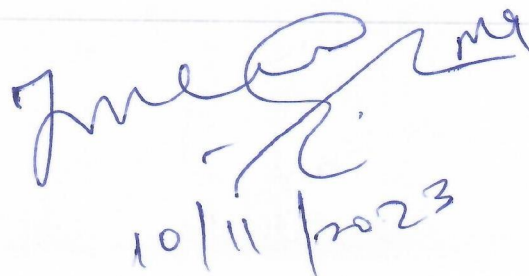
29. It did not matter whether even the whole village believed that the 1<sup>st</sup> defendant was the owner of the suit land. Due diligence demanded that she had to prove ownership of what she had to any buyer including the Plaintiff. Apparently that was never done and that is why even the transfer forms were never signed nor any transfers effected for the said transactions. The 1<sup>st</sup> defendant could not pass any title to the Plaintiff she had none.

30. **S.34(9) of the Land Act Cap 227 (as amended)** provides that *“No transaction to which this section applies shall be valid and effective to pass any interest in land if it is undertaken without a consent as provided for in this section, and the recorder shall not make any entry on record of any such transaction in respect of which there is no consent”*.

31. It is a requirement under the Land Act provided for under **Section 34 (3) of the Land Act Cap 227(as amended)** that *“Prior to undertaking any transaction to which subsection (1) refers, the tenant by occupancy shall submit an application in the prescribed form to the owner of the land for his or her consent to the transaction”*.

32.It was held in the case of *Jennifer Nsubuga versus Michael Mukundane and another C.A.C.A No. 208 of 2018* that the said provisions of the law are couched in mandatory terms.

33. The Plaintiff's search in the land office would have unearthed who the real owner of the said land was. The alleged land transactions by the



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Plaintiff on the suit land occurred when Michael Kalibbala Nteyafa was the registered owner of the suit land as administrator of the estate of the late Apollo Kalibala Gulemye Nteyafa. No consent was obtained from him when the said transactions took place. Since defendant one had promised to transfer a mailo interest to the plaintiff, it was possible for the plaintiff to find out whether the 1<sup>st</sup> defendant had a mailo interest as she claimed. The 1<sup>st</sup> defendant did not possess any mailo interest she could pass on to the Plaintiff. The Plaintiff's purchase of the said bibanjas was therefore unlawful.

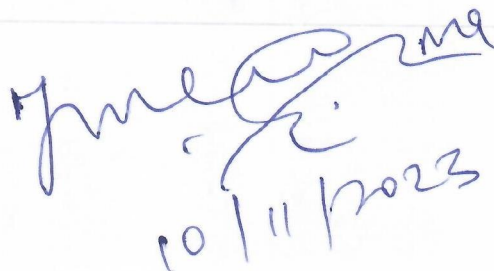
**Issue Two: Whether the Plaintiff occupied the extent of the 10 acres claimed.**

34. Since it has been found in issue one that the purchases of the suit land by the Plaintiff was unlawful, the issue of the extent or acreage of occupation does not arise as the occupation was illegal ab initio. The sales agreements tendered in by the Plaintiff did not indicate the acreage of land he had bought and therefore that could not even be ascertained even from the agreements the Plaintiff tendered in Court.

This in my view also resolves issue number three.

**Issue 4: Whether the 2<sup>nd</sup> defendant illegally acquired land occupied by the Plaintiff.**

35. It is not in dispute that the suit land is comprised in **Kyadondo Block 53 Plot 24 at Mbugu**. The suit land originally belonged to Michael

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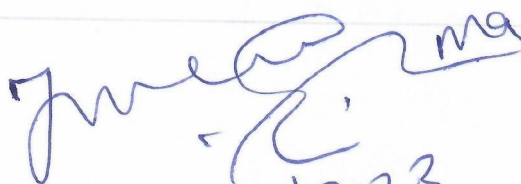
Kalibbala Nteyafa as the administrator of the estate of the late Apollo Kalibbala Gulemye Nteyafa. He was registered as proprietor on 31<sup>st</sup> October 2002 under instrument No. **KLA 242799** as clearly shown in exhibit 1 which is a copy of the certificate of title.

36. The 2<sup>nd</sup> defendant carried out a search in the Ministry of Lands, Housing and Urban Development and he was given documentary evidence that the suit land belonged to Michael Kalibala Nteyafa as administrator of the estate of the late Apollo Kalibala Gulemye Nteyafa. The search report was tendered in Court and miked as exhibit D.2.

37. The 2<sup>nd</sup> defendant went ahead to prove that he ascertained that the said administrator had indeed obtained Letters of Administration for the said estate where the suit land was part. A copy of the letters of administration was tendered in Court and marked as exhibit D.3.

38. The second defendant then executed a sale agreement with the owner of the land. The sale agreement was tendered in court and marked as Exhibit D.4.

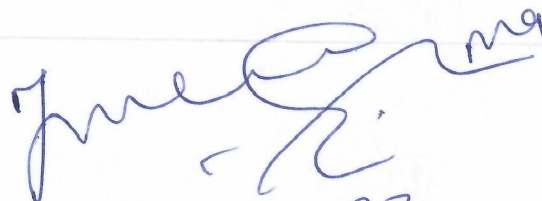
39. The 2<sup>nd</sup> defendant further adduced evidence that he agreed with the Plaintiff on the utilization of the land he purchased by sharing out portions. It was an agreed fact that the Plaintiff got a certificate of title from the 2<sup>nd</sup> defendant for the portion of land he had ceded to the 2<sup>nd</sup> defendant. The acreage was 1 ½ acres. The Plaintiff claims this was done under duress as the 2<sup>nd</sup> defendant used force. I have already held that the

  
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Plaintiff acquired his Kibanja interest illegally as he had not obtained the consent of the landlord at the time he allegedly acquired his interest so he could not qualify as a lawful or bonafide occupant of the suit land as defined under **Section 29 of the land Act.**

40. The Plaintiff acquiesced in the arrangement he entered into with the 2<sup>nd</sup> defendant when he accepted a certificate of title from him. This cannot therefore be described as a transaction that was entered into by force. There is nothing to show that the Plaintiff reported at police the threats that had been put on him by the 2<sup>nd</sup> defendant when he entered into the said arrangements with him. I therefore agree with the 2<sup>nd</sup> defendant's submission that the Plaintiff's suit was an afterthought.

42. Evidence was led by the 2<sup>nd</sup> defendant through DW2 and DW3 that in fact public gatherings were held to compensate bibanja holders who had an interest in the suit land. This was a fact acknowledged by even the Plaintiff's witnesses like Lubwama Stephen (PW2) and Simon Busulwa (PW3). They even stated that some residents refused to enter into an arrangement with the 2<sup>nd</sup> defendant and they were still occupying their land to date. One wonders why the 2<sup>nd</sup> defendant could not apply the same force he purportedly put on the Plaintiff to enter into agreements with them as he did with the Plaintiff! I therefore do not believe the Plaintiff's evidence that he was coerced into the arrangement he had with the 2<sup>nd</sup> defendant

  
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43. The 2<sup>nd</sup> defendant could not have maliciously damaged the Plaintiff's plantations on land he illegally obtained and in any case the Plaintiff apart from making assertions on what he lost did not strictly prove the special damages he claimed. It is a well settled principle of law that special damages must be specifically pleaded and strictly proved.

44. This resolves the rest of the issues raised as they are related. S.101(1) of the Evidence Act Cap 6 provides that *"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."*

*(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."*

45. I find that the Plaintiff has failed to prove his case on the balance of probabilities and I will dismiss this case with costs to the 2<sup>nd</sup> defendant.



**Hon. Justice John Eudes Keitirima**  
**10/11/2023**