

**(ARISING FROM CIVIL SUIT NO.741 OF 2014)**

**ERIEZA KAGGWA:..... 3<sup>RD</sup> RESPONDENT**

4. The Plaintiffs/Respondents suit is frivolous and vexatious for inconsistencies in respect of the description of the suit land claimed in the amended Plaintiff supported by attached agreement

5. The costs of this Application be provided for

The grounds supporting this Application are set out in the Applicant's Affidavit briefly stating that;

a) The 1<sup>st</sup> Defendant, who is party to the sale agreement annexed to the amended Plaintiff, is not a party to the variation of the description of the suit land Plot 868 intended by the Plaintiffs/Respondents to have been purportedly purchased on 5<sup>th</sup> March 2003.

b) There is no written variation agreement on description of the sold land between the parties to the written agreement dated 5th March 2003.

c) No proof of ownership has been attached to the amended Plaintiff that the Respondents' father had any Kibanja interest on the suit land comprised in Busiro Block No.383 Plot 868 at Kawotto Kitende

d) The Respondents' attachments/annextures in paragraph (g) to the amended Plaintiff are not in respect of any land under the Registration of Titles Act Cap 230 since they do not reflect the suit land Plot 868 or any other description.

e) The Respondents' suit is barred in law for not disclosing when the cause of action accrued.

f) It is just and equitable that the Court declares that Plaintiffs/ Respondents suit is not maintainable in law and should accordingly be struck off and or dismissed.

In an Affidavit in reply sworn by the 2<sup>nd</sup> Respondent, it was stated that Lwanga Yosam the 1<sup>st</sup> Defendant to the suit sold the land to the children of the late Paulo Salongo Musoke who had a Kibanja on his land. The Respondents father had a Kibanja on the 1<sup>st</sup> Defendant's land which was in possession thereof.



That the descriptions are clearly demonstrated in annexure F the area schedule showing the origins of plots 9446 and Plot 1719 and the same are matters of evidence which Court shall hear at the time of trial and cannot be basis for this Application to strike out the amended Plaintiff.

60 That the Applicant is pre-empting the Court and is on a fishing expedition to justify this Application without proof. That the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had locus to sue as they have been in actual possession of the land with their father since the 1940's to date.

65 That the 1<sup>st</sup> Defendant fraudulently wrote the wrong plot number to defraud the Respondents of their father's kibanja of 7-8 acres on the land which they have been in occupation of until he sold to the Applicant and the 3<sup>rd</sup> Defendant. Therefore 1<sup>st</sup> Respondent has locus to claim the suit land by virtue of occupation, that he was born on the suit land and their father's old houses and graves are on the suit land.

70 The Respondent avers that Civil Suit No. 741 of 2014 was filed within time upon which the Applicant's actions of encroaching on their Kibanja and subdividing it in 2013 and prays that the Application is dismissed.

In rejoinder, the Applicant stated that he was formerly the registered proprietor of land comprised in Block 383 Plot 1719 curve out of Plot 868 not 848 and he  
75 subdivided it into plots 9446 and 9447 having purchased the same from Ssempiija Joseph who is not a party to the main suit.

That the Respondents' annexed to the amended Plaintiff a 2003 sale agreement of Block 383 Plot 848 and not plot 868. Both plots are separate and formerly owned by the 1<sup>st</sup> Defendant. That the 1<sup>st</sup> Defendant is not party to any written variation  
80 agreement of the description of the suit land intended to have been purportedly purchased by the Respondents.

That there is no documentary evidence attached to the amended Plaintiff as proof of ownership that the Respondent's father the late Paul Salongo had any Kibanja

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interest on the suit land comprised in Busiro Block No.383 plot 868 at Kawotto  
85 Kitende. That the Respondent's annextures in regards to the transfer and  
consent to transfer are not in respect of the suit land plot 868 or any land under  
the Registration of titles Act Cap 230 since they do not reflect any registered land  
by Block and plot or any other description in any names.

That the Respondents lack locus standi to claim plot 868 Block 383 Busiro and  
90 right in the claim for reversionary interest due to the different description of land  
sold in 2003 land sale agreement. That the suit is barred in law for not disclosing  
the date when the cause of action accrued and claiming enforcement of an  
agreement made in 2003 over 13 years. The Respondent's suit claims for Plot  
868 in the amended plaint are inconsistent to their claims of land for which they  
95 obtained an interim order being plot 848 described in the impugned agreement.

### **BACKGROUND**

The Respondents instituted Civil Suit No. 741 of 2014 seeking orders; for specific  
performance against Lwanga Yosam (the 1<sup>st</sup> Defendant), a declaration for the  
cancellation of certificate of title for Plot 9446 Block 383 Busiro land at Kawotto-  
100 Kitende, permanant injunction, general damages, vacant possession and costs.  
As proof of the suit land claim, the Plaintiffs/Respondents annexed to the  
amended Plaint a sale agreement between Lwanga Yosam (the 1<sup>st</sup> Defendant) as  
vendor of land Block 383 Plot 848.

That the 1<sup>st</sup> Plaintiff purchased the Mailo interest in the said Kibanja but the 1<sup>st</sup>  
105 Defendant neglected to complete the transfer process. Instead later the 2<sup>nd</sup> and  
3<sup>rd</sup> Defendant's claim interest in the suit land which has been in possession of  
the Plaintiffs.

The Applicant who is the 2<sup>nd</sup> Defendant in the main suit contends that the 1<sup>st</sup>  
Defendant who is party to the annexed sale agreement, is not a party to the  
110 variation of the description of the suit land intended to have been purportedly  
purchased. That the Respondents' attachments/annextures relating to the  
signed transfer forms and the application for consent to transfer land are not in



115 respect of any land under the Registration of Titles Act Cap 230 since they do  
not reflect any registered land by Block and Plot or any other description in any  
names.

### ISSUES RAISED

The Applicant raised the following issues for determination which was adopted  
by the Respondent.

1. Whether the Respondents' Complaint discloses a reasonable cause of action?
- 120 2. Whether the Respondents lack locus standi to claim the suit land or right  
in the claim for reversionary interest?
3. Whether the Respondents' suit is barred for failure to disclose the time  
when the cause of action accrued?
4. Whether the Respondents' suit is frivolous and vexatious?
- 125 5. What reliefs are available to the parties?

### RESOLUTION

Both parties filed written submissions that have been taken into consideration  
in determining this Application. I shall consider issue 1 and 4 concurrently as  
the resolution of issue 1 has a bearing on issue 4.

130 *Issue 1 Whether the Respondents' complaint discloses a reasonable cause of action?*

*Issue 4: Whether the Respondents' suit is frivolous and vexatious?*

135 Counsel for the Applicant submitted that the Applicant has no interest in Plot  
848 as he was the registered proprietor of land comprised in Block 383 plot 9447  
which plot was carved out of plot 1719 (a subdivision from Plot 868) formerly  
owned by Ssempijja Joseph. That the plots 848 and 868 existed separately and  
the Respondent's interim injunction to maintain status quo was in respect of  
Plot 848 and not 868.

Counsel also submitted that according to the amended Complaint, the Respondents  
sued the Applicant for declaration that they are the rightful owners of the suit

140 land Plot 868 and their documentary evidence in support of their claim of ownership of the suit land was a land sale agreement of 2003 for Plot 848, that no written variation agreement was made by both the vendors and purchasers in respect of the intended purchase therefore there is no cause of action against the Applicant whose interest was on plot 868 and not plot 848.

145 Counsel for the Applicant referred Court to paragraph 4(e) of the Amended Plaintiff that states that there was an error in the 2003 land sale agreement in that the stated Plot 848 Block 383 was not their intended plot of purchase but rather plot 868.

150 Furthermore, that this averment is not supported by a written variation agreement signed by both parties on description of the sold land as required under *Section 67 of the Contracts Act*. That such an error cannot be corrected by Courts of law but by parties themselves.

155 Therefore, the failure by the Respondents to attach to the amended Plaintiff proof of a written variation agreement signed by both parties in respect of the description of the intended plot 868 and not plot 848 leaves the 2003 land sale agreement binding between the parties.

160 Counsel for the Respondent also submitted that the amended Plaintiff under paragraph 4(d) and (e) show that the 1<sup>st</sup> Plaintiff and a one Kamya Nadab purchased a Mailo interest in plot 868 from the 1<sup>st</sup> Defendant and executed a sale agreement to that effect. However, due to the malicious and fraudulent actions of the vendor, he indicated a different plot number 848 in a bid to defeat the interests of the purchasers. That the 1<sup>st</sup> Defendant then sold to the 2<sup>nd</sup> Defendant who purchased the same without exercising due diligence.

#### *The Law Applicable*

165 Under *Order 7 r 11(a) of the Civil Procedure Rules*, a Plaintiff may be rejected by the Court if it does not disclose a cause of action. It is trite that in determining whether a Plaintiff discloses a cause of action, the Court must look only at



the Plaintiff and its annexures if any and nowhere else. See Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000

170 The Supreme Court defined what a cause of action is in the case of Major General David Tinyefunza vs. Attorney General of Uganda Const. Appeal No. 1 of 1997 where the Court cited with approval the definition of a cause of action by Mulla on the Indian Code of Civil Procedure, Volume 1, and 14th Edition at page 206:

175 "A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. ... It is, in other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by  
180 the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit."

In order to prove there is a cause of action, the Plaintiff must show that the Plaintiff  
185 enjoyed a right; that the right has been violated; and that the Defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. See Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.

190 I note that the Respondents under paragraph 4 of the amended Plaintiff state that they are beneficiaries of the estate of the late Paul Salongo Musoke who has a Kibanja interest on Block No.383 plot 868 land at Kawotto Kitende. Furthermore that they were born on the suit land, grew up there and have been in possession of the land for over 70 years. That even the suit land is also where the burial grounds for the family is.

195 The Respondent attached a sale agreement which shows that Yosamu Lwanga (the 1<sup>st</sup> Defendant) sold to the Respondents 22 acres on Block No.383 Plot No.848

as children of the late Paul Salongo Musoke who had a Kibanja. The Respondents in their amended plead fraud against Yoasmu Lwanga (the 1<sup>st</sup> Defendant) for having sold the land to the Applicant with full knowledge that he had already  
200 sold to the Respondents. Under paragraph f of the amended Complaint, the 1<sup>st</sup> Respondent contends that he paid a substantial sum of UGX 4,000,000 of the purchase price out of UGX 4,500,000.

From the perusal of the amended Complaint and the annexures attached, it is alleged that the Respondent's father had a Kibanja interest on the suit land and that the  
205 Respondents are in possession of the same. It is in contention that the Applicant purchased the same suit land from Yosamu Lwanga who had also sold to the Respondents. The Respondents in their Complaint raised allegations of fraud against the Applicant and Yosam Lwanga.

Therefore the Respondents have a cause of action relating to their interest on the  
210 suit land. The right to own land was violated. The Defendants are alleged to have violated this right.

I also note that allegations of fraud in land matters are very pertinent. Therefore there is need for this Court to ascertain and determine whether the land the Respondents' have been in possession of and purchased from the 1<sup>st</sup> Defendant  
215 is different from the land the Applicant contends to have an interest in. The Applicant did not attach any evidence regarding ownership of Plot 868 and how he came to obtain its ownership. This vacuum can only be determined in the main suit.

I also note that in Misc. App No. 0896 of 2015, the Applicant raised this very  
220 preliminary objection relating to cause of action and Court found that the Respondents have a cause of action against the Applicant.

In conclusion since the Respondents raised allegations of fraud against the 1<sup>st</sup> Defendant Yosamu Lwanga relating to the sale agreement dated 3<sup>rd</sup> March 2003 and by virtue the fact that they have been in possession of this suit land, they

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225 have unregistered interest that ought to be determined by this Court hence this  
suit is not frivolous and vexatious.

These issue 1 and 4 fail.

*Issue 2: Whether the Respondents lack locus standi to claim the suit land or right  
in the claim for reversionary interest?*

230 Counsel for the Applicant submitted that in paragraph's 4 a, b,c,d,e and f of the  
amended Plaintiff, the Respondents claim ownership of the suit land plot 868  
Block 383. That however there is no proof of ownership attached to the amended  
Plaintiff that their father had any Kibanja interest on the suit plot. That the  
Respondents have no right to claim the suit land plot 868 based on a 2003 land  
235 sale agreement which bears plot 848 and another person as a buyer by the  
names Kamya Nadab Walonze who is not party to the claim

Counsel for the Respondent submitted that the amended Plaintiff and its  
annexures particularly the sale agreement between the 1<sup>st</sup> Defendant and the  
Respondents grant the Respondent's locus standi to bring this action. That the  
240 agreement therein shows that the children of the late Paul Salongo Musoke were  
in occupation of the suit land prior to purchasing of the legal interest in the  
same.

In the case of Hon. Katuntu & Another v. MTN Uganda Ltd & Others, H.C.C.S No.  
248 of 2021, it was stated that locus standi as defined by *Osborn's concise law*  
245 *Dictionary 11th Edition* is, simply;

*"A place of standing; The right to be heard in a court or other proceeding."*

The concept of *locus standi* is the right of a party to appear and be heard before  
a Court. In order to invoke the jurisdiction of the Court, the person invoking  
must not only have an enforceable personal right or interest in the matter, but  
250 must also the capacity to initiate the action. See Chombe & 2 Ors v Kaya & Anor  
(Civil Appeal No. 15 of 2010) [2017] UGHCLD 24

In the instant case, according to the amended Complaint, the Respondents contend that they are the children of the late Paul Salongo Musoke, and that they have been in occupation and possession of the suit land. Under paragraph 4 (d) of the  
255 amended Complaint. The Respondents state that the 1<sup>st</sup> Respondent and Kamya Nadab Walonze purchased Mailo interest on the suit land from the first Defendant and that the land sale agreement had an error in the Plot 848 Block 383, that the intended kibanja for purchase being Plot 868 since it's the land that belonged to the Respondents.

260 The Respondents aver that their father had a Kibanja interest, under paragraph 4 (c) of the amended Complaint. The Respondents state that they were born on the suit land and they grew up there and have been in possession of the Kibanja for over 70 years. The Respondents also contend that the land sale agreement had an error in the plot No.848 Block 383 yet the right plot of intended purchase and  
265 being a Kibanja to which they had full possession since the 1940's was plot No.868 since it's the land that belonged to them.

Having perused the Complaint, it is my finding that the Respondents have locus standi because of the claim to have been in possession of the Kibanja that they intended to purchase the Mailo interest.

270 *Issue 3: Whether the Respondent's suit is barred for failure to disclose the time when the cause of action accrued?*

The Applicant submitted that the Respondents did not state when their cause of action against the 2<sup>nd</sup> Defendant/Applicant accrued and that they are seeking an order for specific performance of an agreement executed in 2003 over 13  
275 years. That the Respondents are seeking for an order of specific performance of an agreement executed in 2003, 13 years later and hence the head suit is bared in accordance with *Section 3(1) of the Limitation Act*.

The Respondent submitted that no time limit was set for payment of the remaining balance for the suit land, That the respondents pleaded that they were  
280 willing to pay the outstanding balance and also transfer the land into the 1<sup>st</sup>



Respondent and Kamya Nadab's names. That the matters discussed by Counsel for the Applicant are matters of evidence which need to be delved into at trial.

285 I note that under paragraph 4 (i) of the Complaint, the Respondents contend that they requested for the Area Schedule of the suit land, annexure F, a copy of letter dated 13<sup>th</sup> May 2013 from Ministry of Lands addressed to the Chief Administrative Officer Wakiso requesting for the area schedule to be attached.

I also note that under paragraph j, the Respondents learnt that the 1<sup>st</sup> Defendant had fraudulently subdivided Plot 1719 the suit land to create plots 9446 and 9447 and sold off plot 9447 to the 3<sup>rd</sup> Defendant.

290 It is clear from the pleadings that it was only in 2013 that the Respondents discovered the fraudulent dealings in the land and breach in agreement when the area schedule revealed that the suit land had been subdivided despite their interest in the suit land.

295 According to *Section 5 of the limitation Act*, the limitation period began to run after the discovery of the fraud. In 2013 when the Respondents discovered that Yosam Lwanga whom they had purchased their interest had dealt in the land and sold to the Applicant and the 3<sup>rd</sup> Defendant, they filed a civil suit in this Court. (CS 741 of 2014)

Therefore the action was brought within the prescribed period of 12 years.

300 This issue fails

*What reliefs are available to the parties?*

The Applicant is not entitled to the remedies sought.

*Conclusion*

The Application is dismissed with costs. The main suit is fixed as follows.

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1. JSM to be filed by 30<sup>th</sup> November 2023
  2. Trial Bundles to be filed by 14<sup>th</sup> December 2023

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Parties to appear before me on 10<sup>th</sup> April 2024 at 12.30 pm for completing conferencing and fixing hearing dates.

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**Elizabeth Jane Alividza**

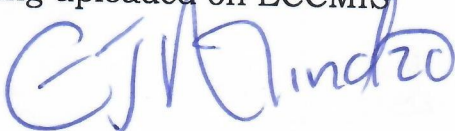
**Judge**

**31<sup>st</sup> October 2023**

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**6<sup>th</sup> November 2023**

320 Ruling uploaded on ECCMIS



**Elizabeth Jane Alividza**

**Judge**