

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

CIVIL SUIT NO. 0382 OF 2020

1. KAGIRI SINAN

2. NAGADYA SHADIA ::::::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. TAMALE CHRISTOPHER

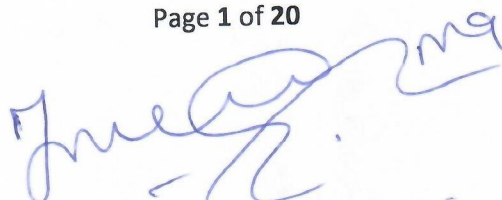
2. MUGUZI DENIS

3. RONALD KASOZI ::::::::::::::::::::::::::::::::::: DEFENDANTS

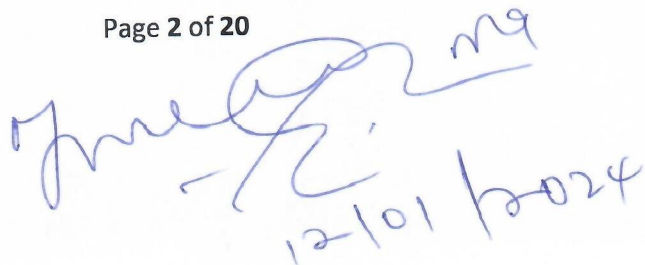
BEFORE: HON: JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

1].The Plaintiffs claim against the defendants jointly and severally is for declarations and orders inter alia, directing the defendants to hand over certificates of titles to land comprised in **Kyadondo Block 246, Plots 2206 and 2207 formerly Plot 1261 at Muyenga – Bukasa Kyeyitabya, Kigwa zone** to allow subdivision and transfer of a portion of land comprised in an un registered interest sold to the Plaintiff, a permanent injunction restraining the defendants from further acts of trespass, consequential orders thereto, general, punitive and aggravated damages, interest and costs.

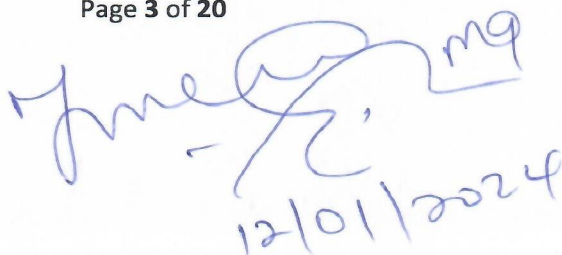

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- 2]. The facts constituting the Plaintiff's cause of action as stated in their Plaint are as follows;
- i. By agreements and acknowledgments dated 22nd December 2010 and 18th October 2011, the late **Stanley Sentongo** a relative to the 1st defendant sold to the Plaintiff a portion of land and an extension thereto as shown by agreements of land comprised in **Block 246** with measurements stated as **25 ft. by 47 ft. and additionally by 15 ft.** inclusive of an access road.
 - ii. The Plaintiffs stated that the 1st defendant and the late Stanley Sentongo were joint administrators to the estate of the late Kamulegeya. J. and the 1st defendant is the surviving administrator.
 - iii. That the 1st defendant and the late Stanley Ssentongo were to hand over transfer forms to the Plaintiffs upon completion of the balance payments for purchase of the said land.
 - iv. That the Plaintiffs took possession of the suit land and constructed thereon a residential house.
 - v. That the Plaintiffs did not experience any interference from the defendants and the late Stanley Sentongo as they undertook the construction.
 - vi. The Plaintiffs contended that on 24th June 2016 the 1st defendant along with the late Stanley Ssentongo signed transfer forms in favour of the Plaintiffs and promised to hand over certificates of title and signed mutation forms which they never did.

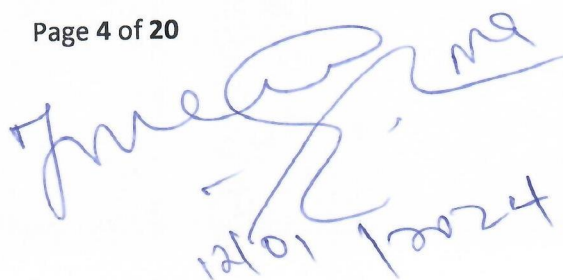


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- vii. That once their residential property was habitable, they sought to secure power and placed an electricity pole besides the access road which was forcefully removed by the 2nd defendant and the 1st defendant jointly who claimed that the Plaintiffs were trespassers and had no right over the land.
- viii. That the 2nd defendant through his workmen, constructed speedily a perimeter wall and blocked the Plaintiff's access to their suit property thereby effectively trespassing on the Plaintiff's land, an act only stopped following a report to Kabalagala Police.
- ix. That subsequently the Plaintiffs learnt that the 1st defendant subdivided **Plot 2161** to create **Plots 2206 and 2207**.
- x. That the Plaintiffs got to learn that land comprised in **Block 246, Plot 2206** was transferred to the 1st defendant.
- xi. That the Plaintiffs also learnt on 30th June 2020 the change of proprietorship of land comprised in **Block 246 Plot 2207** undertaken on 11th July 2018 to the 3rd defendant.
- xii. That the transfers and change of proprietorship were undertaken without first allowing the Plaintiffs to secure a certificate of title over the portion sold, in disregard and with intention to wrongfully defeat the unregistered interest of the Plaintiffs.


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- xiii. That attempts to engage the defendants were rendered futile as they are adamant to recognize the Plaintiffs interests over the suit land.
 - xiv. That the Uganda Police sought to intervene in the matter but have since acted in a partisan manner to the Plaintiffs prejudging their documentation as forgeries and instead taking out summons against the 2nd Plaintiff on purportedly criminal charges of malicious damage.
 - xv. The Plaintiffs contend that the 1st defendant acted unlawfully in refusing to provide signed mutation forms and certificates of titles to the Plaintiffs to subdivide the portion of land purchased having together with the late Stanley Ssentongo signed and provided transfer forms to the Plaintiffs.
 - xvi. The Plaintiffs further contend that the 2nd defendant trespassed on their property by constructing a perimeter wall and attempting to deny them access to their property by blocking the access with a construction wall.
 - xvii. The Plaintiffs further contend that the defendants acted fraudulently, illegally and unlawfully in causing the transfer of the entire property to the 2nd defendant without regard to their interest.
- 3]. The Plaintiffs listed the particulars of fraud, unlawfulness and trespass as follows;
- a) Having signed and issued transfer forms, the 1st defendant knowingly declined to provide the certificate of title and transfer forms to enable the Plaintiffs subdivide their interest.

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- b) The 1st defendant causing subdivision of the entire suit land with wrongful intention to defeat the Plaintiffs unregistered equitable interest.
- c) The 1st defendant transferring a portion of the entire suit land to the 2nd and 3rd defendants with no regard and with a wrongful intention to defeat the Plaintiffs unregistered equitable interest.
- d) The defendants entering upon the Plaintiffs land and directing removal of an electricity pole placed with in her access road for the supply of power to the plaintiffs' residential property.
- e) The 2nd and 3rd defendants using the 1st defendant as a decoy conveniently to claim proprietorship of the land already transferred with wrongful intention to defeat the Plaintiffs unregistered equitable interest.
- f) The 2nd and 3rd defendants ignoring to carry out due diligence prior to acquisition and getting registered as proprietors.
- g) The 2nd and 3rd defendants entering upon the Plaintiffs land and constructing an obstructing wall to block the Plaintiffs access road.
- h) The defendants having known the existence and presence of the Plaintiffs on the suit property in deceit and in order to grab land from them, using Police to commence criminal charges and complaints as a ploy to continuously trespass and construct on the Plaintiff's land.


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- i) The 2nd and 3rd defendants having known of the presence and existence of the Plaintiffs on the suit land, getting registered with the wrongful intention to defeat the Plaintiffs first right to acquisition of a registered interest and thereby defeating their unregistered equitable interest.


4]. The Plaintiffs contend that the actions of the defendants are continuous and unabated for which they hold the defendants jointly and severally liable. That because of the said fraudulent acts omissions, and trespass by the defendants, the Plaintiffs continue to be deprived of their quiet use and enjoyment of the suit property and continue to incur expenses to defend their interests for which they seek payment of general, punitive and aggravated damages.

5]. The Plaintiffs are therefore praying for judgment against the defendants jointly and severally and with the following declarations /orders; -

- i. A declaration that the suit property belongs to the Plaintiffs.
- ii. A declaration that the defendants acted fraudulently in causing their registration of the suit property portions thereof falling on both **Plots 2206 and 2207 of Block 246 Kyadondo Kyeyitabya Muyenga, Bukasa, Makindye Division Kampala.**
- iii. A declaration that the registration of the defendants on the suit property as proprietors with no regard to the Plaintiffs interests is unlawful, null and void.
- iv. A declaration that the defendants are trespassers on the suit land.
- v. An order directing a survey of the portion of the land comprised in an un registered interest sold by the 1st defendant and the late Stanley Ssentongo to the Plaintiffs.

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- vi. An order directing the defendants to surrender certificates of title to land comprised in **Plots 2206 and 2207 of Block 246 Kyadondo Kyeyitabya, Muyenga, Bukasa Makindye Division** Kampala along with signed forms to necessitate the Plaintiffs sub - divide their unregistered equitable interest.
- In the alternative;
- vii. An order directing the Commissioner of Lands to cause proprietorship of the 2nd and 3rd defendants and transfer of a portion of land comprised in the unregistered interest sold by the 1st defendant and the late Stanley Sentongo into the names of the Plaintiffs.
- viii. An order issues for the immediate eviction of the defendants and or their agents and persons claiming under them and or their successors /assignees from the suit land trespassed upon.
- ix. An order that the defendants restore the suit land to a status prior to their trespass.
- x. An order directing the defendants at their expense to secure Umeme ltd to replant an electricity service pole at the Plaintiff's access.
- xi. A permanent injunction restraining the defendants jointly and severally, their agents and persons claiming under them and or their successors /assignees from interfering in the quiet possession of the suit property by the Plaintiffs.
- xii. An order for payment of damages as pleaded.
- xiii. An order for payment of interest at Bank of Uganda Commercial Banks average prime lending interest rate per annum. From 1st June 2020 until payment in full.
- xiv. An order for payment of costs and interest thereon.
- xv. Any other relief that this Court deems fit.


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6]. In his written statement of defence the 1st defendant stated that the suit was a sham with no merit and prayed Court to dismiss it.

The 1st defendant contended that he has never dealt with the Plaintiffs in any way with regard to the suit property.

7]. That he is the legal owner of the land comprised in **Kyadondo Block 246 Plot 2207 at Kyeyitabya measuring 0.057 acres (5.7 decimals)** the same having reverted from the 3rd defendant who had wrongfully transferred it in to his names.

8]. That the subject land comprised in **Plot 2207** is a small residue Plot and he together with the late Stanley Sentongo had chosen to preserve it as it was being occupied by the family of their late brother Kamya Jimmy. That the late Kamya Jimmy's family is in possession of the suit land, **Plot 2207** and have a family house thereon.

9]. That the 1st defendant only learnt about the Plaintiffs interest in the suit land in June 2020 at the land Protection Unit, Kibuli where upon the 2nd Plaintiff produced an agreement purportedly executed by his late brother and former co-owner Stanley Sentongo.

10]. That he has never executed or participated in any transaction with the Plaintiffs in respect of the suit property nor has he ever signed any transfer form or other like document in favour of the Plaintiffs.

11]. That the alleged sale agreements annexed to the Plaint had no translations attached thereto but on perusal they showed that the purported sales were conducted by the late Stanley Sentongo in his individual capacity.

12]. The 1st defendant further stated that the survey report by M/S Redeem Consult ltd indicated that the Plaintiffs claimed property was situate on five **Plots to wit 2206, 999, 1877, 1207 and 2207.**

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13]. That it was inconceivable that his brother the late Stanley Sentongo could have sold to the Plaintiffs land belonging to other people without their participation or consent.

14]. That he is a resident of Kito Parish, Kira Municipality and rarely visits Bukasa where the suit property is situate and has always assumed that the suit land measuring about 5 decimals comprised in **Plot 2207** to be in possession of his brother Kamya Jimmy and not any other person.

15]. That he and his late brother Stanley Ssentongo only distributed/ sold legal Mailo interests for the over 6 acres of land the two administered in the area and the various current owners hold certificates of title over their respective lands.

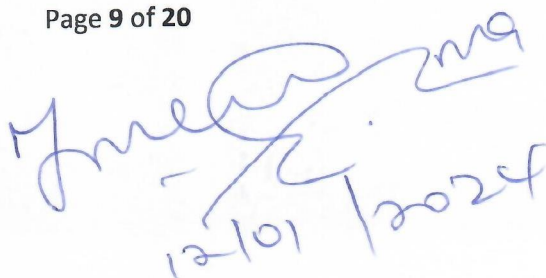
16]. That the Plaintiffs claim of fraud against the defendants is misconceived and an attempt by the Plaintiffs to sugar coat their criminal acts of trespass.

17]. That he has not caused the Plaintiffs any loss or inconvenience but it is instead the Plaintiffs who have caused the 1st defendant mental anguish, subjecting him to un necessary expenses as a result of their vexatious claims.

18]. In his written statement of defence the 2nd defendant states inter alia;

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- i. That he is the registered proprietor of land comprised in Kyadondo **Block 246 Plot 2206** situate at Kyeyitabya village Muyenga Bukasa Makindye Division in Kampala District.
- ii. That he was informed by the 1st defendant that the plaintiffs have never bought any land from him as they allege and that the Plaintiffs were mere trespassers on his land.
- iii. The 2nd defendant further contends that **Block 246 Plot 2206** was occupied with burial grounds which were exhumed in 2014.

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- iv. That the Plaintiffs link him to **Plot 2207** and yet he derives his interest from **Plot 2206** and has no connection to **plot 2207**.
- v. The 2nd defendant prays that the suit against him by the Plaintiffs should be dismissed with costs.

19]. The 2nd defendant raises a counter claim against the plaintiffs where he states inter alia; -

- i. That he is the lawful owner of the suit land and the counter defendants are trespassers on it.
- ii. The counter claimant is also seeking for a permanent injunction against the counter defendants restraining them from interfering, disposing of, alienating or dealing in the suit land.
- iii. The Counter Claimant is also seeking for general, specific and punitive damages against the counter defendants.
- iv. Costs of the suit and any other relief this court may deem fit.
- v. The Counter claimant states that he bought the suit land from the 1st defendant and the late Stanley Sentongo as joint administrators on 10th July 2014 at thirty-five million shillings (35,000,000/=).

20]. That the counter claimants' land shares boundaries with the counter defendant's land which is **Plot 2207**. That by the time the counter defendants occupied their land, part of the suit land was a graveyard.

21]. That the said graves were exhumed in 2014 with the financial support of the Counter claimant. That he occupied the entire Plot 2206 uninterrupted until recently when the counter defendants started interfering with his quiet possession of the suit land and trespassed on it.

22]. That the counter defendants without any colour of right demolished his perimeter wall to the counter claimant's detriment and that the counter defendants are still trespassing on his land.

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23]. The Counter claimant contends that he instituted criminal proceedings against the counter defendants vide CRB 536 /2020 and the case is still ongoing.

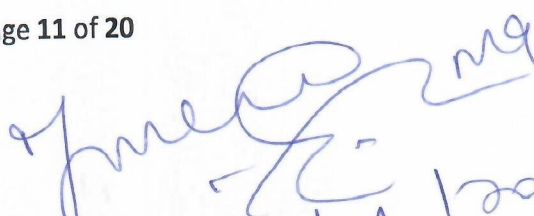
24]. The counter claimant is seeking for the following remedies; -

- i. That he is the lawful owner of the suit land.
- ii. A declaration that the counter defendants are trespassers on the suit land.
- iii. A permanent injunction restraining the counter defendants from interfering, disposing of, alienating and or dealing in the suit land.
- iv. General, specific and punitive damages.
- v. Costs of the suit and counter claim.

25]. In his written statement of defence, the 3rd defendant states inter alia;

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- i. That the suit against him is sham with no merit and that the same should be dismissed with costs.
- ii. That he has no interest in the subject land comprised in **Plot 2207 Block 246 at Kyeyitabya.**
- iii. That the suit land had been wrongly transferred into his names following the mortgage arrangement between himself and the 1st & 2nd defendants.
- iv. That when the 1st and 2nd defendants cleared what was due to him, he forfeited any interest or rights he had acquired in the suit land.
- v. That the suit land has since reverted to the 1st defendant and he dully signed transfer forms to the 1st defendant.
- vi. That the 1st defendant has since disclosed to him that the 2nd Plaintiff lodged a caveat against the suit land on 19th August 2020 barring transferring of the land in to the 1st defendant's names despite lodging his instrument of transfer earlier on 13th August 2020.


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- vii. That he has never dealt with the Plaintiff in any way with regard to the suit land and does not have any interest in the suit land despite the same being in his names.
- viii. The 3rd defendant contends that the claims against him by the Plaintiffs are misplaced and that the plaint does not disclose a cause of action against him and should be struck out with costs.
- ix. The 3rd defendant contends that he has not caused the Plaintiff any loss or inconvenience but it is rather the Plaintiffs who are causing him mental anguish and subjecting him to unnecessary expenses as a result of defending a vexatious claim.
- x. The 3rd defendant prayed that the suit against him by the Plaintiffs should be dismissed with costs.

26]. The issues that were raised for resolution are; -

1. Who is the lawful owner of the suit land comprised in **Block 246 Plot 2207**.
2. Who of the parties is a trespasser on the disputed land.
3. Whether there was any fraud committed by the parties.
4. Remedies available to the parties.

Issue1: who is the lawful owner of the suit land comprised in Block 246 Plot 2207?

Plaintiff's evidence

27]. In their evidence, the Plaintiffs stated that they purchased the suit land on the 22nd December 2010 from the late Stanley Sentongo. The sale agreement was tendered in Court and marked as exhibit P.1. According to the agreement, the said Stanley Sentongo sold to the 1st Plaintiff part of his land at Bukasa, Kyeyitabya Muyenga Block 246 which was 25 ft. by 47 ft. to the 1st Plaintiff for a consideration of Seven Million Shillings (7000,000/=).

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The sale agreement was witnessed by a one Irene Kiwuka, Mbogga James, Nakato Prossy and a one Tamale (PW1).

28]. The agreement indicated that the vendor had given them an access road up to their land. The Plaintiffs called four witnesses to corroborate their evidence on how they purchased the suit land.

29]. The Plaintiffs contend that the defendants acted fraudulently, illegally and unlawfully in causing transfer of the suit land, **Plot 2161 to Plots 2206 and 2207** to the 2nd defendant without regard to the Plaintiffs interest.


30]. The Plaintiffs in their evidence also stated that the late Stanley Sentongo together with the 1st defendant signed transfer forms in their favour. The Plaintiffs took possession of the land they bought and constructed a residential house thereon.

1st defendant's evidence

31. The 1st defendant contends that he has never dealt with the Plaintiffs in any way and that he is the legal owner of land comprised in **Kyadondo Block 246 Plot 2207 at Kyeyitabya measuring 0.057 acres (5.7 decimals)** the same having reverted from the 3rd defendant who had wrongfully transferred it in to his names.

32]. That the subject land comprised in **Plot 2207** is a small residue plot and the 1st defendant together with the late Stanley Sentongo had chosen to preserve it as part of it was being occupied by the family of their late brother Kamya Jimmy.

33]. The 1st defendant stated that the late Kamya Jimmy's family is in possession of the suit land with a family house. The 1st defendant stated that he only came to know of the Plaintiffs interest in the suit land in June 2020 at the land protection unit, Kibuli when the 2nd Plaintiff produced an


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agreement purportedly executed by his late brother and former co-owner Stanley Sentongo.

34]. The 1st defendant denied ever participating nor executing any transaction with regard to the suit land and that he has never signed any transfer forms in respect of the suit land in favour of the Plaintiffs.

2nd Defendant's evidence

35]. The 2nd defendant adduced evidence that he is the registered owner of land comprised in **Kyadondo Block 246 Plot 2206** situate at Kyeyitabya village, Muyenga, Bukasa Makindye, division having purchased the same on 10th July 2014 from the 1st defendant and the late Stanley Sentongo as joint administrators of the estate of the late Iginatiyo Kamulegeya Salongo and that he took possession of the land immediately after purchase.

36]. The 2nd defendant contended that since 2020, the Plaintiffs have been and are continuously trespassing on his said land by constructing a permanent house and a perimeter wall thereto.

37]. That sometime in June 2020 the plaintiffs entered the defendant's land (Plot 2206) and established an access road thereon and they dismantled part of his wall fence which he had established on the land. That he reported a matter to Kabalagala Police Station vide CRB 536 of 2020.

38]. That he also engaged a Private surveyor, redeem consults ltd to open boundaries of the suit property whereupon it was discovered that the Plaintiffs wall fence had encroached on the 2nd defendant's land (Plot 2206) by an area measuring approximately 0.084 hectares (0.02 acres).

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39]. The 2nd defendant further stated that at the time of acquiring the suit land around 2014, he found the suit land now **Plot 2206** partly comprised of burial grounds for the 1st defendant's family without any access road going through it.

3rd defendant's evidence

40]. The 3rd defendant contended that he had no interest in the suit land and that the suit land had been wrongly transferred into his names following a money lending transaction between himself and the 2nd defendant where the subject property was pledged as security.

41]. The 3rd defendant stated that the suit land has since reverted to the 1st and 2nd defendants and that he signed transfer forms in favour of the 1st and 2nd defendants.

Decision of court on issue one

42]. 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."

43]. The Plaintiff tendered in agreements for sale of land executed on 22nd December 2010, 12th January 2011 and 18th October 2011 which were

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tendered in court and marked as exhibits P.1, P2 and P3 as evidence of purchase of the suit land. The Plaintiffs produced PW1, PW2, PW3 and PW4 as witnesses to the said transaction.


44]. Evidence was led and which was proved at the locus in quo that the Plaintiffs took possession of the land they bought and constructed a house thereon.

45]. Defence witness four (DW4) Felix Opio who carried out a survey of the suit land confirmed that the Plaintiff's house was on **Plot 2207**. He also stated that in 2014 when he carried out a subdivision of Plot 1730 the Plaintiffs house was at beam level.

46]. According to Exhibit D1 which is a Certificate of title of land comprised in **Block 246 Plot 2207**, it shows that the title was created on **10th August 2015 vide Instrument KCCA -00019934** in the names of Christopher Tamale and Stanley Sentongo. This was done after the sale by the late Stanley Sentongo to the 1st Plaintiff.

47]. When the subdivision of **Plot 1730** was done by the surveyor that created **Plot 2207** and where the suit land is situate, the surveyor admitted during cross – examination that he never involved the Plaintiffs and yet there was evidence that they were already in possession of land they had bought from Stanley Ssentongo.

48]. **Plot 2206 from Block No. 246** was created on 2nd February 2017 and registered in the names of the 2nd defendant.


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49]. The above notwithstanding, there is evidence that the Plaintiffs had acquired an equitable interest in the suit land by virtue of the purchase they made with the late Stanley Ssentongo. Equity interests in land pass on upon payment of the purchase price. It was held in the case *Semakula and another versus Sematimba HCC.A No. 05 of 2013 (Land Division)* that in the sale of immovable property, upon payment of a deposit, property passes to the purchaser who acquires an equitable interest.

50. In this case the Plaintiffs adduced evidence that they purchased the suit land, took possession and constructed a house which they have since occupied. This evidence was ascertained when the court visited the locus in quo.

51. When the 1st defendant had the land registered in his name and that of his late brother, the Plaintiff's had already acquired their interest in the suit land.

52. The 1st defendant claims he came to know of the Plaintiffs interests in the suit land in June 2020 at the Land Protection Unit, Uganda Police Kibuli when they produced an agreement executed by him and his late brother Stanley Sentongo. That if the sale was genuine, it was conducted solely by the late Stanley Sentongo without the knowledge or participation of the 1st defendant.

53. The 1st defendant claims that he and the late Stanley Sentongo were jointly registered on the Certificate of title for the suit land as joint owners

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by virtue of them being joint administrators of the estate of the late Iginatiyo Kamulegeya Salongo.


54]. As I had already stated, the 1st defendant and the late Stanley Sentongo got registered on the suit land on the 10th August 2015 vide instrument No. 00019934 way after the Plaintiffs had purchased the suit land.

55]. The said title does not show that the 1st defendant and the said late Stanley Ssentongo were registered as administrators of the estate of the late Iginatiyo Kamulegeya Salongo as he would wish to intimate.

56]. The evidence of the Plaintiffs shows that they embarked on construction in 2012 and they occupied the house without any interruption. The 2nd defendant's purchase of his land was subsequently done when the Plaintiffs had already purchased their land. The 2nd defendant never approached the Plaintiffs to inquire about their interest in the suit land and yet they were already physically on the land.

57. It was held in the case of *Uganda Posts and Telecommunications versus A.K.P.M Lutaaya – S.C.C.A No. 36 of 1995* that if a person purchases an estate which he knows to be in occupation of another other than the vendor, he or she is bound by all the equities which the party in occupation may have in the land.

58. The registrations of the 1st and 2nd defendants on the suit land were subject to equities the Plaintiffs already had on the suit land. The


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defendants should have clearly known by then that the plaintiffs were in physical possession of the land and I do not believe the evidence especially of the first defendant that he came to learn of the plaintiffs' interest in the suit land in 2020 when they were at the police station.

59. In the said sale agreement, the access road had been indicated and will hence be maintained. The acreage of the land can be ascertained from the sale agreement. It was 25 ft. by 47 ft. and later on 15 ft. as indicated in the sale agreements that were tendered in court and marked as exhibits P1, P2 and P3.

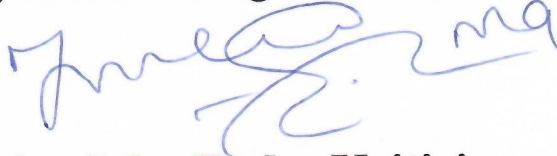
60. The parties with their lawyers and with the participation of the Local Council one Chairperson of the area where the land in dispute is situate, carry out a joint survey to ascertain that portion that was sold off to the Plaintiffs as indicated in their sale agreements so that it is severed off from the land the 1st and 2nd defendants claim. The access road will be maintained as it was when this court visited the locus in quo.

61]. I therefore find that the Plaintiffs are the owners of the land they purchased from Stanley Sentongo measuring **25 ft. by 47 ft. ad 15 ft.** as indicated in their sale agreements which should be curved off from **Plot 2207** where their land is situate.

In my view this resolves the rest of the issues.

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In the spirit of promoting reconciliation between the parties as neighbours and considering the role they still have to play during the joint survey, I will give no order as to payment of damages or costs for the suit.



Hon. Justice John Eudes Keitirima

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