

- 1.DAVID MUWANGA::::::::::::::::::::::::::::::::::::: PLAINTIFFS**
- 2. LUWEMBA JAMES MANDE**
- 3. BIRABWA CHRISTINE JAJJEMBA (Administrators of the estate of the Late Ezekiel Mukasa).**

- 1. MARGARET NAKIGANDA**
- 2. NAMUSOKE ALLEN**
- 3. NAMUSISI ROY**
- 4. NAKITYO ROY.**

**BEFORE: HON. MR. JUSTICE TADEO ASIIMWE**

Page 1 of 25

29/1/24.

The Plaintiffs sued the Defendants jointly and severally for trespass and fraudulent sale of a kibanja belonging to the estate of the late Ezekiel Mukasa located on the Kabaka's land vide; BLB/02/56/74/NAN at Nansana West 1 B, Kyadondo, Wakiso District (hereinafter referred to as the suit land). The plaintiff seek for a declaration that the suit kibanja located on the Kabaka's land vide; BLB/02/56/74/NAN at Nansana West 1 B, Kyadondo, Wakiso District belongs to the estate of the late Ezekiel Mukasa which is administered by the plaintiffs, a declaration that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants do not have exclusive right to ownership or claim over the suit land that belongs to the estate of the late Ezekiel Mukasa which is administered by the plaintiffs, a declaration that the sale transaction between the 1<sup>st</sup> defendant and 5<sup>th</sup> defendant over land belonging to the estate of the Ezekiel Mukasa without Letters of Administration is illegal and fraudulent and did not pass over any interest in the suit land to the 5<sup>th</sup> defendant, a declaration that the 5<sup>th</sup> defendant is a trespasser on the suit kibanja located on the Kabaka's land vide; BLB/02/56/74/NAN at Nansana West 1 B, Kyadondo, Wakiso District belongs to the estate of the late Ezekiel Mukasa, a permanent injunction against the defendants and their employees, agents or anybody acting on their instructions and or their authority restraining them from interfering with the plaintiffs possession of the suit land and or restraining them from selling off, constructing or alienating or mortgaging or dealing with the plaintiffs suit kibanja, an eviction order against the 5<sup>th</sup> defendant directing him to render

vacant possession of the suit land to the plaintiffs, an order for payment of general damages for the inconvenience, psychological torture and emotional stress caused and an order for payment of punitive damages and costs.

On the other hand, the 1<sup>st</sup>-4<sup>th</sup> Defendants denied the plaintiffs case and pleaded that they have been in ownership of the suit kibanja which is distinct and separate from the burial ground as per estate distribution and an inventory filed in court. That the suit kibanja has never been declared by court to be a family home or burial ground as such they rightfully sold it to the 5<sup>th</sup> defendant.

The 5<sup>th</sup> defendant also denied the plaintiffs case and stated that he owns the suit kibanja having purchased the same from the 1<sup>st</sup>-4<sup>th</sup> defendants after carrying out due diligence.

Therefore, they invited Court to dismiss the Plaintiff's case.

At scheduling, the following issues were agreed for determination by this Court; -

1. Whether the 1<sup>st</sup>-4<sup>th</sup> defendants have exclusive right of ownership of the suit land.
2. Whether the 5<sup>th</sup> defendant has trespassed on the suit land.



### 3. Remedies available to the parties.

At the hearing the plaintiffs were represented by Counsel Elotu Johnathan while the defendants were represented by Counsel Mbanza Martin Kalemera.

Both Counsel filed written submissions which I shall consider.

### **THE LAW**

The general rule is that he or she who asserts must prove and the burden of proof therefore rests on the person who must fail if no evidence at all is given on either side. The standard of proof required to be met by either party seeking to discharge the legal burden of proof is on a balance of probabilities.

**In Miller V Minister of Pensions [1947]2 ALL E R 372** Lord Denning stated:

*“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.”*



*It is also the position of the Law that the evidential burden does not shift to the defendant unless there is cogent and credible evidence produced on the issue for determination.*

In a bid to proof their case, the plaintiffs led evidence of Three witness and closed while the defendants called Three witnesses.

## **EVIDENCE.**

PW1, James Luwemba Mande testified that late Ezekiel Mukasa was the original owner of the suit land. That after his death, himself together with Najjemba Birabwa, David Muwanga and Nakiganda Margaret were selected as persons to manage the estate and they obtained Letters of Administration to that effect. That a meeting was held and it was unanimously agreed by the children the properties of late Ezekiel Mukasa should remain intact and owned by all the children under a company which would be registered. That the meeting also agreed that family members that had been gifted portions of land by the late prior to his death should continue occupying their portions of bibanja. That on 15<sup>th</sup> May 2008, the family sat and distributed the properties of the deceased and further agreed that the parking/compound be rented out to him at Uganda shillings sixty thousand per month (UGX. 60,000/=). Subsequently after the distribution an inventory was filed in court and it was clearly stated that the balance of the kibanja had been reserved as ancestral home and

burial ground. That this family home consisted of a compound which had been rented to him as parking/compound. That later in 2021, MA No.36/2020 was filed in Family Division seeking to dispose of the remaining part of the kibanja (suit land) measuring 70x80 feet which was refused by Justice Matovu who held that the ancestral home and family burial ground was the balance after the division of the property and there was nothing left for distribution. And that the said reserved land would only be disposed of after consultation and approval by all beneficiaries of the estate of the late Ezekiel Mukasa. That later he was evicted from the said compound 1<sup>st</sup>-4<sup>th</sup> sold it to the 5<sup>th</sup> defendant pretending to be the owners whereas not. That the family tried to sit down the defendants and resolve the issues about the land however they remained adamant claiming that the land belongs to them hence this case.

In cross-examination, he confirmed that the suit land was first owned by his late father and it was equivalent to 7 acres and 80 decimals and that after his father's death letters of administration were obtained and the estate was administered where an inventory was filed in compliance with a court order.

PW2, Birabwa Christine Najjemba testified that after the death of Ezekiel Mukasa in 1993 he was buried at Nansana and the administrators were appointed to administer his estate. He corroborated PW1 confirming that a family meeting unanimously agreed that the properties of the late



Mukasa Ezekiel he sold and the monies accruing therefrom be used to build houses to assist in taking care of the unemployed children/needly children of the late Mukasa Ezekiel. That the meeting also agreed that family members who had been given plots prior to their father's death to retain their portions and the suit land to be kept intact as a compound/parking.

Her evidence was corroborated by that of PW1 and PW3.

In cross-examination she confirmed that, indeed an inventory for her father's estate was filed in court and she had no problem with the property distribution.

PW3, David Muwanga testified that the suit land did not belong to the 1<sup>st</sup>-4<sup>th</sup> defendants as they had received their share from the deceased's estate. He agreed with PW1 and PW3 that the suit land is part of the retained family land and not belonging to the 1<sup>st</sup>-4<sup>th</sup> defendants.s

On the other hand, DW1, Nakiganda Margaret testified that when her father died in 1993 he left behind 15 children and properties including the suit land. That she was part of the Administrators who distributed the estate of the late Ezekiel Mukasa in May 2008 and that after an inventory was filed by the Administrators as final distribution of the estate in May 2016. That the suit land is distinct and separate from the ancestral home of our father and the burial grounds. That it is located along the main road



formerly used as a car parking and washing bay. That following the determination of the matter that had been filed in the High Court in 2021, the 1<sup>st</sup>, 2<sup>nd</sup> 4<sup>th</sup> defendants and herself sold the suit Kibanja to the 5<sup>th</sup> defendant. That the 5<sup>th</sup> defendant then applied to Buganda Land Board for registration of the said land and issuance of a land title and the same was concluded and issued. That the 5<sup>th</sup> defendant having occupied the plot and started some developments, the plaintiffs filed Civil Suit No. 942 of 2011 challenging the sale of the suit land by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and her to the 5<sup>th</sup> defendant still claiming that it was not distributed. That she knew the suit land to be the same land which took them to court in 2020 and the same one which court already determined theirs. That she believes the plaintiffs are misusing the court process by keeping them running around in courts and she does not know the intention. That she did not commit any illegality and or fraud regarding the plot subject of this suit at all or in their transaction to sell it to the 5<sup>th</sup> defendant. The land belonged to the 1<sup>st</sup>- 4<sup>th</sup> defendants which they sold it to the 5<sup>th</sup> defendant and the reason Buganda Land Board gave him a title.

In cross-examination, she stated that suit land was given to her by the administrators measuring 70x80 fts and it was documented as per PE4 paragraph 1 of the distribution list which is different from the compound and parking. That is was once rented by Luwemba and rent money shared.

That it is true in M/C 36/2020, Justice Matovu prevented sale of the remaining property in the estate and her she sol shel proceeded and

sold her part. That the suit land is the very land Muwanga and Birabwa were seeking to sale measuring (70x80) which is the very land I sold to the 5<sup>th</sup> Defendant at Shs 650,000,000/= after the Plaintiffs had refused to come and consent in vain.

DW2, Paulo Mugisha Kabanza testified that it is true that he purchased a plot of Kibanja land from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants in 2021. The land is situate in Nansana and lies along the highway. At the time of purchasing the land, it was being used as a car parking and washing bay. The land is of commercial use and is not a home of any kind not a compound to a home and not a burial ground or part of it. That before buying the Kibanja interest from the said defendants, he duly conducted a due diligence and became aware that it was a Kibanja on the Kabaka's land that was formally held by the late Ezekiel Mukasa. He also found out that the land had since been distributed to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and that this position was also carried in a Judgment of the High Court of Uganda in Miscellaneous Cause No. 36 of 2020 (arising from Civil Suit No. 86 of 2015). He did not find any appeal or notice of appeal against that decision of the court. That upon purchasing the land, he immediately took possession and then applied to Buganda Land Board to have a leasehold interest in the land. The application was granted and he was issued a leasehold title for 49 years vide LRV 4715 Folio 14 Plot 12485, Kyadondo Block 203. That at the end of October 2021, he fenced off the land and began construction of a commercial structure. In April 2022 he



was served a court ruling of injunction that was apparently issued on 28<sup>th</sup> February 2022. That the whole exercise of fencing off the land was conducted peacefully and with the full knowledge of the Local Council Authorities. There was no force used not was there any threat or instruction to injure anyone. This allegation is meant to and does defame my character. That he entered agreement with the owners of the land that he bought whom he verified were the owners of the land as confirmed by all court documents. There was no illegality or fraud committed by himself or the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants as alleged by the plaintiff or at all.

In cross-examination, he confirmed that he was not present at purchase but later signed after paying consideration. That he did not meet any of the Defendants before. Everything was done for him by one Kitonsa his agent whom he trusted. That when he visited the land with guidance of the said Kitonsa, the sellers were absent and only meet them in 2022 when the disputes arose.

DW3, Musisi Oliver testified that the suit land is situate in Nansana and lied along the highway. At the time of purchasing the land it was being used as a car parking and washing bay. The land is of commercial use and is not a home of any kind not a compound to a home and not a burial ground or part of it. That before the 5<sup>th</sup> defendant bought the land, it was rented by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to the 2<sup>nd</sup> plaintiff. This tenancy was terminated on 16<sup>th</sup> April 2021 and was duly witnessed by several people including himself as the local government authority unit

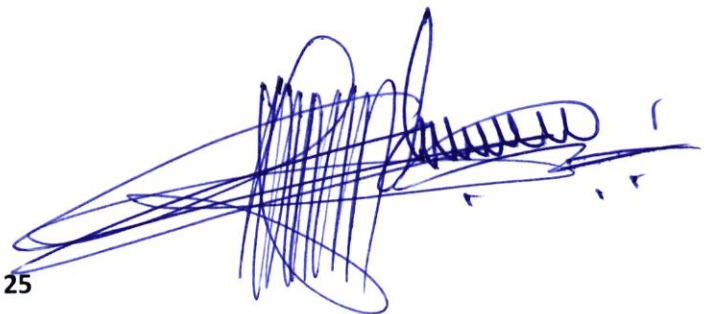


responsible for this area. A report of the handover was duly compiled and signed off by all witnesses. He also signed it off and dully stamped it. That before this day there was notice of termination of the tenancy from lawyers which was copied to him. That when the 5<sup>th</sup> defendant bought the land, he immediately took possession and at the end of October 2021 he fenced off the land and began construction of a commercial structure. That he is familiar with the family of the late Ezekiel Mukasa and he knows that the land being argued about is a commercial plot and is separate and distinct from the ancestral home of the family of the late Ezekiel Mukasa and their burial grounds.

### **Determination.**

#### **1. Whether the 1<sup>st</sup> -4<sup>th</sup> defendants have exclusive right of ownership of the suit land.**

According to the pleadings and evidence record, it appears that the plaintiff's claim is based on inheritance on the suit land as family property and trespass by the 5<sup>th</sup> defendant who derives his interest from the 1-4<sup>th</sup> defendants while the 1<sup>st</sup> to the 4<sup>th</sup> defendants claim exclusive right on the suit land based on both inheritance and a gift from their father. I shall first determine the issue of gift intervivos,



It was evidence of the 1<sup>st</sup> defendant that the suit property was given to her by the late Ezekiel during his life time and that it is distinct from their ancestral home that forms part of the estate property.

The law is that a gift inter vivos takes effect when three situations are fulfilled, that is, there is intention to give the gift, the donor must deliver the property, and the donee must accept the gift.

The question to ask in this case is whether, from the adduced evidence on record, and on applying the relevant laws, there was intention on the part of Ezekiel to gift the suit property to DW1, whether he actually delivered the property, and whether DW1 accepted the gift donated to him by Ezekiel see Joy *Mukobe V Willy Wambuwu HCCA 055/2005*

In this case, what is clear from evidence of both parties is that the late Ezekiel Mukasa gave his children a portion of his land before he died and the residue was distributed by the administrators of his estate upon his death. It is therefore important to resolve the question of whether the suit land was gifted to the 1<sup>st</sup> defendant.

The 1<sup>st</sup> defendant adduced no documentary evidence to prove the suit land as part of what was gifted to her. There was no evidence of who could have been there when he was gifted the same. She relied on PEX4, the minutes of the meeting held on 15/05 /2015 to prove her gift. However, nothing in this document shows that the suit land was gifted to her. Instead the said document shows a clear distribution of the late Mukasa's estate



and the suit land was which was referred to as a parking be rented out for the benefit of all beneficiaries and not only the 1<sup>st</sup> to the 4<sup>th</sup> defendant.

At locus the 1<sup>st</sup> defendant failed to show court the difference between the suit land and what she claimed was the ancestral home that was meant to be a burial ground. I did not find anything convincing to prove the suit land as a gift intervivos.

In addition, the defendants claim is based their share from their late furthers estate.

On record there is evidence of an inventory that was filed in court and exhibited as PEX8 in regard to the estate of the late Ezekiel Mukasa. The inventory was very clear on what was distributed to each child. And the suit land a residue in paragraph 9 of the inventory was left as family land and burial ground. The same was retaliated in the ruling of **Justice David Matovu in MC no 36 of 2020- PE9** in which the suit property was subject. In the said miscellaneous application, the applicants (plaintiffs now) sought leave of court to sell the same suit property and it was decided that, I shall quote verbatim

*“in view of the above the kibanja in Nansana was distributed and nothing was left as alleged by the applicants for sale save for the home and the family burial ground which were retained and the same can only be sisposed of after consultation and approval of all beneficiaries to the estate of the late Eziekiel mikasa.”* This ruling was never appealed



against. It absolutely answered the major question in this case and I entirely agree with it.

In conclusion I find that the 1<sup>st</sup> to the 4<sup>th</sup> defendants have no exclusive right on the suit land as it is family land which can only be sold with the consent and for the benefit of all the beneficiaries.

**Whether the 5th defendant has trespassed on the suit land.**

According to Supreme Court case of Justine E.M.N. Lutaaya vs Sterling Civil Engineering Co. SCCA No.11 of 2002 trespass to land occurs “when a person makes an unauthorized entry upon land, and thereby interfering, or portends to interfere, with another person’s lawful possession of that land”. Court in that case added that the tort is committed not against the land, but against person who is in actual or constructive possession of the land. In order to succeed in this case, the Court of **Appeal in Sheikh Muhammed Lubowa versus Kitara Enterprises Ltd CA No. 4 of 1987** observed that one must prove;

- That the disputed land belonged to the Plaintiff
- That the Defendant had entered upon it, and
- That entry was unlawful in that it was made without permission or that the Defendant had no claim or right or interest in the disputed land.

It was the evidence of the plaintiffs PW1, PW2 and PW3 that the 1<sup>st</sup> to the 4<sup>th</sup> defendant without consent of the entire family trespassed on the suit

land and sold the suit land to the 5<sup>th</sup> defendant. the sale was not disputed by the defendants. They however claimed that they had powers to sale the suit land as it had been allocated to them by their death father. The 5<sup>th</sup> defendant also testified as DW2 and confirmed that he bought the suit Kibanja from the said defendants, duly conducted a due diligence and became aware that it was a Kibanja on the Kabaka's land that was formally held by the late Ezekiel Mukasa. That he found out that the land had since been distributed to the 1st, 2nd, 3rd and 4th defendants and that this position was also carried in a Judgment of the High Court of Uganda in Miscellaneous Cause No. 36 of 2020 (arising from Civil Suit No. 86 of 2015). That upon purchasing the land, he immediately took possession and then applied to Buganda Land Board to abstain a leasehold interest in the land

There is so much contradiction in the defence evidence where the same suit property is being claimed as a gift and at the same time as a share in the estate. Secondly, I have already found that the 1st-4th defendants have no exclusive right of ownership of the suit land and therefore wrongly sold the suit property to the 5<sup>th</sup> defendant. The 5<sup>th</sup> defendant seems to have misunderstood the ruling of court in MC 36 of 2020 to mean that the defendants were granted exclusive ownership of the suit property whereas not. In his evidence as DW2, he confirmed that he based his purchase on the said ruling and that after his purchase he took possession of the same.



Unfortunately, his taking of possession of the suit property in the circumstance amounts to trespass.

However, it is important rule out the issue of whether the 5<sup>th</sup> defendant was a bonafide purchaser for value without notice.

*A person is considered a purchaser in good faith if he or she buys the property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property. It connotes an honest intention to abstain from taking undue advantage of another. Good faith consists in the buyer's belief that the person from whom the buyer purchased the land was the owner and could convey title. Good faith, while it is always to be presumed in the absence of proof to the contrary, requires a well-founded belief that the person from whom title was received was himself or herself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage of another. Otherwise stated, good faith is the opposite of fraud and it refers to the state of mind which is manifested by the acts of the individual concerned.*

*constructive notice is generally taken to include two different things: (a) the notice which is implied when a purchaser omits to investigate the vendor's title properly or to make reasonable inquiries as to the deeds or facts which come to his knowledge; (b) the notice which is imputed to a*



*purchaser by reason of the fact that his solicitor or other legal agent has actual or implied notice of some fact. This is generally called imputed notice. In Hunt v. Luck (1901) 1 Ch 45 the court considered the nature of constructive notice. Farwell J said: "Constructive notice is the knowledge which the courts impute to a person upon presumption so strong of the existence of the knowledge that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him on further enquiry or from willfully abstaining from inquiry to avoid notice."*

*A purchaser of unregistered land who does not undertake the otherwise expected investigation of title which will often ordinarily involve him in quite elaborate inquiries, is bound by equities relating to that land of which he had actual or constructive notice (see Williams and Glyn's Bank Ltd v Boland, [1981] AC 487). When a purchaser has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in the vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation, his or her mere refusal to believe that such defect exists, or his or her wilful closing of his or her eyes to the possibility of the existence of a defect in the vendor's title will not make the purchaser an innocent purchaser for value if it later develops that the title was in fact defective, and it appears that he or she would have had such notice of the defect had*

*he or she acted with that measure of precaution which may reasonably be required of a prudent person in a like situation.*

*Constructive notice applies if a purchaser knows facts which made "it imperative to seek an explanation, because in the absence of an explanation it was obvious that the transaction was probably improper" (see Macmillan v. Bishopsgate Investment Trust (No. 3) [1995] 1 WLR 978). When it is proved that such a purchaser acquired knowledge of circumstances which would put an honest and reasonable man on inquiry (see Baden v. Societe Generale pour Favoriser le Developpement du Commerce et de l'Industrie en France SA, [1993] 1 WLR 509), and yet he did not undertake the necessary inquiries, such a purchaser cannot claim to have bought in good faith. The ascertainment of good faith, or lack of it, and the determination of whether due diligence and prudence were exercised or not, are questions of fact which require evidence. The burden of proof to establish the status of a purchaser in good faith lies upon the one who asserts it. This onus probandi cannot be discharged by mere invocation of the legal presumption of good faith.*

In this case as already discussed above, the plaintiff exhibited a ruling of this honorable court (MC no 36 2020) PE9 in which the suit property was subject. In the said miscellaneous application, the applicants (plaintiffs now) sought leave of court to sell the same suit property and it was decided that, I shall quote verbatim



*“in view of the above the kibanja in Nansana was distributed and nothing was left as alleged by the applicants for sale save for the home and the family burial ground which were retained and the same can only be disposed of after consultation and approval of all beneficiaries to the estate of the late Ezekiel mikasa.”*

This ruling was never appealed against. The same is a ruling in Rem and a decision that is in a public realm. It was quite available to the 5<sup>th</sup> defendant. And indeed in his defence he testified that he had seen the said decision which in effect left the property to be family property. One wonders why he went ahead to purchase it. My understanding is that he misinterpreted the said decision. Unfortunately, ignorance has never been a defence whatsoever. Due diligence in such a situation would have required seeking professional advice from his lawyers before purchase. Ideally his conduct does not qualify him as a bonafide purchaser for value.

As a whole the suit property belongs to the estate of the late Ezekiel Mukasa as family land which remained after distribution of the estate as per the final inventory of the estate of the late Ezekiel Mukasa to be utilized by all the family members. As already stated above there is no evidence by the first to 4<sup>th</sup> defendants' ownership so as to sell it. Therefore, the purchase by the 5<sup>th</sup> defendant was illegal and of no effect since he did not qualify as a bonafide purchaser for value without notice.

In conclusion, the 5<sup>th</sup> defendant is a trespasser on the suit land.

## **Whether the Plaintiffs are entitled to any Remedies**

The Plaintiff sought for the following remedies.

- 1. A declaration that the suit property belongs to the estate of the late Ezekiel Mukasa.**

I have already found that that the suit property belongs to the estate of the late Ezekiel Mukasa. I so declare.

- 2. A declaration that the 1<sup>st</sup>-4<sup>th</sup> defendants do not have exclusive rights over the suit property.**

I have already found that the 1<sup>st</sup> -4<sup>th</sup> defendants do not have exclusive rights over the suit property. I so declare.

- 3. A declaration that the sale transaction between the 1<sup>st</sup> -4<sup>th</sup> defendant and the 5 defendant over the suit land is illegal and fraudulent.**

I have already found that the 1<sup>st</sup> to 4<sup>th</sup> defendants are not the exclusive owners of the suit property and therefore cannot pass any better title to a third party. I so declare.

I have already found that the defendant is a trespasser on the suit land, i so declare.

- 4. A declaration that the 5<sup>th</sup> defendant is a trespasser on the suit property.**



Having earlier found his transaction with the 1<sup>st</sup> to 4<sup>th</sup> defendants illegal and him having acquired no interest in the suit property. He is consequently declared a trespasser.

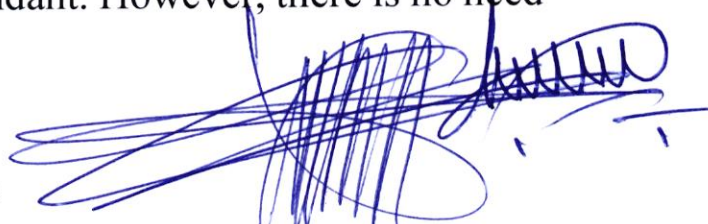
**5. A permanent injunction against the defendant's, their employees and their agents from interfering with the suit property.**

Having found that the suit property belongs to the estate of LATE Ezekiel Mukasa. This order is granted against the 5<sup>th</sup> defendant. As regards the 1<sup>st</sup> to the 4<sup>th</sup> defendants, this order is issued restraining them from dealing the suit property without the consent of the entire family.

**6. An order cancelling the certificate of title in LRV 4715 FOLIO 14 PLOT 12485 issued to the 5<sup>th</sup> defendant.**

Section 177 of the Registrar of Titles Act empowers this Court to direct the Commissioner for Land Registration to cancel any certificate of title and replace the same, for being fraudulently obtained contrary to Section 176 of the Registrar of Titles Act.

I do agree with the Plaintiffs that this is a proper case for ordering cancellation of the title of the 5<sup>th</sup> Defendant. However, there is no need



to replace it with any one's name since the suit land was not registered land.

The registrar of title is hereby directed to cancel the 5th defendant's title, the same having been obtained illegally.

**7. An eviction order be issued against the 5<sup>th</sup> defendant to deliver vacant possession of the suit land.**

Having found that the 5<sup>th</sup> defendant is a trespasser on the suit land, an order of vacant possession against him is hereby granted.

**8. General damages**

In assessment of general damages, Courts are mainly guided by the value of the subject matter, the economic inconvenience that the innocent party may have been put through and the nature and extent of the breach suffered. In **Charles Acire versus Myaana Engola HCCS No. 143 of 1993** it was also held that;

“A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong.”

Damages for trespass are per se. Once trespass is proved, there is no need for further explanation.

It is also trite law that in exercising the discretion to grant general damages, Court should not punish the Defendant for the breach but, rather



put the Plaintiff in the position he or she was prior the breach complained of. See **Boschcon Civil & Electrical Construction Co., (U) Ltd versus Salini Construttiri Spa HCCS No. 151 of 2008.**

Taking in to account of the inconvenience suffered by the Plaintiffs as a result of the Defendants' acts, I would find a sum of UGX 20,000,000/= (twenty million only) to be sufficient as general damages to the Plaintiffs.

### **9. Punitive and exemplary damages**

"It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. On the other hand, exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive". As per **Obongo Vs Municipal council of Kisumu [1971] EA 91,**

Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct.

They are also awardable for the improper interference by public officials with the rights of ordinary subjects.

In this case I don't find any basis to award punitive damages and i shall not award any since none of the plaintiffs is a public official and no highhanded and oppressive conduct is borne out of evidence on record.

### **COSTS**

Costs follow the event unless Court finds justification to decide otherwise. The Plaintiff is successful in this case. In this case, all the parties belong to the same family and there is need to reconcile and live peacefully. I will therefore award a half of the Costs to the plaintiffs.

In conclusion, the suit succeeds with the following orders.

1. A declaration that the suit property belongs to the estate of the late Ezekiel Mukasa.
2. A declaration that the 1<sup>st</sup> -4<sup>th</sup> defendants do not have exclusive rights over the suit property.
3. A declaration that the sale transaction between the 1st -4th defendant and the 5 defendant over the suit land is illegal and fraudulent.
4. A declaration that the 5<sup>th</sup> defendant is a trespasser on the suit property.
5. A permanent injunction doth issue against the 5<sup>th</sup> defendant', their employees and their agents from interfering with the suit property.



6. A permanent injunction doth issue restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants from dealing the suit property without the consent of the entire family.
7. The registrar of titles is here by ordered to cancel LRV 4715 FOLIO 14 PLOT 12485 issued to the 5th defendant.
8. An eviction order is issued against the 5th defendant to deliver vacant possession of the suit land.
9. An order granting 20,000,000/= (Twenty Million) shillings as General damages against all the defendants.
10. Punitive and exemplary damages are not awarded.
11. Half of the Costs are here by awarded to the plaintiffs.



TADEO ASIIMWE

JUDGE

29/01/2024