

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO. 131 OF 2014

5    **MUTAGUBYA STEPHEN-----PLAINTIFF**

**VS**

**1. NANTEZA REBECCA**

**2. PETER MITANDA**

**3. NASAZI LORINE**

10    **4. MUHUMUZA ROGERS**

**5. HOUSING FINANCE BANK LIMITED**

**6. COMMISSIONER LAND REGISTRATION-----DEFENDANTS**

 **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

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**JUDGMENT**

The Plaintiff brought this action against the Defendants jointly and severally seeking;

1. A permanent injunction restraining the 1<sup>st</sup> Defendant from selling the Plaintiff's land (Kibanja), comprised in Block 377 Plot 840 Land at Seguku-Katale, Kazinga-Busawuula, herein referred to as the suit land, to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
- 20    2. An order compelling the 1<sup>st</sup> Defendant to sign transfer forms in the Plaintiff's favour in respect to suit land.
3. An order compelling the 1<sup>st</sup> Defendant to add 25 decimals to the suit land, and transfer this additional land to the Plaintiff.
4. An order of eviction of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from the suit land.
- 25    5. Mesne profits from all three Defendants for depriving the Plaintiff's adequate use of his land.
6. General damages for the inconveniences caused to the Plaintiff.

7. Costs of the suit.

**PLAINTIFF'S CLAIM**

Mr. Mutagubya's claim is that since 1976 he has been a bonafide occupant of the suit Kibanja measuring approximately 75 decimals which was bequeathed to him by his grandmother, the late Samali Lukiya Nakaweesi. He has always enjoyed quiet possession, unchallenged by the subsequent registered proprietors on the Mailo title, up until the time 1<sup>st</sup> Defendant, Ms. Nanteza became registered proprietor.

In 2012, Mr. Mutagubya agreed to purchase the registerable interest in his Kibanja from the 1<sup>st</sup> Defendant at a total consideration of UGX 25,000,000/=. He paid UGX 9,500,000/= upon execution of the agreement. When he approached Ms. Nanteza to clear the balance, she took him to a surveyor whom she instructed to do all that it takes to help him get his title, including receiving the balance on her behalf.

After completing the payment of the balance to the surveyor, he handed to Mr. Mutagubya the certificate of title and advised him to get signed transfer forms from Ms. Nanteza. Despite written requests from the Plaintiff's lawyers, the 1<sup>st</sup> Defendant refused to hand over the signed transfer forms. Instead, she fraudulently sold part of his land to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who have now constructed houses on it and fenced it off, in spite of her obligations under their contract of sale. Additionally, the title in the Plaintiff's possession only has an area of 50 decimals and not 75 decimals which he originally paid for, which constitutes his registerable interest. Hence this suit for recovery of his land.

**THE 1<sup>ST</sup> DEFENDANT'S DEFENCE AND COUNTERCLAIM**

Ms. Nanteza denied the Plaintiff's claim and filed a Counterclaim against the Plaintiff, adding Mr. Gitta Jesse (Surveyor), as the 2<sup>nd</sup> Counter defendant and Mr. Mulumba Hannington, as the 3<sup>rd</sup> Counter defendant.

She contended that the Plaintiff has neither been a bonafide occupant of the suit land nor has he ever enjoyed quiet possession. Ms. Nanteza admitted that she entered into a sale agreement with the Plaintiff for his purchase of her land measuring 55ft x 34ft at UGX



25,000,000/=. But according to her, Mr. Mutagubya paid only UGX 9,500,000/= and has never paid the balance.

In response to the claim that she authorised someone to receive her balance, Ms. Nanteza was emphatic that this was not true. Her version of events is that the 2<sup>nd</sup> Counter Defendant, Mr. Gitta, the surveyor, mutated her land into Plots 840 and 839 without her consent and handed the suit land certificate of title to the 3<sup>rd</sup> Counter Defendant, Mr. Mulumba Hannington, who is currently, holding onto it without cause.

Under her counterclaim, Ms. Nanteza sought the following orders;

1. A declaration that the Plaintiff/ 1<sup>st</sup> Counter-defendant breached the contract of sale of 18<sup>th</sup> February 2010 and is not a bonafide occupant at all.
2. A declaration that the payments allegedly made by the Plaintiff to Mr. Gitta Jesse were not authorised by the Counter-claimant and were not in respect of the suit land.
3. An order that the contract of sale be rescinded.
4. An order that the Counter -claimant's original title be returned to her with an order that all entries in respect of Plot 839 and 840 be cancelled.
5. General damages for breach of contract.
6. Costs of the Counter-Claim.

Before the commencement of the hearing, Ms. Nanteza withdrew her claim against the 2<sup>nd</sup> Counter Defendant, Mr. Gitta Jesse.

## **EVIDENCE**

### **Plaintiff's Evidence**

The Plaintiff, Mr. Mutagubya Steven, testified that he and his siblings lived on the suit land, a 3 acre Kibanja. It was given to them by their grandmother one Lukiya Nakaweesi after the death of her sister, the late Samalie Namusoke and they have lived there for over 50 years. During this period, they developed the Kibanja by constructing permanent houses and their grandparents are buried on it. Their landlord then was the late Kayinani Seninde, a resident of Sseguku Kyadondo to whom they paid Busuulu as Kibanja holders as per Exb.P.1. When he died, he was succeeded by a one Sebagala Elifazi, who later

distributed his estate among several beneficiaries who included Ms. Nanteza, the 1<sup>st</sup> Defendant. The distribution was subject to all the overriding interests on it, including theirs. And each of the beneficiaries to the estate had a duty to discuss with the people then occupying the property distributed to him or her.

5 Mr. Mutagubya testified that he is entitled to the registerable interest in the suit Kibanja. It was following the foregoing distribution that Ms. Nanteza, the registered proprietor, approached them to purchase their registerable interests in the property. To that end, Mr. Mutagubya agreed with Ms. Nanteza in a written undertaking, Exb. P.2, to pay UGX 25,000,000/= to her for the 75 decimals allocated to him. On the 18<sup>th</sup> February 2010, he  
10 made a deposit payment of UGX 9,500,000/= to Ms. Nanteza, in the presence of the late Emmanuel Jjagwe, Steven Walusimbi and one Kakembo Joshua her relative. In return, Ms. Nanteza had the duty to survey-off Mr. Mutagubya's 75 decimals but instead, she disappeared. Mr. Mutagubya started looking for her to receive the balance in accordance with their agreement and when he failed to trace her, on advice of his lawyers, he wrote  
15 to her a formal communication through the LC1 Chairperson, Zone 5 Mr. Kijongolo, informing him that he wished to make his payment to Ms. Nanteza, through him. A copy of the letter was admitted and marked Exb. P.3.

Following that communication, Ms. Nanteza appeared but she did not receive the money. What she did was to introduce him to a company called Property Envoys International  
20 Limited where she told him to pay the balance. And from 4<sup>th</sup> April 2010 to the 13<sup>th</sup> November 2013, the Plaintiff made several payments which totalled UGX 23,000,000/= and the receipts were issued by Mr. Gitta Jesse. Copies were admitted and marked Exb. P.4 A-D. It was agreed that the balance of UGX 2,000,000/= be paid upon delivery of the title to him. After that, Mr. Mutagubya went to the islands to do farming. When he returned  
25 he found the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had constructed on part of the land a foundation of houses. Consequently, he reported a case to the Land Protection Unit in Kibuli which was of no help. He engaged the services of a lawyer, Mr. Lule Godfrey to file a case. Several other authorities among whom was the LC1 Chairman, the Police Land Protection Unit were also informed. In addition, Mr. Mutagubya pursued Ms. Nanteza's surveyor, Mr.  
30 Gitta Jesse of Property Envoys International Limited.



Mr. Gitta informed Mr. Mutagubya that Ms. Nanteza owed him UGX 18,000,000/= and he would only be able to give Mr. Mutagubya his certificate of title after the amount had been paid. Despite the Plaintiff's continued demands for his title, Mr. Gitta refused to hand it over saying he was holding it as a lien for the amount due to him.

- 5 Eventually, the title was delivered to Mr. Mutagubya's lawyer, Mr. Mulumba, but it was missing 25 decimals out of the 75 decimals owing to him. Upon engaging another surveyor, it was discovered that the legal title that Ms. Nanteza contracted to sell to the Plaintiff was not 75 decimals but only 50 decimals and 15 decimals of the land was being built on by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant as indicated in a copy of the survey report marked  
10 Exb.P.5.

To prevent further encroachment, the Plaintiff filed an application for an injunction to stop the Defendants from constructing on the suit land, which was granted, but ignored by the Defendants. Copies of photographs showing the status quo at the material time and after the contempt were admitted and marked Exb. P.6 A-F and P.7 respectively.

- 15 An added fact is that a short time after his agreement with Ms. Nanteza, Mr. Mutagubya, sold off the land to a one Hon. Ebbie Ekwaw, but she has not been able to access it because of Ms. Nanteza's actions. Therefore, Hon. Ekwaw had Mr. Mutagubya arrested and detained for several months. This criminal case is still continuing under CRB No.4283 of 2018 which has subjected him to undue inconvenience, stress and mental anguish for  
20 which he prays that the Court awards him general damages.

Mr. Sensozi Gideon, the Plaintiff's son corroborated his testimony.

### **1<sup>st</sup> Defendant's Evidence**

- Ms. Joyce Gunze Habaasa, a registered surveyor with Terrain Consult, testified as DW1. On 28<sup>th</sup> October 2015 she was instructed by Ms. Nanteza to carry out a boundary opening  
25 and verification survey of the Kibanja as previously held by Mr. Mutagubya on former Plot 124 as per the agreement of sale dated 18<sup>th</sup> February 2010. She explained that the Kibanja was found to partly sit on Busiro Block 377 Plot 760, 838 and part of 840. And that it is only Plot 839 which appears to have been further subdivided to create Plots 839 and 840. The Kibanja for Mr. Mutagubya occupies an area of 70 decimals on the Ms.

Nanteza's land and the area of Plot 840 as per print is 92 decimals. Ms. Habaasa concluded that the total acreage of Mr. Mutagubya's Kibanja was 0.70 acres or 0.282 hectares and yet he is in possession of land title for Plot 840 which computes to 0.378 ha which is 92 decimals.

5 DW2, Ms. Nanteza Rebecca, the 1<sup>st</sup> Defendant, testified that on the 18<sup>th</sup> February 2010 she entered into an agreement with the Plaintiff for him to purchase his Kibanja interest on her land comprised in Busiro Block 377 Plot 124. The land measured 55ft x 345ft and the agreed consideration was UGX 25,000,000/= of which the Plaintiff paid UGX 9,000,000/=. The balance of UGX. 15,500,000/= was supposed to be paid within 3 weeks  
10 and thereafter she would subdivide and transfer for him his share. A copy of the agreement was admitted and marked Exb. D.1. She further clarified that the Kibanja she was selling was only measured in feet and they did have any surveyor to measure it in acres or otherwise. She added that as a landlord she is aware that the survey is always done at the cost of the transferee and she did not agree with the Plaintiff to receive the  
15 balance of the purchase price on her behalf. And the balance remained unpaid beyond the agreed three -week period and her efforts to locate Mr. Mutagubya to pay were unsuccessful.

Ms. Nanteza further testified that at all material times, she has always lived on the land adjacent to the said Kibanja and Mr. Mutagubya was not living on the suit land which was  
20 a bush. On 3<sup>rd</sup> August 2010, she received a letter written by M/S Bazirengede & Co. Advocates claiming that she had refused to receive the balance and asking her to collect it from them as per Exb. D.2. When Mr. Bazirengede Muhammad personally brought the letter to her and she asked him for the balance, he just went away and never returned. She further asserted that it is not true that she introduced the Plaintiff to Property Envoys  
25 International Limited and instructed him to pay them her balance after the said communication. Therefore, the Plaintiff's claim that he paid that company money on her behalf was false because she never authorised him to make those payments and there is no proof that he authorised him. She denied any knowledge of the receipts marked Exb. D.4 to D.7 made to that effect.



Responding to the allegation that she had disappeared, Ms. Nanteza denied receiving the letters dated 6<sup>th</sup> November 2013 and 18<sup>th</sup> November /2013 marked Exb. D.9 and D.10. She pointed out that they contradict the earlier letter written by Mr. Bazirengede asking her to receive the balance. They seem to acknowledge that the balance of UGX 5,500,000/= was still outstanding and that she was supposed to collect it. Yet the Plaintiff claims to have paid the balance of UGX 13,500,000/= leaving a balance of UGX 2,000,000/=. She further denied any knowledge of the document dated 27<sup>th</sup> November 2013 marked Exb. D.11 which indicated that the 3<sup>rd</sup> Counter defendant received the title of the suit land on behalf of the Plaintiff. Ms. Nanteza insisted that she did not authorise Mr. Gitta Jesse to receive UGX 3,700,000/= as her last instalment. She maintained that the Plaintiff never paid her the balance of UGX 15,500,000/= and he illegally connived with Mr. Gitta to create Plot 840 out of her land and hand over title to the 3<sup>rd</sup> Counter defendant.

When the Plaintiff failed to pay the balance, he resorted to threats to get Ms. Nanteza to release the mother title to him. She reported these threats to Kajjansi Police, Officer in Charge, Criminal Investigations Department, Katwe and Kibuli. The Plaintiff was summoned by the Police but he did not appear. Ms. Nanteza clarified that Mr. Gitta Jesse was known to her as a surveyor who has done work on her land in respect of other people and he still had her mother title. She only took the Plaintiff to him to confirm that the title was with Mr. Gitta who would survey the Plaintiff's Kibanja after she had received her purchase price. But without her knowledge and authority, the Plaintiff got in touch with Mr. Gitta and connived to defraud her of her land since he had her mother title. She further asserted that she never sold any part of the suit land to the 2<sup>nd</sup> Defendant or anybody else and she denied having taken part in executing the agreement dated 25<sup>th</sup> September 2009 marked Exb. D.13 between herself c/o Mr. Gitta Jesse and Mr. Musisi Fred Ssozi c/o the 2<sup>nd</sup> Defendant.

### **2<sup>nd</sup> Defendant's Defence**

Mr. Peter Mitanda, the 2<sup>nd</sup> Defendant, DW3, denied the Plaintiff's claim and averred that he is neither the owner nor proprietor of the suit land and the orders sought cannot apply to him. He distanced himself from the transaction in which Ms. Nanteza sold land

comprised in Busiro Block 377 Plot 126 at Seguku Katale to one Mr. Musisi Fred Ssozi. Mr. Mitanda contends that all he did was give UGX 18,000,000/= on behalf of the said Musisi Fred Ssozi to Mr. Gitta who received it on behalf of Ms. Nanteza.

5 DW3, added that he and Mr. Musisi Fred Ssozi are cousins. Mr. Ssozi requested Mr. Mitanda to purchase the land described as Busiro Block 377 Plot 760 measuring approximately 0.06 hectares at Seguku, on his behalf. Through Mr. Gitta, a surveyor familiar with the land, Mr. Mitanda was introduced to the 1<sup>st</sup> Defendant, Ms. Nanteza as the owner of the land. A search at the land registry revealed that the land was registered  
10 in the name of Salongo Ssebagala Elifazi as per Exb.D.15. Ms. Nanteza, when contacted to explain, informed him that she was the beneficial owner of the land. After Mr. Mitanda inspected the land, which was a bush and unutilised, the purchase price was agreed at UGX. 18,000,000/=, and Ms. Nanteza referred him to Mr. Gitta, whom she described as her agent for purposes of the sale. She instructed him to pay the money to Mr. Gitta and  
15 to execute an agreement with him since he was in possession of the titles to her land.

On 25<sup>th</sup> September 2009, DW3 proceeded to Mr. Gitta's office and paid the purchase price. A copy of the agreement was admitted and marked Exb. D.13. Mr. Gitta then informed him that the title deed for the suit land was in the process of sub division and that it would be handed to him or his cousin, Mr. Ssozi, at a later date. Subsequently, on  
20 11<sup>th</sup> November 2010, Ms. Nanteza signed transfer forms in favour of Mr. Ssozi and handed them over together with passport size photos as seen in Exb. D.15. Immediately after conclusion of the purchase, Mr. Ssozi moved onto the land and started construction of rental houses in 2009. Exb. D.16 is a letter authored by Ms. Nanteza addressed to Mr. Mitanda informing him that part of the fence that Mr. Ssozi built had encroached onto  
25 someone else's land.

### **The 3<sup>rd</sup> Counter Defendant's Evidence**

Mr. Mulumba Hannington, the 3<sup>rd</sup> Counter Defendant, testified that the title which is sought to be recovered from him came into his custody in his capacity as an advocate for the Plaintiff. In or about 2013, the Plaintiff, Mr. Mutagubya, gave him instructions to recover  
30 his land from the 1<sup>st</sup> Defendant measuring approximately 70 decimals. By a letter dated



18<sup>th</sup> November 2013, he asked the 1<sup>st</sup> Defendant, Ms. Nanteza, to collect her money which was by then amounting to UGX 5,500,000/=. Acting on her instructions, he paid the money to Mr. Gitta Jesse of Property Envoys International Limited who in turn delivered the title to Mr. Mutagubya, hence the acknowledgment marked Exb. CD1.

- 5 By a letter dated 5<sup>th</sup> December 2013, he notified Ms. Nanteza that they had complied with her request and that they had received the title comprised in Block 377 Plots 839 and 840. After receipt of the title, Mr. Mulumba handed it over to Mr. Mutagubya on the 3<sup>rd</sup> day of April 2014, as indicated in a copy of the acknowledgement marked Exb.CD2. As a law firm, they asked Ms. Nanteza to execute a transfer form in Mr. Mutagubya's favour, 10 which she failed to do, hence this suit. Mr. Mutebi maintains that the suit does not disclose any cause of action against him, because all that was done, was within the law therefore it ought to be dismissed with costs.

### **REPRESENTATION**

- The Plaintiffs was represented by Mr. Mohammed Bazirengede of Bazirengede & Co. 15 Advocates and the 1st Defendant was represented by M/S Tumwesigye Louis and Co. Advocates.

Locus visit took place on the 8<sup>th</sup> June 2023.

Counsel filed written submissions which I have duly considered.

The following issues were formulated for Court's resolution;

### **Issues**

1. Whether the Plaintiff is entitled to the legal interest in the 75 decimals of his Kibanja?
2. Whether the 2<sup>nd</sup> defendant lawfully acquired interest in the suit land from the 1<sup>st</sup> defendant?
- 25 3. Whether the 1<sup>st</sup> defendant has a valid claim against the 3<sup>rd</sup> counter defendant?
4. What remedies are available to the parties?

### **RESOLUTION**

Issue 1Whether the Plaintiff is entitled to the legal interest in the 75 decimals of his Kibanja?

The Plaintiff's claim to the suit land is that he was a tenant by occupancy. His claim, as he demonstrated by the Busulu receipts marked Exb. P.1, is that for over 50 years, his family owned a Kibanja in the vicinity of the suit land and the 75 decimals is his beneficial share therein. To take ownership of this portion, he entered into an agreement, as envisaged **under section 36 of the Land Act**, to purchase the legal interest of his Kibanja measuring 75 decimals from the 1<sup>st</sup> Defendant, the registered proprietor, on the 18<sup>th</sup> February 2010. I have reproduced a copy of the agreement, Exb. P.2, below;

Sseguku Kyadondo L.C1 Zone 5  
Ggomba, Ssabagabo- Makindye  
18-2-2010

I Nanteza Rebecca of Sseguku Kyadondo L.C1 Zone 5 Gomb. Ssabagabo Makindye the owner of the land on Block 377 Plot 124 Busiro. I have allowed Mutagubya Stephen to buy his Kibanja interest. His Kibanja is as follows; below he separates with Ssemwanga from the sunset he borders with Jjagwe Emmanuel- Above he borders with Betty Kiregeya and from Jjagwe ft55 (fifty- five feet only) from there as you are sloping to Sempa's Kibanja ft. 345 from the sunrise from Ssemwanga's boundary to the boundary behind ft. 55 (fifty -five feet).

I have sold it to him at shs 25,000,000/= (twenty -five million shillings only). He has so far paid shs. 9,500,000/= (nine million five hundred thousand shillings only). The balance will be paid after 3 weeks from today. After that I will make him a transfer and a mutation form and he takes his share.

I- the vendor- Nanteza Rebecca 0774858268

I- who has paid – Mutagubya Stephen

Witnesses:

(Kakembo Joshua

(Jjagwe Emmanuel

The crux of the Plaintiff's claim is that while he made full payment of the purchase price, albeit out of the 3 -week agreed period, he has so far received a title to 50 decimals of the suit land and has never been granted vacant possession to any of it. On the other hand, the 1<sup>st</sup> Defendant maintains that she never received any more money after the



agreement was executed. She stated that she made several verbal attempts to request her balance, in vain.

Counsel for the Plaintiff relied on the cases of **Ernest Kabyanga v Sanyu Patrick & 4 Others Civil Suit No. 304 of 2002**; **H.M Kadingidi v Essence Alphonse HCCS No. 289 of 1986** and **Ismail Jaffer Allibhai & 2 Others v Nandlal Harjivan Karia & Anor SCCA No. 53 of 1995** to submit on the principle that a purchaser to a contract is entitled to the equitable remedy of specific performance. Counsel submitted that the legal interest in the land passed on to the Plaintiff upon execution of the agreement.

In reply, Counsel for the 1<sup>st</sup> Defendant submitted that the locus visit made it abundantly clear that the Plaintiff had nothing on the land, there were no graves as he claimed. This coupled with the fact that the busulu receipts were not in his names and that he failed to make complete payment of the purchase price were a demonstration that the Plaintiff had no legal interest in the suit land.

I find that at no time was the authenticity of Exb. P.2, the agreement between the Plaintiff and the 1<sup>st</sup> Defendant challenged. In that agreement, the 1<sup>st</sup> Defendant described herself as the registered owner and she described the Plaintiff as a Kibanja holder. By doing so, the 1<sup>st</sup> Defendant acknowledged the Plaintiff's interest in the land, the subject matter of the agreement and received a payment of UGX. 9,000,000/= against that understanding. It was therefore not open to her advocate to use these proceedings as a platform to dispute the Plaintiff's Kibanja interest, when his client had derived a benefit from it.

My understanding of the provisions of **section 36(1) of the Land Act** which governs transactions of this nature, is that after the parties enter a mutual agreement, which I find that the Plaintiff and the 1<sup>st</sup> Defendant did, as indicated by her receipt of the UGX 9,000,000/=, they are bound by the provisions of **section 36(2)** which provides for the practical steps for putting their agreement into effect. The entire section provides;

*36. Mutual agreement between tenant by occupancy and registered owner*

(1) A registered owner and a tenant by occupancy may mutually agree that the land in which a tenant by occupancy has an interest be subdivided in such portions as the parties may agree with each party having exclusive occupancy or ownership of such portions as may be agreed or that the parties become joint proprietors of the land either as joint tenants or as tenants in common, and where they agree to be tenants in common, the shares of each in the land on such terms and conditions as they may agree.

(2) Where the parties agree to subdivide the land and become owners of individual portions of the subdivided land or where the parties agree to become joint proprietors of the land, they shall provide the Commissioner with documentary evidence of their agreement and certified survey plans where applicable, and the Commissioner shall—

(a) make the appropriate entries on the certificate of title of the land;

(b) issue new certificates of title to the parties;

(c) inform the recorder of the changes that must be made to the certificate of occupancy, including where relevant the cancellation of the certificate. (Emphasis added)

The provisions of **Section 36** place an equal burden and responsibility upon both the registered owner and the tenant by occupancy to ensure that the process of subdivision is completed before the Commissioner Land Registration. It is a mandatory duty that must be jointly executed until each party is in possession of their respective titles.

In the suit before me, it is Plaintiff's claim that he made all the payments of the balance on the purchase price to a Mr. Gitta, whom he knew to be the 1<sup>st</sup> Defendant's surveyor and in return he was issued with receipts marked Exb. P.4 A-D. The 1<sup>st</sup> Defendant who denied receiving the monies sued Mr. Gitta and then just before the hearing, she withdrew the suit against him. He was also not called as a witness by either party.

Be that is may, there is a surveyor who testified for the 1<sup>st</sup> Defendant, Ms. Joyce Gunze Habaasa, DW1. She testified that on the 28<sup>th</sup> October 2015, she was instructed by the 1<sup>st</sup>



Defendant to carry out a boundary opening and verification survey of the Kibanja as previously held by Mr. Mutagubya on former Plot 764 as per the agreement of 18<sup>th</sup> February 2010. She found that the Kibanja occupies an area of 70 decimals on the 1<sup>st</sup> Defendant's land. It was her conclusion that the total acreage of the Plaintiff's Kibanja was 0.70 acres or 0.282 hectares and yet he is in possession of a land title for Plot 840 which computes to 0.378 hectares which is 92 decimals. Again, by the 1<sup>st</sup> Defendant's own evidence, the Plaintiff's legal interest in the suit land is acknowledged, with the only discrepancy being the acreage.

I find that the failure by the parties to strictly adhere to the provisions of **section 36 of the Land Act** gave rise to this avoidable and protracted dispute. A joint sub-division and registration exercise would have expedited the lawful execution of the parties' intentions under their agreement. I find that there is need for the parties to return to their agreement and give its effect using the path envisaged under the law to ascertain the Plaintiff's Kibanja acreage constituting his legal interest in the suit land once and for all. According to their agreement, the Plaintiff's legal interest is 70 decimals. Since he claims 75 decimals, the question of precise acreage shall be determined in a joint survey and sub-division verification exercise premised on the agreement between the Plaintiff and the 1<sup>st</sup> Defendant dated 18<sup>th</sup> February 2010.

**Issue 1 is resolved in the affirmative**

## **Issue 2**

**Whether the 2<sup>nd</sup> defendant lawfully acquired interest in the suit land from the 1<sup>st</sup> defendant?**

A perusal of the evidence makes it abundantly clear that Mr. Peter Mitanda has never held interest in the suit land. His role was as an agent on behalf of his cousin, Musisi Fred Ssozi. Counsel for the 2<sup>nd</sup> Defendant relied on **section 159 of the Contracts Act 2010** which provides;

*159. Enforcement and consequences of contract of agent*

*A contract entered into through an agent and obligations arising from acts done by the agent under the contract shall be enforced in the same manner and have the same legal consequences as if the contract was entered into or done by a principal.*

Counsel further relied on section 162(a) and (b) of the Act which states;

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*162. Agent not to enforce or be bound by contracts on behalf of principal*


*In the absence of any contract to the contrary, an agent shall not enforce a contract entered into by him or her on behalf of a principal and shall not be bound by the contract, except where—*

10 *(a) the contract is made by the agent for the sale or purchase of goods for a merchant resident abroad;*

*(b) the agent does not disclose the name of the principal;*

According to Counsel, 2<sup>nd</sup> Defendant's written statement of defence has been on record since 2017 and the 2<sup>nd</sup> Defendant's role in the transaction has not been hidden.

15 He therefore prayed that the 2<sup>nd</sup> Defendant's absentee principal not be condemned unheard and the suit against him be dismissed.

 Counsel for the Plaintiff's submissions were made on the basis that the 2<sup>nd</sup> Defendant was rightly sued in his own right as a purchaser of the suit property the subject of DE13, the purchase agreement dated 25<sup>th</sup> September 2009.

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A perusal of the agreement indicates that it was made between Gitta Jesse on behalf of Margaret Nanteza, the 1<sup>st</sup> Defendant, on one part and on behalf of Musisi Fred Ssozi on the other part. As rightly stated by the 2<sup>nd</sup> Defendant, Mr. Musisi was never sued in his own right. Secondly the suit initially brought by the 1<sup>st</sup> Defendant against her surveyor was withdrawn. This effectually leaves the Plaintiff with a lopsided complaint. Both real parties to the agreement are not present and therefore I agree with Counsel for the 2<sup>nd</sup> Defendant, that Mr. Musisi ought to have been sued in his own right so that he could defend the agreement complained of. Since this was not done, this issue is misconceived and the agreement stands unchallenged in law until the contrary is proved.

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**Issue 3****Whether the 1<sup>st</sup> defendant has a valid claim against the 3<sup>rd</sup> counter defendant?**

The 3<sup>rd</sup> Counter Defendant is an advocate. He acted in a strictly representative capacity and I find that there is no evidence to demonstrate that his actions attracted any liability of any kind.

**Issue 3 is resolved in the negative.**

**Issue 4****What remedies are available to the parties?**

I am satisfied that the Plaintiff is entitled to some remedies sought. And that the Counterclaim has no merit for reasons stated.

**In conclusion, the Counterclaim is dismissed with costs and this suit partially succeeds and judgment is entered for the Plaintiff and I order as follows;**

1. It is declared that the Plaintiff is the rightful owner of the Kibanja described in the agreement dated 18<sup>th</sup> February 2010 between himself and the 1<sup>st</sup> Defendant.
2. A joint survey exercise to be carried out by the Plaintiff and 1<sup>st</sup> Defendant to ascertain the Plaintiff's actual interest.
3. The 1<sup>st</sup> Defendant to sign transfer forms in the Plaintiff's favour in respect of his interest in (2) above.
4. The Plaintiff to release the suit land certificate of title to the 1<sup>st</sup> Defendant for purpose of the transfer in (3) above.
5. Costs of the suit to the Plaintiff.

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Olive Kazaarwe Mukwaya

**JUDGE**

**29<sup>th</sup> February 2024**

**Delivered by email to Counsel for the Parties.**