

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. HCT 02 CV. AC 0001/03

(Arising from The Judgement and Decree of Arua Chief
Magistrate's Court Civil Suit No. 29/02 before His Worship
Boniface Wamala Esq. Magistrate Grade I)

1. **ANDIGA JABIR**
2. **NYAKUNI JAMES ::::::::::::::::::::::::::::::::::: APPLICANT**

1. **BANKOLE MUSTAGA JABIR**
2. **ALLAN JABIR**
3. **AHMED JABIR ::::::::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE MARY I.D.E. MAITUM

JUDGMENT

This is an appeal from the Judgement and decree of the Chief Magistrate's Court at Arua, Civil Suit No. 29/02 before His Worship Boniface Wamala, Magistrate Grade I.

Briefly the facts are that in 2002 the Respondents who were the Plaintiffs filed a suit against the Appellants who were the then Defendants. The Respondents/Plaintiffs had sued the then Defends/Appellants for vacant possession of Plot 26 Adumi Road in Arua Municipality. The Plaintiffs had also prayed for a permanent injunction and against the then Defendants/Appellant and for costs of the suit.

The then Plaintiffs in Civil Suit 29/02 pleaded that their father, the late Allahai Jabir, had died in 1984 leaving properties which included 26 Duka/Adumi Road. Their Aunt Siam, who was illiterate, became the Administrator of the Estate of A. Jabir who had died intestate. Due to the fact of her illiteracy, the 1st Appellant/Defendant had been agreed to, by members of the family, to be a Co-Administrator with Siam and two others who have since died, i.e. Ngingi Kicks and Hamad Amber.

The 1st Applicant took charge of the estate of the late A. Jabir and administered his property on behalf of the family from 1986 up to 1988. Allahai Jabir also owned Plot. 1-3 Duka Road, Arua Provision Stores (U) Ltd, 44 William Street Arua.

In 1993 The 1st Appellant, who was an administrator of the estate of Allahai Jabir informed the family that Plot 26 Adumi Rd, i.e. the suit property was not properly documented. The family gave him authority to apply to the Municipal Council Arua to grant a lease of the Suit Plot. The 1st Appellant then applied for the lease in his own names and informed the family that since Siam was illiterate and the other two Co. Administrators were deceased he would use his names to secure the lease. The 1st Appellant then secured the lease in his own names but used funds from the estate of Allahai Jabir to pay the required fees.

In 1997, a lady, called Florence Poni, started grading the suit land. She claimed, when the family objected, that she had bought the suit land from the 1st Appellant/Defendant. The family blocked development to the land,

went to Municipal Council offices from where they learnt that, the 1st Applicant had written to the Council to transfer the lease in the names of Florence Poni as the new leasee.

Later the 2nd Appellant James Nyakuni, fenced the suit land and claimed that he had bought the suit land from Florence Poni who had bought it from the 1st Appellant. The 2nd Appellant during the time of the dispute over the land with Florence Poni was a tenant of the Respondent and was fully briefed by them on the development on the suit land as the problems unfolded.

The Respondents then sued the two Appellants and his Worship B. Wamala found in their favour hence this appeal.

There are 8 grounds to this appeal:-

1. The learned trial Magistrate erred in law to grant the orders to the Respondents on a matter pertaining to an estate of a deceased person when they were not the administrators of the same;
2. The learned trial Magistrate erred in law and fact when he decreed and ordered for cancellation of the title in the name of the 2nd Appellant on fraud which was not specifically pleaded nor proved by the Respondents;

3. The learned trial Magistrate erred in law when he granted an order of cancellation of the title of the 2nd Appellant which was not pleaded by the Respondents;
4. The learned trial Magistrate erred in law when he made an order of cancellation of the 2nd Appellant's title and decreed the allocation of and registration of titles in the names of the Administrators of the estate of the late Allahai Ibrahim Jabir, which exceeded his jurisdiction;
5. The learned trial Magistrate erred in law and fact when he cancelled a Certificate of title of the 2nd Appellant at the instance of the Respondent who were not the 2nd Appellant's predecessors in title;
6. The learned trial Magistrate erred in law and fact when he disregarded the 2nd Appellant's plea of being a bona fide purchaser for value of the property.
7. The learned trial Magistrate erred in law in admitting copies of documents as primary evidence and,
8. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence and thereby coming to wrong conclusions.

The appellants prayed this Hon court to:-

- 1) Allow the Appeal;
- 2) Set aside his worship B. Wamala's decree and reinstate the 2nd Appellant's name on the Certificate of Title and
- 3) The Respondents pay costs for both this hon. Court's and those in the lower court.

Mr. Kaleb Alaka, contended that the Respondents had no right of audience before court as against the 1st Appellant as they were not personal Representatives or the Administrators of the estate of the late Haji Ibrahim Jabir.

Mr. Alaka referred to Stroud's Judicial Dictionary P. 1517 and Halsbury's laws of England for 3rd Ed. Vol. 16 paragraph 121 & 174 for definitions of "*Personal representatives, 'Executors and Administrators'*".

He further contended that the 1st Respondent was not the natural son of Haji Ibrahim Jabir.

Mr. Alaka further contended that under 0.28 r(1) CPR only Trustees, executors or Administrators shall represent and the sue on matters concerning property.

He contended that there was no evidence that the letters of Administration

to Siama on 14/11/86 was ever revoked and the 1st Appellant included in the subsequent grant.

He submitted that if the 1st Appellant was ever granted letters of Administration for the estate of Ibrahim Jabir then the Respondents should have proceeded under S. 234 of the Succession Act and that the trial Magistrate should have bared them from prosecuting the suit.

On the pleadings, which contained allegations of fraud, learned Counsel Alaka cited;

1. Kampala Bottle Ltd -v- Damanico (U) Ltd SCCA NO 22/92 and
2. Alibhai and ors -v- Karia & ors 1995-98 Vo!. 2 EALR where the late Hon Justice Oder stressed that "*Where fraud is pleaded the particulars must be given/~* He argued that although the learned trial Magistrate was alive to this principle he, *nevertheless*, went ahead and found that there was fraud although the particulars of the fraud were not pleaded.

As concerns the 2nd Appellant, learned Counsel for the Appellants concluded that no fraud was pleaded against him neither were particulars of it attributed to him. Learned Counsel then cited in Section 176 RTA Cap 230 (The then 5.184 RTA Cap 205) which provides that no act of ejectment or other action for *recovery* of land shall lie or be sustained against a person who is the registered proprietor except on the ground of fraud. Counsel argued that the learned trial Magistrate Grade I did not consider whether the Respondents came within the contemplation of 5.176 of the RTA. (revised). Mr. Alaka further submitted that the 1st Respondent was merely a Managing Director of the family business called "*Arua Provisional Stores*"

but not an Administrator of Haji Ibrahim Jabir's estate as assumed by the learned trial Magistrate Learned Counsel Alaka further pointed out that the learned trial Magistrate G.1 exceeded his jurisdiction by purporting to cancel the 2nd appellant's title when it was only the high court which had the powers to do so under 5.177 RTA Cap 230.

Learned Counsel further submitted that the trial Magistrate disregarded the fact that the 2nd Appellant was a bona fide purchaser for value and that he had relied on the IGG's letter stating that the suit plot belonged to Florence Poni from whom he bought the suit plot. Counsel Alaka cited the case of **Lwanga -y- Registrar Titles (1980) HCB 25** to the effect that a bona fide purchaser's title was unimpeachable since a previous registered owner, through fraud, could pass a good title.

Learned Counsel, Alaka, further pointed out that the suit plot had first been allocated to the 1st Appellant who then wrote to the Municipal Council to transfer the said plot into the names of Florence Poni, which was duly done. He stated that when Florence Poni attempted to develop the plot, she was resisted by the Jabir family members inspite of the fact that they were informed by the Council that the plot did not belong to the late Haji Ibrahim Jabir. He continued that the Respondent had appealed to the IGG whose office confirmed that the plot belonged to Florence Poni. He submitted that the 2nd Appellant was propelled to purchase the suit plot from F. Poni on the strength of the Report by the IGG. Counsel argued that this very fact rendered the 2nd Appellant a bona fide purchaser for value.

Mr. Alaka went on to submit that apart from the letters of Administration which appeared to be the original, the other documents were photocopies tendered by persons who were not parties to the documents and that the learned trial Magistrate had relied on these secondary evidence contrary to section 65 of the Evidence Act Cap 129.

Learned Counsel for the Appellants further pointed out that PW1 had tendered in Exh. 6 when he was not a party to it and that PW3 had claimed to be a son of the late Ibrahim Jabir whereas he was not. He further pointed out that the letters of Administration bore the names of SIAMA JABIR whereas she had given her name as SIAMA EZAKARU - PW3 Counsel further submitted that the learned trial magistrate had relied on hearsay and failed to properly evaluate the evidence thus arriving at erroneous conclusion.

Learned Counsel Tebyasa Ambrose, for the Respondents, submitted that the suit plot had been occupied and used by the Respondents.

Counsel combined issues 2, 6 & 7 to his submission. He submitted that although the Respondents were not Administrators of the estate of the late Haji Ibrahim Jabir they were beneficiaries of that estate and as such had the capacity to commence proceedings against an Administrator who held the estate in trust for them.

He further submitted that under paragraph 174 of Halisbury's laws of England cited by learned Counsel for the Appellants, those entitled to

benefit from an estate were assignees and heirs of the deceased. He further stated that paragraph 175 of Halsbury's laws of England (supra) confirmed that Administrators of a deceased person's estate were merely Trustees for the benefit of the beneficiaries.

Learned Counsel challenged the WSD of the Appellant in the original suit as not having challenged the Respondents' position as litigants in the said suit. Learned Counsel cited:

Abdu Ssetayiga & ors -Y- Sulemani Semanda & ors SCCA No. 8/95 and Supreme Court decision in:

Israel Kabwa -Y- Martin Bazoba Musiga SCCA No. 32/95 at P.5 where it was stated that even when a person could not sue, as an administrator of the estate, his acts in preserving or protecting the estate were valid.

Learned Counsel went on to argue that even if the 1 & 2 Respondents were not the biological children of Ibrahim Jabir, they were beneficiaries of his estate as they had been brought up and fostered by the deceased.

Commenting on Stroud's Judiciary Dictionary cited by Counsel Alaka, Counsel Tebyasa that that dictionary in paragraph 3 stated:

*“The phrase legal representative and such cases will generally mean next of skin and **not** Executors or Administrators”*

He further stated that:

"The definition included persons who become entitled to the deceased's property. Counsel argued that under 0.31 of the CPR Executors and Administrators are entitled to sue but that the order was not mandatory and that a person with a rightful claim to the estate could sue or be joined as a party to a Suit. Counsel, Tebyasa, submitted that PW3 SIAMA JABIR, according her evidence had given authority, as someone having the Letters of Administration to the Respondents to sue the appellants. He further submitted that even without that authority, the Respondents had a right, under S. 178 RTA to commence an action for the recovery of property fraudulently appropriated. He added that a person deprived of land had a right to sue to recover it. - **See Israel Kaggwa** supra. Counsel stated that in the above case the Supreme Court held that even if the Respondent had no Letters of Administration, his right to the land did not depend on Letters of Administration. Counsel submitted that the evidence that the Respondent's father had used the suit land was not challenged in the lower court and that the Respondent's use of the land gave them the right over it. Counsel stated that the trial in the lower court was properly commenced and that substantive justice was done and therefore there was no need to address issues which were not canvassed in the lower court.

On ground 2, 6 and 7 & Counsel for the Respondents submitted that fraud was pleaded and proved to the satisfaction of the lower Court. He further submitted that the Appellants had not rebutted the evidence relating to fraud in the lower Court.

Mr. Tebyasa further stated that the 1st Appellant admitted in his evidence that although the family had commissioned him to apply for Plot 26 Adumi Rd; in the names of the four Administrators, i.e. Siama, Kicks & Hamed Amba and himself, he had applied for the plot in his individual names, thus therefore, admitting his own fraud. Counsel Tebyasa, quoted the WSD where in para 2 of the same the 1st Defendant and present 1st Appellant had stated "The 1st Defendant admits the contents of paragraph 2 of Plaintiff? see WSD.

Learned Counsel for the Respondent also pointed out that both Appellants/Defendants had their WSD claimed that each was the allocatee of the suit plot. He further stated that the 1st Appellant had used funds from Ibrahim Jabir's estate to pay fees and premium for the suit plot.

Learned Counsel further submitted that Florence Poni knew very well that the 1st Appellant had not secured the permission of the Jabir family to sell the plot to her as evidenced by their resistance to her developing the plot and for this reason she knew of the fraudulent acquisition of the plot by the 1st Appellant, Counsel stated.

Counsel further submitted that the 2nd Appellant, as a tenant of the Respondent knew about the controversy on the suit plot and was therefore a party to the fraud when he bought the plot from F. Poni. Counsel submitted that according to the evidence on record the 2nd Appellant tried to forcibly enter the suit plot and even took policemen to gain access and that he had all along known of the dispute on that plot.

Counsel contended that the Municipal Council should have transferred the land to F. Poni after all the building comments had been complied with by the 1st Appellant and not before. He further noted that the Appellant had sold the suit plot after only 2 years instead of the 5 years of the lease.

Counsel further submitted that the 2nd Appellant had admitted to the lower Court that he had known of the dispute over the Suit plot but that he thought the parties had settled it. Citing

Kampala District Land Board and anor.

Versus

Vanansio Babiweyake &. 30rs C.A No. 57 LOS

Counsel submitted that it was held in the above case that where a person knew that the land was occupied by another he should not apply for a lease of that land without recognizing the right of the occupant to exercise his right to be offered a lease; He contended that the 2nd Appellant knew that the Respondent had disputed F. Poni's ownership of the suit land and should not have bought it from her.

On ground No. 3 of the Appeal Counsel submitted that the Respondents had prayed Court for the restoration of their property and the relevant documents. He stated that since the Respondents had no legal representation their pleadings in Court was sufficient for them to obtain substantive justice.

He conceded that the learned trial Magistrate had no power to cancel the title as pleaded on ground 4 of the Memorandum of appeal but he stated that the learned trial Magistrate had the power to order a cancellation of the lease to the 2nd Respondent which would have automatically cancelled the certificate of Title. Counsel argued that this hon. Court should address itself on whether there was sufficient ground to warrant the cancellation of Title. Counsel further argued that the cancellation of Title by the learned trial Magistrate was a mere declaratory order which he had power to make and cited:

Ruzhmengyuwa -y- Ruzigana HCCS No. 48/76 Reported (1977) HCB 94 where it was held that a Magistrate Grade 11 had power to declare for the cancellation of Title. He argued that the order for cancellation of Title by the trial Magistrate was a mere irregularity which could be cured by an Appellant Court. He argued that this court could confirm the learned trial Magistrate's finding under S. 98 CPA and S. 33 & S. 142 of the Judicature Act.

On ground of Appeal No. 5, Counsel for the Respondents contended that the Respondents were customary tenants or bona fide occupants under S. 29 (3) (a) of the Land Act because they were settled on that land through

Haji Ibrahim Jabir by the land Commission.

As to the argument by Counsel for the Appellant that the 3rd Respondent was not the son of the late Ibrahim Jabir. Counsel prayed court to take judicial notice of the African custom of referring to nieces and nephews as daughters and sons respectively. To the objection that the person to whom letters of Administration was granted was not to PW3, who gave her name as SIAMA EZAKURU, and not SIAMA JABIR, Counsel for the Respondent countered that in the case of **B.O.B. Okello Oryem** (No. citation given). It was held that one person could have several names.

On the Counsel for the Appellant's assertion that the learned trial Magistrate relied on hearsay, Mr. Tebyasa submitted that the hearsay complained of had not been specified by Counsel.

Counsel Tebyasa urged this hon. Court to rely on the fact that the pleaded fraud was proved and particularized in the evidence in the Lower Court and that this court should ignore the procedural irregularities in the lower court's proceeding and base itself on whether substantive justice was done. Counsel cited, **Makula International-versus- Cardinal Nsubuqa** [1982] HCB n.

Counsel further stated that some grounds of appeal were academic and this hon. Court should not entertain them as was decided in:

Jasper Singh Sanqhahu -versus- Noble Builders Ltd SCCA No 13/02

P.4 & 5.

Citing: **Kakooza John Baptist -v-Electoral Commission & Anthony Yiga C.A Case No. 106.** Counsel Tebyasa prayed Court to reject all grounds not canvassed in the lower Court and that this hon. Court shall look at the Appeal in its totality and in respect of Art 126 (2) (c) of the Constitution Learned Counsel prayed Court to dismiss the Appeal.

The background to the suit land is rather checkered, and this has some bearing on the status of Plot 26 Adumi Road and its relationship to the JABIR family as represented by the Respondents. PW6, Abdu Twalib Kassajja testified in the trial that Nasur Ali Habuba Munyoro had "*given the /andNto* Alahai 1. Jabir who in 1969 had married Habuba Alahai Jabir who was Munyoro's daughter named Apio. The witness testified in the lower Court that Alahai Ibrahim Jabir had given Habuba A.N Munyoro shs 800/= "*as a token of thanks*" Now it was not elaborated whether the 800/= was for a Sale/gift for the land or whether it was in a form of dowry for Apio, the daughter of Nasur A. Habuba Munyoro.

PW6 stated that later on Alahaji I. Jabir leased this land and the witness averred that he could show the mark stone and that there were eucalyptus trees planted there. According to this witness the land belonged to the late A.1. Jabir. In cross examination the witness stated that the suit land was given to the late Jabir A.1. in 1972. The witness stated that there was a written document when the suit land was given to A.I. Jabir. The witness claimed to have been present when the transaction took place and saw witnesses to the transaction appending their names to the document. His father Twalib Kassajja and a sister to Nasur Habuba Munyoro were witnesses. He stated that the documents in respect of the suit plot were

signed in April 1975.

PW4 testified that in 1975 she had come to work for the late A.I Jabir and later become his wife and bore him a child in 1976. She stated that the late Jabir had documents to the suit land and those which were not in dispute. She further testified that after the late Jabir was killed; all his documents were passed to Mama Siama. PW4 further stated that the suit land used to have a house with a store and was used as a parking yard and a garage. She stated that Habuba Munyoro had given the land to Alahaji Jabir in the presence of her children one of whom was Nasur Ali. She testified that she had been shown a document concerning the suit land but she did not read it. She further testified that when she got married to the late A.I. Jabir he was already in possession of the suit land and he had put up a house and a parking yard on it.

PW3 Mama Siama testified that she was the head of the Jabir family and that he 1st Appellant/Defendant was her brother and the 2nd Defendant/Appellant was tenant of the Jabir family. She testified that the suit plot had been used by the late Jabir as a parking yard. She testified that the suit plot also had a temporary structure on it which was used as a store, for charcoal and for slaughtering animals.

She further testified that she was illiterate and had invited the 1st Appellant, Andiga, to help her with running the late Jabir's estate. She averred that because of her illiteracy she had surrendered all the files to Andiga, the 1st Appellant/Defendant. She stated that to her knowledge the Suit plot formed

part of the late A. I. Jabir[s estate. She further averred that the 1st Appellant had informed her that he had sold the suit plot to Florence Poni and that the 2nd Appellant had confronted her accusing her of blocking his attempts to develop the suit plot.

PW3 further averred in cross-examination by the 1st Appellant that he had approached her and requested her to find money to refund to Florence Poni and she accepted but that the 2nd Appellant then sued her over the suit land. She further stated that Andiga, the 1st Appellant personally used the money from the sale of the suit land and then wanted the family to refund Florence Poni.

The reason I have gone to the genesis of plot 26 Adumi Rd was to find out whether the suit plot was held under a lease or was a customary tenure. It is unfortunate that no documents were availed to court regarding this plot. PWI and PWII the present Respondents testified that the 1st Appellant had carried out all the documents out of the office on the pretext that he was doing some work at home so no document pertaining to this land has been made available.

It is not clear whether Habuba Munyoro was a tenant on this land and sublet it to the late A.I.Jabir or whether she had held this land under a customary practice and therefore had the power to give it away absolutely. In 1974 when the land was allegedly given to Jabir, that land might have been public land. By the Public Land Act, a person could, however, apply for a lease on public land. Did Habuba Munyoro apply for a lease? This is

a moot question.

By the Land Reform Decree 1975 all land in Uganda became public land and one had to apply to a sub-county land board to get permission to settle on the land or to get a lease for it.

However, from the evidence adduced at the lower court, it appears that A.I. Jabir was in possession of Plot 26 Adumi Rd from 1974 1980 when he had to run to the Congo because of the war. After his death in Arua in 1984. His sister and the Administrator of his estate took over the suit plot as part of his estate in 1984.

On 15/4/1975 A.I. Jabir applied to the Provincial Commissioner for Lands and Surveys in Gulu for allocation of Plot 26 Adumi Road in Arua. A copy of the letter was given to the Ag. Town Clerk, Arua Municipal Council and to the DCCND Arua. There does not seem to have been any response of any kind to this letter. The 1st Appellant, DWI had admitted in his evidence that it was he who drafted that letter of application of behalf of A.I. Jabir and that it was addressed to the wrong authority. *"Infact I am the one who wrote that /etter//* 1st Applicant on P.27 of proceedings.

The 1st Defendant as OWI testified that he had applied for the suit plot in 1988, 5th April - Exh. D.1 but was not successful as the Plot was allocated to Asa Nasulu Ali who transferred it to James Yeka Azio - Exh. 0.2.

D. W 1, the 1st Appellant stated that he again applied for the suit Plot on 26/5/93 and it was allocated to him. The Respondents seemed to have been in blissful ignorance of the fact that plot 26 Adumi Rd, the suit plot, had been located to Asa Nuru and later to James Yeka Azio.

It seemed the two never took steps to attempt to develop the plot because the Respondents did not even mention them in their testimonies.

PW1 and PW2 testified that in 1988 Andiga, the 1st Appellant informed the family that he wanted me to apply, on behalf of the family for the extension of leases for plots 1-3, and was given authority to apply for lease extension of all the late A.I. Jabir's bUildings on lease. This appeared to have been the time when he applied unsuccessfully for the suit plot 26 Adumi Rd.

In 1993 T. Andiga, the 1st Appellant informed the family that the Municipal Council wanted Plot No 26 Adumi Rd to be leased and developed but not as a parking yard. Andiga informed the family, according to PW1/s testimony Pages 3-4 proceedings that he would apply for a lease of Plot 26 Adumi Rd on behalf of the family and use land titles of the family plots to borrow funds for developing the suit plot.

However, when Andiga, 1st Appellant, showed the family the application form for the lease, it contained only his names. When questioned, he stated that the two other co-Administrators, Kicks and Amber were dead and Siama was illiterate so the family was satisfied and continued to believe that plot 26 Adumi Rd was to be applied for on behalf of the estate of A.I.

Jabir.

It was in 1996 when Florence Poni appeared on Plot 26 Adumi Rd that the family found out that the suit Plot Had been sold to her by the 1st Appellant. The family resisted. The 1st Appellant then asked the family to refund Poni the purchase price, it refused because it was the 1st Appellant who had received the money.

It has been established, by evidence, that the late Ibrahim Jabir intended to acquire a lease to plot 26 Adumi Rd. The letter requesting for a lease of the above plot was written to the wrong authority i.e. The Provincial Commissioner for Land and Surveys in Gulu but the letter was also copied to the Town Clerk, Arua Municipality who could have, tried he so wished, corrected the Applicant as to which was the lawful authority to apply to.

However, the Respondents as members of the family of the late Ibrahim Jabir were under the misconception that plot 26 Adumi Rd was part of the estate of I. Jabir. The Plot had been in their possession since 1974 with a break of four years then from 1984 1996 i.e. for at least 17 years in total.

It seems their possession/occupancy was not interrupted even when the plot had been leased to Asa Nuru, Yeka Azio and Andiga in 1994. Even the Municipal Council did not alert them by any notice that it was leasing the land to another person so they occupied plot 26

Adumi Rd in blissful ignorance of the true position until 1996 when Poni staked a claim on the plot.

Even when the Jabir family went into exile in 1980 - 1984, there is no evidence that anyone else ever occupied the suit plot in their absence.

The 1st ground of appeal that the learned trial Magistrate erred in law to grant the orders to the Respondents as a matter pertaining to an estate of the deceased person when they were not the Administrators of the estate.

From the record of proceedings, this issue was not raised in the lower court and the learned trial magistrate did not pronounce himself on it.

However, the 1st Appellant had testified in the lower that he had no problems with the Respondents suing him as they had the authority from their aunt Siama, an illiterate, who had the letters of Administration of the estate of the late Ibrahim Jabir. The 3rd Respondents is the son of the late Jabir. The other Respondents are the nephews of the late Jabir and were brought up by him. According to the testimony of PW3 Siama. The Respondents are also beneficiaries of the estate of the late Ibrahim Jabir (P.14 of the Proceedings PW3). The Respondents had interest on Plot 26 Adumi

Rd as beneficiaries and occupants of the Suit Plots since their uncle "acquired" the use of it in 1974.

In **Andrea Lukwago - v - The Registrar of Titles Misc. Cause No. 7/77** it was held that the word proprietor not having been defined by RTA - anyone with a registrable interest in the Land whether legal or equitable interest could sue - **See also Gibbs -v-Messr (1891) A.C. 248.**

In this case the Respondents were defending their rights by virtue of their having occupied the same since 1984, as beneficiaries of the estate of the late Ibrahim who was given the Plot by Habuba Munyoro in 1974.

It has also been contended by Counsel for the Appellant that the suit Plot did not form a part of the estate of the late Ibrahim Jabir, if this is so then the Respondents could sue as the lawful or bona fide occupants or bear occupants of the suit plot by virtue of their having occupied the Plot since 1984 in the case of being neither a lawful or bona fide occupants, the Respondents would recourse to S. 30 (1) of the Land Act 1998 which provides thus.

"Where a person has occupied and utilized or developed any land unchallenged by the registered owner of the land or agent of the registered owner for less than 12 years and therefore does not qualify to be a bona fide occupant under 5.29, that person shall take all reasonable steps to seek and identify the registered owner of the land for the purpose of undertaking negotiations with that person concerning his/her occupation of the land."

This is what the Respondents were doing when they authorized the 1st Appellant to obtain a lease for the Suit Plot.

In **Israel Kabwa -y- Martin Banoba Musega SCCA No. 52/95**

P.8Justice Tsekooko J.S.C appeal on the ground that the Respondent was not a holder of Letters would fail:

"Even if no letters of administration had been obtained, because of the Respondents right to the land and his developments thereon do not depend on letters of administration."

Justice Tsekooko also stated: (Supra)

"Even if it were assumed for the sake of argument that the Respondent could'nt sue, his conduct in preserving or protecting the estate are valid. "

I believe the Respondents were protecting the estate of the late Ibrahim against an *"unscrupulous//administrator* of the estate. Ground one of the appeal therefore fails.

On the ground two of the Appeal the Respondent pleaded fraud in their Plaintiff in paragraph 6 and gave particulars in the same paragraph. Thus:-

"The 2nd Defendant (2nd Appellant) knowingly and without colour of right accepted to buy the said plot from the 1st Defendant"

In paragraph 7 of the Plaintiff the Respondents stated that:

"The matter was reported to the authorities but the two defendants (Appellants) ignored."

The 6th paragraph of the Plaint followed from paragraph 5 where it was stated:

"Towards the end of 1996 the 1st Defendant (1st Appellant) fraudulently and without consent and knowledge of the Plaintiffs (Respondents) obtained the land Title of the above mentioned land plot No. 26 Adumi Rd and sold it to the ;rd Defendant'~ (i.e. 2nd Appellant)

The facts which emerged were that the 1st Appellant sold the Plot to F. Poni who later sold it to the 2nd Appellant. The facts which revealed fraud were that the 1st Appellant applied in his own names and told lies to the family about his reasons for acquiring the Plot in his names. He then wrote to the Municipality to process the title in the names of Ms. Poni. This, he did without informing the family. The Respondents only saw F. Poni coming with building materials to construct on the plot. The 1st Appellant wanted to defraud the family of the plot.

As regards fraud by the 2nd Appellant, the 1st PW1, Mohamed Jabir, 3d respondent, testified at p. 12 of the Proceedings:-

"James (Nyakuni) knew before he purchased the land (plot 26 Adumi Rd) that it was under controversy. He is a tenant on our land/house and his shop is next to our office.

"He used to ask us about all the happenings and we could relate everything to him".

This testimony was never challenged by the 2nd Appellant.

At page 6 of the Proceedings PW1 stated thus:-

"Florence Poni knew that the plot belonged to the family as the family approached her and other people also told her/~

On P.13 of the Proceedings when PW1 was cross-examined by the 2nd Appellant he stated:

"The document we got with you (2nd Appellant) were the ones for renewing the lease ... the most important were the lease offer for the same plot, the land titles to the plot. The documents were in Andiga Jabirs name (i.e. 1st Appellant). We accused you together with Andiga (ft Appellant) because you also grabbed our land."

This shows that there was some sort of collusion between the Appellants. In his evidence in cross examination the 2nd Appellant testified thus.

"When doing a transaction you call someone you trust as a witness but I did not trust Andiga (f Appellant) that is why I did not call him to witness my purchase from Poni."

When the 2nd Appellant was asked whether Poni ever informed him as to why she was selling the plot to him. He answered:-

"It was my understanding with the seller and that is why I bought"

This could be interpreted in two ways. It could be that he colluded with Poni to buy the land or that she told him the reason why she was selling which was kept as a secret between the two of them.

On the same P.31 the 2nd Appellant testified thus:

“In the file in the Municipal Council, I saw the letter written by Poni to Andiga. I read the letter the letter indicated that you threatened Poni... It is true that in the letter Poni had stated that Andiga had deceived her that he was not a member of your family and that she had by her investigation discovered that he was the head of the family.”

On the same page 2nd Appellant continued:-

"All the three reports of the IGG gave me the power to proceed and purchase the plot the reports were dated 24/8/99/ 10/4/2000 and 12/7/2000.

"All people occupying vacant plots in the town are not owners ... they are squatters and occupying the and temporarily.

"That is why I did not contact your family despite the fact that you were using the plot as a workshop."

These are various reasons advanced by the 2nd Appellant for buying the Suit Plot.

These show that the 2nd Appellant was fully aware of the position of the plot and the dispute over it when he purportedly bought the plot from Poni.

The 2nd Appellant's testimony clearly shows that he was aware of the first Appellant's fraudulent sale of the plot to F. Poni. He testified that he did not trust the 1st Appellant and he acknowledges the fact that F. Poni had, in her

letter, which he read, bitterly complained of the 1st Appellant's dishonesty towards her.

The learned trial Magistrate in his judgment found that the 1st Appellant had applied for the Plot with a corrupt intention to defraud the family. The Magistrate stated:

“As an administrator of the late (Jabir 1.) persons estate and a managing director of the same family company, applying for land in which the family itself has interest, is to say the least, highly dishonest and fraudulent Surely such conduct cannot be upheld by a Court of Justice.”

On fraud allegation concerning the 2nd Appellant the learned trial Magistrate pronounced himself as follows.

"I have not believed Nyakunis (2nd Appellant) evidence that he purchased the land on the strength of the reports of the IGG and the documents he saw on the file in the Municipal Council. It should be noted that even after the IGGs report the Plaintiffs' (Respondents) family continued showing signs of dissatisfaction an in fact resisted attempts to develop the land. It is therefore untrue for Nyakuni who was even on the ground to say he was satisfied the matter had been finally settled. //

In Lukwago -v- The Registrar of Titles M.C. No 7A//77 (Supra) it was held:-

"Bonafide purchaser for value who obtains title from a fraudulent

person

has good title so long as he had not been a party to the fraud or had notice of it.”

In Marko Matovu -v- Mohammed 5severino and anor [1979] EACA & HCB 174. It was held:

"Knowledge of the other person's rights or claims over land and deliberate acquisition of a registered title in the face of protests is fraud.”

In John Katwiremu -Y- William Katwiremu &. ors [1977] HCB 187 it was held:-

"If a person procures registration to defeat an existing unregistered interest on the part of another person of which he is proved to have had knowledge then such a person is guilty of fraud. "

The 2nd Appellant knew that there was dispute on Plot 26 Adumi Rd. He was interested in what was happening about the plot as PW1 stated in the lower Court. PW1 testified that he wanted to know what was happening and the Respondents told him everything.

Under the circumstances even if fraud was not specifically pleaded, it would be incumbent on a court of justice to find that there was fraud under 5.98 CPA and Art 126 (2) (c) of the Constitution.

The ground of appeal stating that fraud was neither pleaded not proved fails and the 2nd Appellant found not to have been a bona fide purchaser for

value without notice of the fraud.

Ground 3 of the appeal is dismissed.

On ground 7 of the Appeal is that the trial Magistrate admitted in evidence copies of documents instead of the originals.

Copies of documents, some of which were ineligible were submitted by both parties according to the records. The parties were not represented and none of them challenged the documents being copies. The Magistrate did not make it an issue which may indicate that he was satisfied with them.

Since there is no record to the effect that the documents were challenged, I find this ground superfluous and therefore dismiss it.

Ground eight that the Magistrate failed to properly evaluate the evidence and came to a wrong conclusion.

This has not been apparent on the face of the record. From what I have read the learned Magistrate took a lot of pain in evaluating the evidence and even visited to locus in quo where he was told by LCI Chairperson of the area that the Respondents had occupied the suit plot for over 10 years.

He analysed the issue of fraud according to the evidence and came to the conclusion that the Appellants were fraudulent in their dealing with the suit plot. He found that the 2nd Appellant fore knowledge of the interests of the Respondents in the suit land before he purchased it from F. Poni.

Consequently the court finds as follows:

1. The Cancellation of Title by the Magistrate with regard to the 2nd Appellant was ultra vires the Magistrate's jurisdiction and is thus set aside.
2. The Registrar of Title is hereby ordered to cancel the 2nd Appellant's name from Title. Since it was fraudulently acquired.
3. No. 26 Adumi Rd shall revert to the Respondents who should acquire a legal lease for it since they have been in occupation.
4. The Appellants shall meet the costs of this appeals.

The Appellants have a right to appeal within 14 days.

Mary LD.E. Maitum

JUDGE 11/9/2007

Judgement delivered in the presence of:

Mr. K. Alaka for the Appellants

Mr. A. Tebyasa for the Respondents

Ms. Eva Namutebi -Court Clerk

Mary LD.E. Maitum

JUDGE 11/9/2007