

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**HIGH COURT CIVIL SUIT NO.162 OF 2006**

**DAVID ARTHUR BAGAMBE**

.....

**PLAINTIFF**

**VERSUS**

1. **CHIEF REGISTRAR OF TITLES**

2. **PHILIP DUMBA**

3. **DAVID LUZIGE**

4. **SOLOME KAWEESA**

.....

**DEFENDANTS**

**JUDGEMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

The plaintiff through his lawyers Ngaruye Ruhindi, Spenser & Co. Advocates sued the defendants jointly and/ or severally seeking among other declarations and orders that:-

- (a) That the plaintiff's name be restored to the White page.
- (b) That under section 140 (2) of the Registration of Titles Act, without a Will or settlement a caveat purporting to be that of a beneficiary can lapse.
- (c) That without a hearing envisaged under section 91 of the Land Act, and without calling for duplicate certificates of title for cancellation, the Chief Registrar of Titles could not cancel the plaintiff's registration from the White page.
- (d) That the notice served on the plaintiffs had not expired at the time his certificates of title were cancelled supposing mere notice would lead to cancellation notwithstanding (C) above.
- (e) General damages.
- (f) Permanent injunction.
- (g) Market value of the 12 acres of land at Sseguku to be paid by the estate.
- (h) In the further alternative and without prejudice to the foregoing, refund of the price coupled with 35% interest rate from the time of purchase till payment in full and market value of the developments.
- (i) Costs of the suit.

The plaintiff's pleaded cause of action against the defendants in the plaint is that on or about the 2<sup>nd</sup> day of June, 2004, the 4<sup>th</sup> defendant as an administrator of the estate of the

late Charles Makumbi Ddumba did dispose by way of sale the suit property to the plaintiff and rendered vacant possession. That no registered encumbrances existed on the title. And that subsequently in a move that can at best be described as fraudulent or collusion or/ and conspiracy the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants lodged a caveat on the title immediately after the payment of the purchaser price and such was lodged on the 4<sup>th</sup> June, 2004 after the agreement after the payment of the purchaser price. That the said such was lodged on the 4<sup>th</sup> June, 2004 after the agreement of 2<sup>nd</sup> June, 2004, an act that was malicious. The particulars of malice were set out in the amended plaint.

Further, the plaintiff contends that the Chief Registrar of Titles does not have powers to cancel a registered interest under section 91 of the Land Act basing on section 140 (2) of the Registration of Titles Act if there was no will or settlement before a caveat was lodged but which caveat was subsequently lapsed with a notice to the caveator.

And, lastly that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants being beneficiaries to the estate of the deceased cannot purport to agree to dispossess the plaintiff of the land he acquired lawfully as a bonafide purchaser for value without notice of any encumbrance or /claim from the 3<sup>rd</sup> party. That the plaintiff went ahead to take possession of the suit property and passed interest to other users.

In reply to the amended plaint, the 4<sup>th</sup> defendant, Solome Kaweesa, through her lawyers, contended and averred in the 6<sup>th</sup> paragraph of her written statement of defence that:-

- (a) On the 18<sup>th</sup> day of April, 1991, the 4<sup>th</sup> defendant was appointed the administrator of the estate of the late Charles Makumbi Ddumba by the Chief Magistrate's Court of Mengo vide cause N0. 54 of 1991.
- (b) That having been appointed Administrator of the deceased's estate, the 4<sup>th</sup> defendant was empowered to dispose any property of the deceased either wholly or in part, in such manner as she may think fit subject to the provisions of Section 27 of schedule 2 of the Succession Act which section does not apply to the suit property.

- (c) That having been conferred or empowered to dispose any of the deceased's property, the 4<sup>th</sup> defendant on 2<sup>nd</sup> day of June, 2004 acting within the law rightly sold the suit property to the plaintiff and duly signed the transfer forms in favour of the plaintiff upon completion of the payment of the consideration which was agreed at Shs. 96, 000,000/= (Ninty six millions).
- (d) That the 4<sup>th</sup> defendant having sold the suit land to the plaintiff duly recognizes the plaintiff as the owner of the said property and registered proprietor upon registration. The 4<sup>th</sup> defendant will add that all the proceeds from the sale were utilized for the benefits of the beneficiaries of the estate and other costs related to the administration of the estate. (Underlining is mine for emphasis)
- (e) That the 4<sup>th</sup> defendant has never connived with any of other defendants to dispossess the plaintiff of ownership that was lawfully acquired. The 4<sup>th</sup> defendant will add that the caveat lodged by Phillip Ddumba and David Luzige was done without her blessing, consent or justification. (Underlining is mine for emphasis)
- (f) The 4<sup>th</sup> defendant shall further in reply to paragraph 4 aver that the consent entered between herself, the 2<sup>nd</sup>, and 3<sup>rd</sup> defendants is not binding on the plaintiff and does not affect his interest in the suit property which ceased to be part of the estate of the late Makumbi Ddumba upon the sale and registration of the plaintiff. The 4<sup>th</sup> defendant shall add that the said consent was not based on the merit of the Civil Suit N0. 532 of 2004 but a compromise of the parties for the sake of family unity. The consent referred to was not entered fraudulently with the intent to dispossess the plaintiff since by the time the consent was signed, the plaintiff was the registered proprietor implying that the suit property had already passed on to him and was no longer part of the estate of the deceased. (Underlining is mine for emphasis)
- (g) That the 4<sup>th</sup> defendant has at all times regarded the plaintiff as a bonafide purchaser who lawfully acquired the suit and therefore has no justification to ask the 1<sup>st</sup> defendant to cancel the plaintiff's certificate of title. The 4<sup>th</sup> defendant will

add that the 1<sup>st</sup> defendant acted within his authority and within the law in removing the caveat lodged by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and not erroneously as admitted by the 1<sup>st</sup> defendant section 140 (2) of the Registration of Titles Act does not apply to the removal of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' caveat given the fact that the late Charles Makumbi Ddumba died intestate (without making a Will), there was no settlement at the time of the sale and registration or any orders from court stopping the transaction between the plaintiff and the 4<sup>th</sup> defendant. (Underlining is mine for emphasis)

- (h) That the 4<sup>th</sup> defendant did not collude with any of the defendants to cancel the plaintiff's title and was not even aware that the 1<sup>st</sup> defendant had cancelled the plaintiff's name from the mother title without consequential orders from the High Court as required by law. The 4<sup>th</sup> defendant will add that the consent filed in the Chief Magistrate's Court of Mengo arose from the Consent Judgment that was drafted by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and all the issues affecting the estate of the late Makumbi Ddumba were raised. (Underlining is mine for emphasis)
- (i) That the new Letters of Administration granted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants excludes all land the 4<sup>th</sup> defendant sold to the plaintiff and these defendants do not have any right over the same since the property had passed before they acquired the letters of administration. (Underlining is mine for emphasis)

The 1<sup>st</sup> defendant through her office, Office of Titles, Kampala Mailo office, Century House, filed a Written Statement of Defence, denying all the allegations in the plaint. Its defence has no mention at all on the pleadings of the 4<sup>th</sup> defendant which in totality are against the 1<sup>st</sup> defendant.

Whereas, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, through their lawyers, Barya, Byamugisha & Co. Advocates filed their Written Statement of Defence on 30<sup>th</sup> August, 2006, and an amended defence dated 13<sup>th</sup> July, 2007 denying all the allegations against them by the plaintiff. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants' defence does not make any mention in form of a challenge to the 4<sup>th</sup> defendant's defence to the plaint, which is dated 25<sup>th</sup> August, 2006,

and the 4<sup>th</sup> defendant's amended Written Statement of Defence to the amended plaint, dated 6<sup>th</sup> October, 2006, which in effect were, in my view, intended to destroy the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' defences. In this judgment an analysis of the defences to the plaint of parties jointly and / or severally sued which are contradicting shall be made.

The gist of the admitted facts by the parties is that all the parties agreed that the plaintiff bought the suit land from the 4<sup>th</sup> defendant who was at the time the administrator of the estate of the late Charles Makumbi Ddumba. That the plaintiff subdivided the suit land which initially was plot 15, Block 459 creating plots 84-127, constructed roads but was initially prevented from transferring the suit land as there was a caveat lodged by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants which was later lifted and the plaintiff got registered as proprietor. That the 1<sup>st</sup> defendant in the month of August, 2005 gave notice to the plaintiff that his registration was to be cancelled unless he produced a Court order, which he did but nonetheless the 1<sup>st</sup> defendant claimed it was obtained after the 21 days had expired and the plaintiff's registration on the title was accordingly cancelled on 26<sup>th</sup> October 2006. And that notwithstanding that the order was registered on 16<sup>th</sup> August 2006.

The parties agreed to the following issues:

1. Whether the plaintiff has a cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
2. Whether the plaintiff had capacity to cause the 1<sup>st</sup> defendant to issue notice to caveator.
3. Whether the transfer into the names of the plaintiff was lawful or valid.
4. Whether the cancellation of the plaintiff's name by the 1<sup>st</sup> defendant was lawful.
5. Whether the parties are entitled to their respective relief's sought.
6. Whether the acts of the 4<sup>th</sup> defendant prior to the annulment of the grant was valid.
7. Whether the plaintiff failed to mitigate and is privy to the loss.
8. Whether the transaction was illegal or of no effect.
9. Whether clause 4 (2) of the sale agreement prohibits the plaintiff from bringing the action against the defendants save the 4<sup>th</sup> defendant.

At the hearing, the plaintiff called two (2) witnesses (the plaintiff (PW1) and Isingoma Musana John (PW2)) who testified for the plaintiff. The 3<sup>rd</sup> defendant (DW1) testified and Mr. Deo Bitaguma (DW2) testified for both 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The 1<sup>st</sup> and 4<sup>th</sup>

defendants did not testify and no evidence was called on their behalf in defence to the suit.

It is amazing that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants chose not to adduce evidence in support of their respective pleadings. The said defendants never availed themselves for cross-examination on the evidence they had intended to adduce. The plaintiff and his only witness adduced evidence against the said three (3) defendants. The said three (3) defendants never adduced evidence in rebuttal against the plaintiff's evidence. Therefore, I find that whatever was said about the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants and was not contravened in defence are taken to have been admitted by the said three (3) defendants.

The 1<sup>st</sup> defendant in her defence stated that whatever actions were taken were done lawfully and therefore denied that there was a cause of action against her. In her paragraph 5 of her Written Statement of Defence, it is stated that she cancelled the registration of the plaintiff among other things, on the basis of the court orders of 16<sup>th</sup> September, 2005 (Annexure "CR1") of 28<sup>th</sup> September, 2005 (annexture "CR2") collectively, and the Letters of Administration vide High Court Administration Cause No. 588 of 2006 (annexture "CR4"). That the 1<sup>st</sup> defendant also realized that the notice to caveator vide annexture "CR5" was according to decided cases null and void and of no legal effect. From the foregoing, I find it necessary to comment on the annextures of the 1<sup>st</sup> defendant. Annexure CR1 is an order of Registrar of the High Court granted exparte on 16<sup>th</sup> September, 2005. It ordered that:

- “(a) that the caveat lodged on Busiro Block 459 plot 15 be extended until the hearing and final disposal of Civil Appeal N0. 1 of 2005, arising from Family Cause Civil Suit N0. 1 of 2005.**
- (b) It is further ordered that if there are any steps to lift the said caveat it be stayed.**
- (c) That the costs of this application be in the cause”**

This order of the Court is very clear; it did not order the cancellation of the plaintiff from the register and the Land title as opposed to the pleadings by the 1<sup>st</sup> defendant in her defence.

Annexure CR 2 is a decree on appeal which was granted by Hon. Justice Eldad Mwangusya, dated 28<sup>th</sup> September, 2005.

It reads:-

- “ 1. The appeal be and is hereby allowed.**
- 2. The Ruling /Order of His Worship Anguandia G. Opifeni Chief Magistrate dated 8<sup>th</sup> April, 2005 dismissing Civil Suit N0. 532 of 2004 is hereby set aside.**
- 3. The suit (Civil Suit No. 532 of 2004) be remitted to Mengo Chief Magistrate’s court for trial.**
- 4. The interim order passed on 16<sup>th</sup> September 2005 in Miscellaneous Application N0. 73 of 2005 between the parties hereto and the Commissioner for Land Registration extending the appellants’ caveat lodged on Busiro Block 459 plot 15 and ordering stay of all or any steps by any body to lift the said caveat, be stayed until the final disposal of Civil suit No. 532 of 2004 of the Chief Magistrate Court of Mengo.**
- 5. Each Party bears its own costs in this appeal.”**

It is noted, too, that this decree on appeal was not ordering the 1<sup>st</sup> defendant to cancel the registration of the plaintiff from the disputed land title.

Annexure CR3 is the Letters of Administration that was granted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by the High Court of Uganda at Kampala on 15<sup>th</sup> June 2006. This grant was not ordering the 1<sup>st</sup> defendant to cancel registration of the plaintiff from the disputed title.

Annexure CR4 is a letter from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, dated 26<sup>th</sup> May, 2005, which was an application to remove a caveat lodged on Busiro Block 459 Plot 15. It reads:-

**“This is to let you know that I have received an application to remove your caveat entered on the registered Book under instrument KLA 261308 of 24<sup>th</sup> June 2004. Take notice that I will proceed to remove the caveat unless within 60 days from the date of**

**service on you hereof you produce an order of the High Court to delay or stop my proposed course of action.**

**Kaahwa Edward Tibesigwa**

**(Commissioner for Land Registration)”**

This letter, too was not ordering the 1<sup>st</sup> defendant to cancel the registration of the plaintiff from the suit land Title.

It is the evidence of the plaintiff that, the 1<sup>st</sup> defendant after being prompted by exhibit P26 (letter dated 13<sup>th</sup> July 2006). She issued a notice to the plaintiff (which is annexure CR6 to her defence) undated which was received by Posta Uganda according to the card on 7<sup>th</sup> August 2006 and which the plaintiff received on 9<sup>th</sup> August 2006 and obtained an order of the Court (exhibit P21) stopping the intended course on the 15<sup>th</sup> August 2006 and filed it on 16<sup>th</sup> August 2006. This evidence was not challenged by the 1<sup>st</sup> defendant and even the rest of the defendants. It is therefore, my finding that the 21 days in the notice by the 1<sup>st</sup> defendant had not expired by the time the plaintiff obtained and registered the Order. That when the plaintiff's Court Order was registered, only 10 (ten) had elapsed. Wherefore, the 1<sup>st</sup> defendant received the Court Order in time which for the reasons pleaded against her in the plaint which she did not challenge. The 1<sup>st</sup> defendant failed to hear any evidence from the plaintiff as required by section 91 of the Land Act, ignored and went ahead to cancel the registration of the plaintiff from the disputed land title. Such 1<sup>st</sup> defendant's actions were contrary to the law.

Further, I agree with the plaintiff and his counsel to the extent that, even the 1<sup>st</sup> defendant erred in law, when she failed to comply with section 91 of the Land Act. There is no way the 1<sup>st</sup> defendant should have cancelled the registration of the plaintiff from the title and the Register Book without giving the plaintiff a hearing. To that extent, the action of cancellation of the registration of the plaintiff was void.

In the result, all the aforesaid analysis of the plaintiff's case against the 1<sup>st</sup> defendant settles issues numbers 2, 4 and 5 in favour of the plaintiff as against as against the 1<sup>st</sup> defendant.



I now turn to the major issue in my view, in this litigation, that is, of whether the acts of the 4<sup>th</sup> defendant prior to annulment of the grant are valid.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants submitted that in respect of the instant case, this is restricted to the act of Solome Kaweesa selling the suit land to the plaintiff as an administrator of the estate. That the act of sale in itself was valid. Mr. Byamugisha, Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants argued in his submissions that the registration of the plaintiff as owner for the reasons they have already discussed was not proper. That the plaintiff failed to lodge a caveat under section 139 (1) of the Registration of Titles Act to protect his interests before registration.

In further submission by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants noted rightly in my view, that his careful perusal of the 4<sup>th</sup> defendant's amended Written Statement of Defence might indicate that the 4<sup>th</sup> defendant largely supported the plaintiff's case. That so did her skeleton legal arguments on points of law. Having observed that, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not invoke the discretion of the court to allow him to call her (4<sup>th</sup> defendant) for purposes of cross-examining her on the statements in her defence which statements waters down the 2<sup>nd</sup> and 3<sup>rd</sup> defendants pleadings in their defence to the plaintiff's suit. Therefore, the 4<sup>th</sup> defendant's statement in her defence remained unchallenged as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. In any case, I do not see any reasons that could be advanced by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants when their Counsel in his submissions admitted that the 4<sup>th</sup> defendant's act of sale itself was valid.

In the 4<sup>th</sup> defendant's Written Submissions, her counsel submitted that the parties agreed in clause 1 of the agreed facts that on 18<sup>th</sup> April 1991, the 4<sup>th</sup> defendant was appointed the administrator of the estate of late Charles Makumbi Ddumba by the Chief Magistrate of Mengo vide Administration Cause N0. 54 of 199. That the parties still agreed in clause 33 of the agreed facts that the 4<sup>th</sup> defendant had the capacity to transact with the plaintiff and having been appointed administrator of the deceased's estate, the 4<sup>th</sup> defendant was empowered to dispose of any property of the deceased. Counsel for the plaintiff is in agreement with this position. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant's different opinions that the 4<sup>th</sup> defendant did not have powers to sell do not hold any justification at law. **The position**

**of the law under section 134 of the Registration of Titles Act is to the effect that “A grantee of probate or letters of administration becomes the transferee and is deemed to be the proprietor of the land in issue.” Again, according to Hulsbury’s Laws of England, 3<sup>rd</sup> Edition, volume 16 at page 281, an administrator has full control of all the items making up the estate and can give a good title to them and can also enter a contract on behalf of the beneficiaries. And according to Megarry’s Manual of The Law of Real Property, 6<sup>th</sup> Edition by David J. Hayton while writing on personal representatives stated that personal representatives have all the powers of trustee for sale. That a conveyance to a purchaser for value in good faith is not invalidated merely because the probate or letters of administration under which the personal representatives acted are subsequently revoked. See also the case of *Hewson vs Shelley (1914) 2 Ch.B.***

In the instant case, from the pleadings of the plaintiff, the 4<sup>th</sup> defendant, their respective submissions and the law cited above, the sale transaction of the suit land by the 4<sup>th</sup> defendant to the plaintiff was valid. Further, I agree with the submissions of the 4<sup>th</sup> defendant and the plaintiff that the consents entered into between the 4<sup>th</sup> defendant, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not binding on the plaintiff nor affects the plaintiff’s interests in the suit property which ceased to be part of the estate of the late Charles Makumbi Ddumba upon the sale and registration of the plaintiff. By the time the 2<sup>nd</sup> and 3<sup>rd</sup> defendants obtained the letters of administration in the High Court of Uganda on 15<sup>th</sup> June 2006, the plaintiff was a registered proprietor, implying that the suit property had already passed to the plaintiff and was no longer part of the estate of the deceased. Wherefore, the letters of administration that were granted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants excludes all the lands the 4<sup>th</sup> defendant sold to the plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants do not have any right over the same since the property had passed to the plaintiff before they acquired their Letters of Administration. From the foregoing analysis and arguments of the court, it is the holding of this Court that the acts of the 4<sup>th</sup> defendant prior to the annulment of her Letters of Administration were valid.

The finding above also disposes of the first issue of whether the plaintiff has a cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Their involvement and actions to dispossess the

plaintiff of the suit property was unlawful. Hence, the plaintiff's rights in the suit property were violated by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

Again, since the 4<sup>th</sup> defendant had powers of sale of the suit property to the plaintiff, the transfer of the suit property into the names of the plaintiff was lawful. Hence issue N0.3 is settled in favour of the plaintiff. And for the legal position held by the plaintiff in the suit property, he had capacity to cause the 1<sup>st</sup> defendant to issue notice to caveator. Therefore, issue N0.2, too, is answered in favoured of the plaintiff.

On issue N0. 8 of whether the transaction was illegal or of no effect. Counsel for 2<sup>nd</sup> and 3<sup>rd</sup> defendants submitted that the entire transaction in the suit land is illegal and of no effect. In his cross-examination of the plaintiff and his only witness, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants tried very hard to link the plaintiff to the acts of the 4<sup>th</sup> defendant and her lawyer. PW1 and PW2 in answer to the questions put to them in cross examination, maintained their stand that at the time of sale of the suit property, the plaintiff had no lawyer. That the 4<sup>th</sup> defendant's lawyer is the one who did the transfers of the suit property into the names of the plaintiff. The plaintiff had intended to call that lawyer as his witness. However, that very lawyer came to court and informed court that for him he will be a witness for the 4<sup>th</sup> defendant. The plaintiff then had to drop him as his witness. This clearly shows that the said lawyer had nothing to do with the plaintiff, but rather he knew the 4<sup>th</sup> defendant as his client. In that endeavour, therefore, one cannot fault the plaintiff for the actions of Advocate for the 4<sup>th</sup> defendant.

The plaintiff (PW1) and (PW2) Isingoma Musana John testified and proved the circumstances under which the suit land was purchased, and this was after carrying out a search and how the agreement was concluded and the papers left with the seller's advocate to conclude the transaction, that how eventually the balance was paid, roads constructed and water pipes connected to the several plots but only later to learn that there was a caveat by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. This evidence was not challenged by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 4<sup>th</sup> defendants in either by adducing their evidence in rebuttal nor in cross-examination of the plaintiff and his witness (PW2).

In the result, I hold that there were no illegalities committed by the plaintiff that could affect the said transaction between him and the 4<sup>th</sup> defendant. If it was to be true that less transfer fees were paid based on a low valuation figure of the suit property, the 1<sup>st</sup> defendant by way of counterclaim could have sued for the balance to be paid to Government. This was not done, and there is no conclusive evidence that was adduced by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in support of their claims that the plaintiff committed illegalities and that the cancellation of his registration was based on the illegalities in the said sale transaction. The 1<sup>st</sup> defendant, moreover in her 5<sup>th</sup> paragraph of her Written Statement of Defence gave different reasons, as stated hereinabove, for the cancellation of the plaintiff's certificates of title.

In respect to issue NO. 5 of whether the parties are entitled to the respective reliefs sought, and the issue NO. 9 of whether clause 4 (2) of the sale agreement prohibits the plaintiff from bringing the suit or action against the defendants save the 4<sup>th</sup> defendant, I am handling them together. I have hereinabove, already made findings that the sale transaction between the plaintiff and the 4<sup>th</sup> defendant was valid on grounds that the 4<sup>th</sup> defendant dealt with the suit land in her capacity as the administrator of the estate of the deceased and that at the time of sale, the 4<sup>th</sup> defendant's Letters of administration were valid. And having held hereinabove that the plaintiff had a cause of action against 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, it is evident that the plaintiff is entitled to relief's sought for in the plaint against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. There is no evidence that was adduced by the defendants that could convict court to deny the plaintiff the reliefs sought in the plaint.

Consequent to the above, it is the pleading and submissions of the 4<sup>th</sup> defendant that she sold the suit property to the plaintiff and that she is not involved in the actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants who dispossessed the plaintiff of the suit property she lawfully sold to him. She in that regard prayed for the dismissal of the suit with costs to her.

It should be noted that the 4<sup>th</sup> defendant according to the exhibits on which the 1<sup>st</sup> defendant based herself to cancel the registration of the plaintiff from the suit land were by consent between the 4<sup>th</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. On this alone, the plaintiff was right to sue her for she is the very person he dealt with, which same person dealt with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to defeat the plaintiff's interest in the suit land. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants

having ganged with the 1<sup>st</sup> defendant to defeat his interests, there is no way he would have left out the 4<sup>th</sup> defendant in this suit.

Also from the pleadings of all the parties and the evidence on record, the following constitute collusion of the defendants to defeat the interests of the plaintiff in the suit land:-

- 1) The failure by the 1<sup>st</sup> defendant to do the right thing and not assigning any reason for so not doing, for instance failure to conduct a hearing envisaged under section 91 of the Land Act as shown in exhibit P.13 or even calling for the duplicate certificates of title from the plaintiff for cancellation.
- 2) The 1<sup>st</sup> defendant deliberately and in concert with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants purportedly hiding behind the notice to cancel the titles and later on Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant to say even without notice titles could be cancelled notwithstanding that by the time of cancellation on 26<sup>th</sup> October 2006, there was a Court Order (exhibit P 21) prohibiting the 1<sup>st</sup> defendant from cancelling the plaintiff's titles.
- 3) The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants notwithstanding that the suit before the chief magistrate was for revocation of the letters of administration that were issued to the 4<sup>th</sup> defendant, went ahead and had the said grant (exhibit P7) annulled, without putting the interests of the plaintiff in their consent judgment. The reasons for the annulling, the grant were not given in the consent judgment. Yet the grant to the 4<sup>th</sup> defendant by the Chief Magistrate Court of Mengo was valid under section 235 of the Succession Act cap. 162, Laws of Uganda.
- 4) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants colluding to make it appear that the Orders of the High Court cancelled the plaintiff's name on the White Page whereas the said Orders which were obtained later came after the plaintiff had got registered on the title and were merely for extension of the caveat and not for cancellation for the plaintiff's name on the White page (see exhibits P5, 17, 19 and 20).

From the above statements and evidence as gathered from the pleadings of the parties and the documentary exhibits, it is my finding that the 4<sup>th</sup> defendant contributed to the unlawful cancellation of the plaintiff's name for the title, which action made the plaintiff to suffer damages and inconveniences of which entitles him to damages. However, at the same time, I wish to note that because of the actions of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants which were being presented by two powerful law firms and supported by the 1<sup>st</sup> defendant, the 4<sup>th</sup> defendant could not, as a lay person in law, have changed the trend of events as they happened. It is also worth noting that the 4<sup>th</sup> defendant in her Written Statement of defence and in her submissions continually heaped all the blame to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant's explanations and pleadings plus her final submissions, and those notwithstanding the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants opted to continue the fight against the plaintiff. To that extent, the 4<sup>th</sup> defendant could be exonerated from general damages and costs of the suit.

In conclusion, considering all the arguments set out hereinabove and the law cited judgment is entered in favour of the plaintiff in the following terms:-

- 1) The plaintiff is the bonafide purchaser of land comprised of Busiro Block 459, Plot 15 which is now subdivided into plots 84 -127.
- 2) The 1<sup>st</sup> defendant is directed to reinstate the plaintiff's name as the proprietor on the Certificate of Title comprised in Busiro Block 459 Plot 15 with immediate effect, that is, within a one month from the date of this judgment.
- 3) The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are to be deregistered from the suit title by the 1<sup>st</sup> defendant to give vacant possession of the suit land comprised in Busiro Block 459 plot 15 to the plaintiff as his property immediately after the delivery of this judgment.
- 4) An order of permanent injunction barring the defendants, their agents, relatives or any of the persons delivering authority from them from interfering with the plaintiff's interests in the suit land is granted.

- 5) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants shall pay to the plaintiff Shs. 20,000,000/= (twenty million shillings) as general damages arising from the effects of cancellation of his certificate of title. The sufferings and inconveniences the plaintiff suffered entitle him to the general damages as awarded. The awarded damages shall carry an interest at a court rate from the date of this judgment till payment in full.
- 6) Costs of the suit shall be paid by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

Dated at Kampala this 14<sup>th</sup> day of December, 2009.

---

MURANGIRA JOSEPH  
JUDGE