

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-CA-0053-2022
(ARISING FROM CIVIL SUIT NO. 006 OF 2013)

STEPHEN BALODHA:.....
APPELLANT

VERSUS

1. BALIGEYA CHARLES
2. MAKA DAVID
3. BASOGA JOSEPH
4. MUTWALIBI
KATONGOLE:.....RESPONDENTS

Land Appeal:-

All Grounds of Appeal FAIL; the Judgement and Orders of the learned Trial Magistrate are UPHELD.

BEFORE: HON. JUSTICE DR. WINIFRED N. NABISINDE

JUDGEMENT

The Appellant being aggrieved and dissatisfied with the Judgment of the His Worship Joel Wegoye ESQ, Magistrate Grade One delivered on the 28th day of February 2022 appealed to this Honorable Court against the whole Judgment and set forth their grounds of Appeal that the Learned Trial Magistrate erred in law and fact when he:-

1. Held that the suit land belonged to the Late Bagoole.
2. Failed to evaluate evidence at locus, thereby arriving at a wrong decision.
3. Failed to evaluate the Appellant's evidence on record.
4. Declared the registration of the Appellant on the suit land as void.

The Appellant prayed that:-

1. The Appeal be allowed and the Judgment and Orders of the Learned Trial Magistrate be set aside.

2. Judgment be entered in favor of the Appellant as prayed for in the Written Statement of Defence to the Counterclaim.
3. The Appellant be awarded Costs of the Appeal and the lower court below.

BACKGROUND

The background according to learned counsel for the Appellant is that the Appellant is the owner of the suit land which he acquired while a minor in 1958 as a gift *inter vivos* from his uncle, the late Samson Kamukama. That the suit land was entrusted with Rev. Canon Aaron Isabirye to keep the same in trust for him. That in 1976, the said Rev. Canon Aaron Isabirye handed over the suit land to the Appellant who started cultivating it and on 24/8/1996, a formal handover of the land to the Appellant was made. That in or about 2011, the Respondents made baseless claims to the land and that the same be given to them.

The Respondents case is that the late Bagoole, a great grandfather to all the parties herein originally owned the suit land now comprised in FRV JJA Folio 19 Block 3 Plot 1437 at Makenke, Butembe, Jinja but died intestate leaving it Livingstone Kamukamu undivided. He was survived by the late Yayiro Kulwawo, Kulwawo Livingstone, and Aaron Isabirye to whom the suit land devolved to all parties herein in succession.

It was the Respondent's case that they were born on the suit land and cultivated the same, but due to insecurity and threats caused by the Appellant, they stopped residing on the suit land; hence the suit seeking among others a declaration that the Respondents have a beneficial interest in the suit land.

REPRESENTATION

When this Appeal came up for hearing before me on 16/11/2022, the Appellant was represented by learned Counsel Luwambya Musa of M/S. Wetaka, Bukenya & Kizito Advocates, while the Respondents were represented by learned Counsel Osillo Jacob of M/S. Okoth-Osillo Advocates. Both sides were directed to file and serve written submissions to each other and the matter was set down for Judgment. I have considered their submissions in this Judgement.

THE LAW

It is now settled law that it is the duty of the plaintiff to prove his or her case on the balance of probabilities. In relation to the onus of proof in civil matters, the burden of proof lies on he who alleges a fact and the standard is on the balance of probabilities, and not beyond reasonable doubt as in criminal case. It is provided for in **Sections 101, 102, and 104 Evidence Act** and is discharged on the balance of probabilities. The standard of proof is made if the preposition is more likely to be true than not true.

The standard of proof is satisfied if there is greater than 50% that the preposition is true and not 100%. As per Lord Denning in **Miller v Minister of Pension [1947] ALLER 373**; he simply described it as “*more probable than not.*” This means that errors, omission and irregularities that do not occasion a miscarriage of justice are too minor to prompt the appellate court to overturn a lower court decision. **See Festo Androa & Anor vs Uganda SCCA 1/1998.**

It is also the position of the law that in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act and Section 33 Evidence Act.** A fact under evidence Act means and includes: -

(i) Anything, state of thing, or relation of thing capable of being perceived by senses as per **Section 2 1(e) (i) Evidence Act.**

On the duty of the first appellant court, the first appellate Court is mandated to subject the proceedings and Judgment of the lower Court to fresh scrutiny and if necessary make its own findings. In **Bogere Charles vs Uganda, Criminal Appeal No. 10 of 1996**, the Supreme Court held that:-

“The appellant is entitled to have the first appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to rehear the case and reconsider the materials before the trial Judge. Thereafter, the first appellate Court must make its own conclusion, but bearing in mind the fact that it did not see the witnesses. If the question turns on demeanor and manner of witnesses, the first appellate Court must be guided by the trial Judge's impression.”

This being the first appellant court, it is duty bound to evaluate evidence and arrive on its own conclusion, bearing in mind that it did not have benefit of the observing the demeanor of the witnesses. The duty of the first appellate

court is to re-evaluate, assess and scrutinize the evidence on the record. This duty was well stated in ***Selle vs. Associated Motor Boat Co. [1968] E.A 123*** and ***followed in Sanyu Lwanga Musoke vs. Galiwango, S.C Civ. Appeal No.48 of 1995; Banco Arabe Espanol vs. Bank of Uganda S.C.C. Appeal No.8 of 1998.***

A failure to re-evaluate the evidence of the lower court record is an error in law. The appellate court has a duty to re-evaluate the evidence as a whole and subject to a fresh scrutiny and reach its own conclusion. ***See Muwonge Peter vs Musonge Moses Musa CACA 77; Charles Bitwire vs Uganda SCCA 23/95; Kifamunte Henry vs Uganda SCCA No. 10/1997.***

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where misdirection to law or fact or an error by the lower court goes to the root of the matter and occasioned a miscarriage of justice. ***See Kifamunte Henry vs Uganda SCCA No. 10/1997.***

Having satisfied myself and taken due recognition of the Law and rules of evidence applicable to a first appellate court, I will now turn to the substantive matters as raised in the Memorandum of Appeal and proceed to re-evaluate the evidence on record.

RESOLUTION OF THE GROUNDS OF APPEAL

PRELIMINARY POINT OF LAW

In their Written Submissions, learned Counsel for the Respondents raised a Preliminary Objection that this appeal is incompetent and cannot be properly entertained for having been filed out of time and without leave of this Honourable court and therefore ought to be out rightly dismissed with costs.

Further, that it is clearly indicated in both the Judgment and also acknowledged by the Appellant himself in the preamble of his Memorandum of Appeal that the lower Court Judgment upon which this Appeal is premised was delivered on the 28th day of February, 2022 and it is trite position of the law that any such Civil Appeal to this Honourable Court is to be lodged within 30 days from the date of delivery of the judgment as clearly stated in **S.79(1) (a) of the CPA, Cap 71** which provides thus:

“Except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of the court”.

And also **O.43 r1(1) CPR, SI 71-1** which also expressly provides that “Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocated and presented to court or to such officer as it shall appoint for that purpose”.

In addition, that the instant Appeal as per the Appellant’s Memorandum was however filed on 1st June, 2022 that is four months or one Hundred and twenty days late and without leave of this Honourable court which clearly indicates that this Appeal is time barred and should be accordingly rejected and dismissed by this Honourable court with costs to the Respondents.

Furthermore, that the same position still stands even if the time for preparation of the record is considered under **S.79 (2) of the CPA** since the Appellant applied for the said record ten days after the said judgment and later filed the Appeal 21 days after certification of the record still placing the Appeal beyond 30 days as required by the law as cited above.

They submitted that courts have to be strict in enforcing timelines breach of which are not mere technicalities. counsel in support of the submission cited the case of **Nankabirwa Harriet vs Mansukhalal Mainlal HCMA No.11 of 2002**, where Justice V.T Zehurikize as he then was in dismissing an application filed out of time and/or late by only one day opined that even provisions of **S.98 of the CPA, S.33 of the Judicature Act, Cap 13 and Article 126(2) (e) of the Constitution** cannot salvage an application filed out of time since there is an appropriate remedy of filing an application to seek leave first.

In reply, learned counsel for the Appellant agreed with the legal principles enunciated in the authorities cited by counsel for the Respondents under **S. 79(1) CPA**, that every appeal shall be entered within thirty days of the date of the decree or order of court.

They also conceded that under **O.43 r.1 (1) CPR**, “every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for the purpose”.

They however, disagreed that the legal principles were helpful to the Respondents on their preliminary objection that this Appeal is incompetent and cannot be properly entertained for having been filed out of time and without leave of court; and submitted that what is clear is that counsel for the Respondents’ submission is based on his thinking that the time before

the Appellant writes a letter requesting for Judgment and the record of proceedings is included in the computation of time available to the Appellant to file an Appeal after Judgment and record of proceedings have been availed by court, but this is not the case.

They argued that **S. 79 (2) CPA** is to the effect in computing of the period of limitation the time taken by the court in making the Decree or Order appealed against and of the proceedings upon which it is founded shall be excluded; and cited the case of **Andrew Maviri vs Jomayi Property Consultants Ltd, CACA No.274 of 2014**, while relying on **Okwanga Valentino & ors vs Gulu District Local Council Government, CACA No.265 of 2013**, the Court of Appeal held that the legal timelines starts to run when the record of proceedings is availed.

They also cited the case in **Godfrey Tuwangye vs Georgina Katarikwenda (1992-1993) HCB 145**, where it was held that time for lodgment of an appeal does not begin to run against the intending Appellant until the party receives a copy of the proceedings against which he intends to appeal.

Likewise that in **Ndawula Samuel vs Mutabazi Joseph UGHCLD 81**, court held that once an intending Appellant requests for a certified copy of the record of the proceedings, the computation of the 30 days period within which to appeal is reckoned from the date when the same is availed to him. They further relied on the persuasive decision of **Tight Security Ltd vs Uganda Insurance Company Ltd & Anor HCCA No.14 of 2014** where Justice Christopher Madrama (as he then was) while dealing with a preliminary objection on the competence of the appeal had this to say;

“It is necessary to give notice to the court that there would be an intended appeal to enable the lower court to commence the process of preparing and certifying the decree or order and the proceedings upon which it is founded. Consequently the time to apply for a copy of the record of proceedings has to be within 30 days limitation period from expiring before the application for a record of proceedings is made...i am persuaded that an application for a record of proceedings cannot be made after the expiration of the limitation period. It would be absurd and doing damage to the intention of the legislature for the limitation period of 30 days prescribed under section 79(1) (a) of the Civil Procedure Act to expire before applying for a copy of the record of proceedings”.

They submitted that in the instant case, the Judgment was delivered on the **28th February, 2022** and as rightly put by counsel for the Respondents the Appellant wrote a letter on pg.115 of the record of appeal requesting for typed and certified copies of the Judgment and record of the proceedings. That the record of the proceedings was availed on the **10th May, 2022** and the Memorandum of Appeal was filed on **1st June 2022**.

They therefore concluded that in light of the above, it is clear that the Appellant wrote a letter requesting for a typed and certified copied of the Judgment and record of proceedings 10 days after Judgment which was within 30 days from the date of Judgment.

That the Appellant filed the memorandum of appeal 21 days after the record of proceedings had been availed by court which was within the 30 days limitation period available to the Appellant to file the appeal after the record of proceedings has been availed by court; and consequently, counsel for the Respondent's Preliminary Objection is misconceived and should be rejected so that the appeal is heard and determined on its merits.

I have carefully analyzed this Preliminary Objection as captured above. **Section 79 of the CPA (as amended)** on Limitation for appeals provides that:-

(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

(a) Within thirty days of the date of the decree or order of the court; or

(b) Within seven days of the date of the order of a registrar,

as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

(2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.

Relating the above to this matter, I have carefully examined the record of proceedings from the lower court as vailed to me and I have found that, the Judgment of the lower court was indeed delivered on the **28th day of February 2022**.

It is also on record that learned counsel for the Appellant wrote a letter to the learned trial Magistrate on 10/03/2022 requesting for the typed and certified copies of the Judgment and the record of proceedings for the purpose of appealing. A certified copy of the proceedings was availed to the Appellant on the **10th day of May, 2022** and the Appellant's Memorandum of Appeal was filed on **1st June 2022**.

The above proves that the computation arrived at by learned counsel for the Appellant are valid and fits within the ambit of **Section 79 (2) of the Civil Procedure Act**.

From the above facts and in view of the decided cases relied upon by learned counsel for the Appellant which I'm entirely in agreement with, I therefore find that the Appellant's Appeal cannot be said to have been filed out of time; and in the result, I agree with the submissions of learned counsel for the Appellant and my decision is that this Preliminary Objection has no merit and is over ruled.

Having disposed of the above Preliminary Objection as I have, I will now turn to the substantive grounds of Appeal.

GROUND 1, 2 and 3

- 1. The Learned Trial Magistrate erred in law and fact when he held that the suit land belonged to the Late Bagoole.**
- 2. The Learned Trial Magistrate erred in law and fact when he failed to evaluate evidence at locus thereby arriving at a wrong decision.**
- 3. The Learned Trial Magistrate erred in law and fact when he failed to evaluate the Appellant's evidence on record.**

It was submitted for the Appellant that from determining the issue of the counterclaimants' claim in the suit land, the trial Magistrate at pg.7 paragraphs 4,5,6& 7 of the Judgment said as follows;

"Concerning this issue, I find the evidence of the counterclaimants more believable and consistent on the scale of probabilities. It's common to all parties that the suit land originally belonged to their grandfather. The issue arises with the subsequent devolutions of the suit land. The counterclaimant's evidence of subsequent devolutions was corroborated at the locus in quo when there was proof of joint families' historical use of the

suit land and a graveyard that accommodated generations of all parties' ancestors. For instance Sarah Akobera, a great grandmother to the defendant Kamukama Samson, Eleanor Katabirea, Nakayoma Ashraf, mother of Mutwalibu & Bessi are buried on the suit land.

"There are also remains from the demolished house of the counterclaimant. Counterclaimant 4 also cultivates part of the suit land.

Secondly, that the Defendant to the counterclaim claim to be a 'gift' does not qualify to be one. In determining whether the deceased created a gift inter vivos in respect of the disputed land, I have to ascertain the intention of the donor, and then examine whether the formal requirements of the method of disposition which he attempted to make have been satisfied.

For a gift inter vivos to take irrevocable roots, the donor must;

a) intend to give the gift,

b) the donor must deliver the property, c) the done must accept the gift".

That at page 8 paragraphs 1 & 2 of the Judgment he said;

"In Mukobe's case, the court found that the donor musika intended to give the land, which was unregistered, as a gift to the appellants because it was reduced into writing. Thus, in my opinion, the law does not recognize a verbal gift of land.

To prove the gift, the Defendants to the counterclaim herein presented handover report dated 24/8/1996 from the Reverend Canon Isabirye, a caretaker of the land. No written proof of the gift from Samson Kamukamu was presented. The gift he purportedly gave to the Defendant to the counterclaim was incomplete under the legal provisions governing this type of gift. The Defendant to the counterclaim's case stated that he grew up and stayed on the land for a long time is a mobbing testimony, but it does not accord him legal or equitable claims to the land under the legal principles highlighted. It does not matter how long the Defendant to the counter claim stayed on the land or what he did with the; and. Even if, the late Samson Kamukama had gifted the suit land to the Defendant...which I do not find, equitable interest would still pass on his estate despite the purported gift he made and was available for distribution in accordance with the laws governing intestate estates."

They argued that the above passages clearly show the misapprehension of things by the Trial Magistrate, the reason grounds 1, 2, & 3 of appeal should succeed. This is so because during Trial **DW1** told court that he is the registered owner of the suit land. He presented the certificate of title as proof of the same and the Title was admitted as exhibit **DW1-1**.

He further testified that originally the suit land was purchased by his grandfather known as Katongole who had several untitled land and because he was generous man, he gifted some of his land to his land including Samson Kamukamu who in turn gifted the same to him. He also testified that Katongole fitted another piece of land located at Ivunamba Budondo Sub-County, Jinja District to Yayiro Kulwawo the counterclaimant's grandfather where they have homes and derive their ancestral land which position was not cross-examined about.

They submitted that it is trite that an omission or neglect to challenge the evidence in chief on a material or essential point by cross-examination would lead to an inference that the evidence is accepted, subject to it being assailed as inherently incredible or possibly untrue. See ***Odur David v Ocaya Alphonse and 3 Ors HCCA No.34 of 2018***.

Further, that this evidence being unassailable as inherently incredible or possibly untrue and the witness not having been cross-examined on it, the trial court ought to have inferred that it was accepted by the respondents such that when the court visited the *locus* and witnessed the features that existed on the land, the court having found that of the five people buried on the land, and the rest were the Appellant's close relatives that is; Kamukamu Samson the Appellant's grandfather and one who gifted the suit land to him, Erina who was Kamukamu's sister, Sarah Akobera a grandmother to the Appellant, Nakayima Ashraf a mother to Bawaya Bessi the Appellant's biological sister, it ought to have accepted the explanation that this land was initially owned by Kamukamu Samson and another piece of land located at Ivunamba Budondo sub county, Jinja District to Cairo Kulwawo the Respondent's grandfather where they have homes and derive their ancestral land.

That the only other features on the land were the grave of Mutwalibu Katongole's (4th Respondents son), his garden and the remains of his demolished house. He added that the presence of these particular features does not in any way help the Respondent's case, it instead supports the Applicant's case that when he procured the certificate of title to the suit

land, the Respondents begin laying baseless claims in respect of the land and the 4th Respondent in particular trespass on the suit land by even constructing a small semi-permanent house thereon as a ploy to take over his land on which account he sued them but all his suits including **Civil Suit No.6 of 2013** from which this counterclaim arises were dismissed due to professional negligence of his lawyers.

In addition, that he thinks it was error to hold that because no written proof of the gift from Samson Kamukamu was presented then the gift was incomplete under the legal provisions governing this type of gift as the law does not recognize the verbal gift of land.

They further submitted that if a gift is to be valid, the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do and relied on **Halsbury's Laws of England (Fourth Edition Reissue) Vol.20 pp29-32.**

That for a gift *inter vivos* to take irrevocable roots, the donor must; intend to give the gift, the donor must deliver the property and the donee must accept the gift. The rules do not making writing essential to the validity of a gift; an oral gift fulfilling all the three essentials is incomplete and irrevocable and relied on the case of ***Kalama James and 2 ors vs Abonyo Vicky, HCCA No.94 of 2018***

They further submitted that in this regard, **DW1** the Defendant testified that originally the suit land was purchased by his grandfather known as Katongole who had several untitled land and because he was a generous man, he gifted some of his land to his relatives including Samson Kamukamu and another piece of land located at Ivunamba Budondo Sub-County, Jinja District to Yayiro Kulwawo the counter claimant's grandfather where they have homes and derive their ancestral land which position was not cross-examined about.

That he also testified that he acquired the suit land as a gift *inter vivos* from his paternal grandfather Samson Kamukamu who did not bear any child and that because he was not of majority age, the suit land was left under the caretaker ship of Reverend Canon Isabirye to keep it in trust on his behalf. That in 1976, when he attained majority age, the said Canon Aaron Isabirye handed over the suit land to him and he took over firm and effective possession by planting thereon commercial trees, food crops like maize, cassava, jackfruit, sweet potatoes among others.

And he further testifies that 24/8/1996, at Makenke village in Mafubira sub-county, Jinja district, Reverend Canon Aaron Isabirye formally handed over the suit land to him in the presence of the area local authorities who were also witnesses to the said handover deed. He presented a deed to prove the same was admitted as exhibit **DW1-2**.

Further, that this was corroborated by **DW3** who confirmed that the suit land belongs to counter defendant who has been in firm and effective possession and occupation since 1992 when he met him and that he also witnessed the deed when the suit land was being formally handed over to the counter defendant.

They added that **DW5** told court the parties in this matter are his clan mates and that the suit land belongs to **DW1** which fact he established in the clan meeting whose gist was to establish the ownership of the suit land. That in the meeting each side was tasked to furnish proof of ownership to which **DW1** furnished the gift deed but the counter claimants failed to furnish anything, they caused mayhem hence disrupting the meeting which ended prematurely without any conclusive settling the matter on which account the meeting was adjourned for 1 month, but to date he does not remember whether there was any other meeting that was convened by the clan.

That he further testified that at all material times since his childhood, DW1 and his family have been utilizing the suit land and the counter claimants' land is situate Ivunamba Budondo Sub-County where he even used to visit them.

Further, that Kamukamu Samson intended to give the gift; he delivered the gift because the Appellant took possession first through Rev Canon Isabirye who was the caretaker and later through the Appellant himself when he attained majority age.

That the donee also accepted the gift because he took possession and used it for 35 years before the Respondents interfered with it; therefore the requirements of a gift *inter vivos* were all fulfilled and for that matter the trial magistrate's ruling the gift was incomplete under the legal provisions governing this type of gift was error.

In addition, that that the sum total is that grounds 1, 2 & 3 of the appeal should be allowed because all the above pieces of evidence put together, showed that the suit land belongs to the Appellant having been gifted by the same by Kamukamu Samson and so the trial magistrate erred when he held

that the suit land belonged to the late Bagoole and that the Respondents have a beneficial interest in the same.

In reply, to the above grounds, it was submitted for the Respondents that three grounds argued jointly and concurrently clearly lack merit and indeed the Appellant had failed to specifically prove and of the said grounds to the required standard part from making generalized submissions, reproducing the excerpts of the Learned Trial Magistrate's Judgment verbatim and repeating the false allegations of his witnesses.

That the Appellant has not shown or proved any material error of Judgment by the Learned Trial Magistrate in particular respect of any of the grounds raided in the instant Appeal.

From their perspective, they submitted that the fact that the suit land originally belonged to the late Bagoole a great grandfather to both the Appellant and the Respondents who are clan mates and brothers was not only stated by and proved by the Respondents as a material fact but also well acknowledged and not denied by the Appellant himself and there is indeed no clear rebuttal of the same in the proceedings or records of the lower court.

That although the Appellant has not shown court where in the Judgment, the trial Magistrate made a specific finding to that effect (that the land belongs to the late Bagoole), the Learned Trial Magistrate merely based on a full evaluation of all relevant facts as proved by the Respondents to resolve the first issue of trial and to declare that the Respondents as descendants of the said Bagoole indeed have a beneficial interest/claim in the suit land and also clearly stated as one of the remedies under the 3rd issue of trial as recorded on pg.7 of the lower court judgment.

Further, that the Appellant has also clearly failed to prove his **2nd ground of Appeal** that the Learned Trial Magistrate failed to evaluate the evidence at *locus*; and it is indeed a false assertion of the facts since the trial Magistrate in line 10 on pg.5 and lines 20-25 on pg.7 of his Judgment made specific reference and consideration of the observations made during its visit to the *locus in quo* including specific findings of the family graveyard, 4th Respondents demolished house and gardens .

That indeed the Appellant in the first paragraph on pg.5 of his own submissions also confirms the said findings and observations as made by the Learned Trial Magistrate with reference to the evidence obtained from the

locus in quo all of which clearly confirm that the said evidence at *locus in quo* was duly considered and taken into good consideration by the Learned Trial Magistrate in his evaluation of the evidence to reach his verdict as per Judgment of the lower court.

In addition, that **ground 3** of the Appellant's Appeal has also not been proved to this Honourable Court since the judgment of the learned Trial Magistrate on pgs. 2, 4,5,6,7 & 8 clearly indicate that the Trial Magistrate did not only reproduce and summarize, but also properly considered and evaluated the Appellant's evidence which was properly rejected for meant of sufficient proof including his allegation that the suit land as gifted to him from his grandfather the Samson Kamukamu.

That the Learned Trial Magistrate properly addressed his mind to the law and considered the evidence of the Appellant (Defendant in Counterclaim) relating to "gift *inter vivos*" ; and arrived at the proper conclusion the Appellant failed to prove his allegation that he obtained the land by way of "gift *inter vivos*" as well as recorded on pgs. 7 and 8 of the lower court Judgment.

That the Appellant has not cited any superior authority binding this court to contradict the finding and legal position as to put forth the Learned Trial Magistrate on what amounts to a lawful gift of land under the law.

Further, that the Appellant in his own evidence and indeed also repeated on pgs.1 and 5 of his submissions in this Appeal alleged that he was minor in 1958 when his late grandfather Samson Kamukama allegedly gifted to him the suit land, thus further confirming that indeed he could not have met the two criteria of accepting and being delivered /handed to the land or being in position to take possession thereof.

They therefore submitted that in other words, as rightly found by the Learned Trial Magistrate that apart from failing to adduce written proof or evidence of such gift made by the late Samson Kamukamu, there is no evidence that any effectual gift was made to the Appellant.

Furthermore, that it is also misleading and obviously false for the Appellant to allege as on pg.4 of his submissions that he was not cross-examined on his said allegations of obtaining land as a gift *inter vivos*.

On the contrary the record of cross examination of the Appellant **DW1** on his alleged "gift" is clearly recorded on pg. 16 of the certified record of proceedings of the lower court and on pg.73 of the Appellant's record of

Appeal where the Appellant is recorded to have responded to specific questions in cross-examination relating to his alleged *gift "inter vivos"* as well the purported gift deed itself exhibited as **DW1-2**; thus the Appellant's submission in this regard is misleading and utterly false and should accordingly be disregarded including the authorities cited in support thereof.

That this also confirms that ground 3 of this Appeal like indeed all other previous two lack merit, have not been proved and should subsequently fail because a fair perusal of the lower court Judgment clearly shows that the Learned Trial Magistrate carefully evaluated all, the relevant evidence and facts on record and properly applied and/interpreted the law in Application to the said facts and evidence to arrive at well-reasoned and proper Judgment which the Appellant has also failed to challenge by way of this Appeal.

I have carefully analyzed all the above stated grounds in this Appeal, the certified record of appeal as availed to me and the Judgement of the learned Trial Magistrate Grade 1; and also taken into account the submissions of both sides.

From my analysis, all the above three grounds of appeal can be condensed into one ground of failure to evaluate the evidence adduced in court so as to come to a proper decision. I will therefore resolve all them by exercising my duty as a first appellate court and re-evaluate the evidence on record. In so doing, I have also found it necessary to summarize all the evidence led before the trial court in order to draw my own conclusions and arrive at my own findings.

During the trial before the lower court, the parties did not have any agreed facts, but disagreed on all the facts and key amongst them was the following:-

- Ownership of the suit land.
- Current possession (both parties claim possession).

The following are the issues that were agreed upon to be resolved before the lower court:-

1. Whether the Counter Claimants have any claim in the suit land?
And if so;
2. Whether the Counter-Defendant fraudulently registered himself on the suit land?
3. What remedies are available to the parties?

The original Plaintiff was filed by the Stephen Balodha on 15th February 2013; and the record as availed to me shows that it was only admitted as **Exhibit 1**. Instead, the Amended Counter Claim by the Defendants on 23rd October 2020 took center stage and was the basis of the trial.

I have not found a valid reasons as to why the Plaintiff was only presented as an **Exhibit. 1** and no issues framed from the Plaintiff since the record as availed to me only included the typed and certified copy and not the original file itself. Although I find this procedure of ignoring the original Plaintiff peculiar, I have not found any injustice caused by this and indeed none of the parties or counsel in this appeal raised any concerns about this although the case was defended by counsel.

Having found as I have, I will therefore ignore this flaunting of what is normally accepted procedure since it does not go to the root of this Appeal and concentrate on the merits of the appeal since a Counter claim is also a suit in its own right. In a bid to prove its case, the Plaintiffs/Counter Claimants (current Respondents) led the following evidence:-

The first Plaintiff witness in Counterclaim **Baligeya Charles, a male adult aged 50 years old, Resident of Bujagali Village, Budondo Sub-County, Kagoma County in Jinja District, Driver by occupation (at pages 17- 20 and 65-67 of the record of certified proceedings, hereinafter referred to as PW1)**. His evidence in chief was by way of Witness Statement on **pages 17- 20 of the bound record of appeal** as availed to me. He testified that the Defendant in the Counter Claim is personally known to him as they share a common lineage from one great grandfather the late Bagoole who originally owned the suit land now comprised in Freehold Register Volume JJA 17 Folio 19 Block (Road) 3 Plot 1473 at Makenke in Butembe Jinja District.

That the said suit land upon the death of their said great grandfather, Bagoole inherited jointly by his children who included his grandfather Iyayiro Kulwaawo, the Defendant in the Counterclaim and others like Kamukamu, Aaron Isabirye, Eresi and Erina in its undivided form.

That all the said grandfather's passed on without distributing or dividing the land save for Aaron Isabirye who care took the land still in its undivided form which responsibility was later taken over by Mr. Balodha Steven the counter defendant as the elder of the beneficiaries.

Further, that he and his Co-Counter Claimants are beneficiaries and entitled to the said family land which to date has never been distributed. That family meetings have been held including one held in 2013 at Bujagali village, Ivunamba and also at the home of the Counter Defendant's father in Kayunga village, Mafubira Sub-County to discuss and agree on the distribution of the said suit land which has never materialized to date.

That following the said two meetings, the family agreed that a Certificate be obtained in the name of the surviving grandfather Isabirye Aaron and later be sub-divided among other beneficiaries with the help of the surveyor to which they contributed Ugx 500,000/=.

He further testified that while he and other Counter Defendants have previously attempted to take possession, they have been threatened by the Counter Defendant and only a few relatives such as Mutwaalibi Katongole and Bawaya Bessi using part of it. That the Counter Defendant deviated from the family position by filing **Civil Suit No.6 of 2013** against them and even processed a Certificate of Title for the undistributed family land in his name vide Freehold Register Volume JJA 17 Folio 19 Block (Road) 3 Plot 1473 at Makenke in Butembe Jinja District.

That upon discovery of the said fraudulent registration of the Counter Defendant as sole proprietor, they lodged a caveat to prevent further alienation of the land in 2017.

During cross-examination (pages 65-67 of the record of certified proceedings), PW1 answered that he has been on the suit land which is about 12-13 acres. An acre could be Ugx.500, 000/=. That Reverend Canon Isabirye had 5 children, they were girls, he didn't know when the last one died and that the last one died in 2 years after they instituted the suit but she was not a party to the suit. That the land is for the family, it is not for the clan and they are about 5 have acres in the suit land.

Further, that they he didn't report the case. The 2 are witnesses they reported Balodha Steven. That in 2013, they sat as a family and discussed how land is supposed to be distributed; and agreed to lease the land in the name of their grandfather Isabirye. That no minutes were made. That the meeting did not choose anyone to deal with the title, they chose Balodha Stephen, Basoga Joseph to spearhead the process to acquire the Title and

verified with the lands and as a family they collected Ugx.500, 000/= to start processing a title.

He continued that they gave the money to Basoga Joseph who gave the money to Stephen Balodha. That they trusted each other, no receipts were issued. That he had no Forms of the Application process. That Reverend Isabirye had died by the time the Defendant got a title. The children of Reverend lost children. The children had no interest in the land. They did not complain. The other family members did not have children. Tayin Kulwelo gave birth to Kulwawo Livingstone. Kulwawo Livingstone is my father.

That Katongole gave birth to Masayanje who is the father of Balodha Stephen. That Reverend Isabirye was only a caretaker, Basoga was buried in Makenke on the suit land. That Yayilo Kulwawo was buried in Bujagali, Kulwawo Livingstone was buried in Bujagali and Aaron Isabirye (Rev) was buried in Igenge. They purchased their land on which they were buried. The land had trees and banana plantations. The land has no buildings.

In re-examination, he answered that he contributed Ugx.200, 000/= of the Ugx.500, 000/=, Basoga Joseph contributed Ugx.200, 000/= and David contributed Ugx .100, 000/=. That they handed the money to Basoga Joseph and he delivered the money. That he was not present but was told by Basoga Joseph.

The second witness in the Counter Claim was **Basoga Joseph, a male adult aged 42 years old and resident of village Bujagali Village, Budondo Sub-County, Kagoma County in Jinja District, Builder (at page 21- 23 and 67-68 of the certified record of proceedings, hereinafter referred to as PW2) .** His evidence in chief was by way of Witness Statement on **pages 21- 23 of the bound record of appeal** as availed to me. He testified that he had carefully read, understood and fully associated himself with the Witness Statement of **PW1** who is also his elder brother and confirmed that the following agreement and resolution in their family meeting that the suit land first be registered as the process has been seated and by and in the names of their surviving grandfather Aaron Isabirye and thereafter sub-divided amongst themselves.

That **PW2** and his brothers agreed to contribute money to facilitate the said process which responsibility was placed with the Appellant. That he was delegated and indeed handed the said money of Ugx.500,000/= to the

Appellant in Hajji Tenywa's house within Jinja Municipality which money the Appellant counted, confirmed and received and indeed thereafter took **PW2** to lands office in his car where the Appellant introduced him to a certain gentleman working on the Land Title.

PW2 further added that two weeks later, he went to the Lands Office to follow up and was surprised to be informed by the same officer that the Appellant had instructed them to change and register the title into his personal names and that **PW2** immediately informed his brothers including **PW1**.

He further testified that the Respondents are beneficiaries and entitled to a share of the said family land which to date has never been distributed. That the Respondents confronted the Appellant about the said allegation of registering the land in his own names and also asked him to allow them start using a portion of the land, but that the Appellant started being evasive, uncooperative and secretive in his dealings with the suit land and that **PW2** was surprised that the Appellant lodged **Civil Suit No.006 of 2013** against the Respondents attempting to alienate their interests in the suit land.

Furthermore, that while the suit was ongoing in court, the Certificate of Title of the suit land was registered in the Appellant's name now comprised in FRV JJA 17 Folio 19(Block Road) 3 Plot 1473 at Makenke, Butembe in Jinja which Title **PW2** contends was wrongfully and illegally obtained.

During Cross-examination (pages 67-68 of the bound record of appeal), PW2 answered that that he handed over Ugx.500, 000/= to the Appellant and that they were only two people. That he did not know that in 2013 the land was gifted to the Appellant and that they had tried to use the land but the Appellant had refused them to do so. That they reported the matter to the clan leaders who called all of them. That the Meeting was held at Makekenke Hall but since there were many issues to be discussed, they were told to return the next day, but before the next meeting could be held, the Appellant had already filed a suit in court; and that no minutes were made of the meeting.

Further, that he found the Appellant at Hajji Tenywa's house where he handed him the money. That he had handed the money after one month after the meeting. That he didn't see the Forms for processing of the Title. That he did not see any Lease Forms concerning Reverend Isabirye. That the

Appellant talked about the same during the meeting and that Reverend Isabirye had died at the time of the meeting.

PW2 could not recall when Reverend Isabirye died. That the value of the land could be around 2,500,000/= - 3,000,000/= per acre. That he knew the late Kaija, he did not know the father of Kaija; she was a daughter of one of the daughters.

In clarification to court, PW2 answered that his great grandfather called Bagole was the original owner of the land. That the Late Bagoole had 6 children; Yayiirō Kilirawo, Bagole, Kamukamu and Aaron Isabirye and the 6th was a daughter whom he didn't remember the name. That his great grandfather did not distribute the land, he did not see Bagole as he died before he was born. That Yayiirō Kulwano is the father of his father.

In addition, that they are 3 children; Baligeya Charles, Maka David and Basoga Joseph. Baligeya gave birth to Eukeri. That he was only aware of one son of Eriakesi Wasagya. Eriakesi Wasagya gave birth to Kyoziira, Mukuma, Balodha Stephen (the Appellant), Namukasa, Gonza, Banaya Base, Mutwalibu Katongole. Kamukamu had no children. Aaron Isabirye had two daughters who died. Eriakesi had no children.

The counter claimants third witness was **Mutwalibi Katongole a male adult aged 61 years old and resident of Busolo village, Mafubira Sub-County, Mafubira Parish in Jinja District, peasant farmer (at page 24- 25 and 68-69 of the certified record of proceedings, hereinafter referred to as PW3)**. His evidence in chief was by way of Witness Statement on **pages 24- 25 of the bound record of appeal** as availed to me. He testified that he is a brother to the parties in the Counterclaim and a beneficiary of the suit land and in physical occupation of part of the suit land. That he is well aware of the facts and evidence of Baligeya Charles and Basoga Joseph and that he started using the suit land as his inheritance in around 2004 and has since remained thereon and cultivates maize, potatoes, cassava bananas and fruit trees like jackfruit, avocados among others.

Further, that he had also earlier built a house on the suit and the same was illegally demolished by the Appellant and as of now only grows thereon food crops. That the Appellant contrary to the family position, illegally registered

the suit land in his personal names and himself and other Respondents object to the same and seek cancellation to the Title.

During cross-examination, pages 68- 69 of the bound record of appeal as availed to me, answered that that he has oranges, *matooke*, jackfruit, avocado, maize and mangoes. That he started using the land in 2004. That the land was not given to the Appellant and that Rev. Aaron Isabirye was the last to die, but he didn't recall when he did and didn't see him face to face and didn't see any document giving the Appellant the land.

That he was duly served with the Plaint; he knew Sowali Kamukamu and he is the son to Bagole the brother to **PW3**'s father. That Eriakesi Wasagya is **PW3** father and that he is sickly.

During clarification of his testimony by court, PW3 responded that the Appellant is his brother, they have different mothers and that Kamukamu is sickly and can't talk and he is the only surviving uncle. That Kamukamu is not among the Counter-Claimants/Respondents and he didn't know why Kamukamu was not among the Counter-Claimants/Respondents. That he had also built on the suit land and the Appellant demolished the same. That he constructed the house between 2013/2014, but he did not report the demolition. That his father was buried in Kayunga.

In Re-examination, he responded that Eriakesi Wasagya was buried in Kayunga Village, Mafubira and he was not buried on the suit land. That Bagole is the father to Sowali Kamukamu and that he built the house when there was an avocado tree but now there was a garden currently. That Kamukamu Katongole Nakayima (his mother), his son, Ali Mutwalibu, Eriana, his grandmother is buried there; and that Elesie, his grandmother is among the people buried on the land.

The Counter Defendants fourth witness was **Bawaya Bessi, a female adult aged 63 years old and resident of Makenke village, Mpumudde-Kimaka Division in Jinja, peasant farmer by occupation (at page 26-27 and 70-71 of the certified record of proceedings, hereinafter referred to as PW4)**. Her evidence in chief was by way of Witness Statement on **pages 26- 27 of the bound record of appeal** as availed to me.

She testified that the parties to the suit are well related to her and that the Appellant is her biological brother while the 1st, 2nd and 3rd Respondents are her cousins and thus share the same the paternal lineage of their great grandfather the late Bagoole who was the original owner of the suit land.

Further, that she started living on the suit land at the age of 2 years when she was taken to stay with her grandmothers Erina and Eresi who were also living on the land at the time. That she has grown and lived on the sit land even after marriage returned to take care of her grandparents on the same land including the late Aaron Isabirye who also eventually died and she continued to cultivate thereon up to date.

That the said land has been preserved and jointly used as family/clan land through successive generations till the death of their last grandfather Aaron Isabirye who was the last caretaker who also died and that before he died he said he had left the land undivided to be all the beneficiaries including **PW4**.

That after the death of Aaron Isabirye, the Appellant attempted to claim the whole land contrary to the known family position and resolutions made by the clan meeting after the land dispute arose. That the said Appellant also illegally obtained a Certificate of Title to the said land in his own which direct attempt to deprive her and other legitimate siblings of the suit land.

That apart from herself and Mutwalibi Katongole who are still using portions of the suit land, the Appellant had threatened, chased and prevented their other brother s and beneficiaries from accessing the family land.

During cross-examination, (pages 70- 71 of the bound record of appeal as availed to me, she answered that they have never written minutes. That in 2013 they did not write any minutes. That she knew the late JB Isabirye. That she did not see him in the meeting of 2013. That the land belonged to her grandparents. That she knew the land and that it measures 9 acres. That the buildings collapsed. That she has never sold part of the suit land.

She knew that her grandparents used to occupy the suit land. That her grandmother left because of the dispute. That the dispute was between Kaija and the Appellant. That Kaija just left the land, she wasn't aware of any document when Kaija vacated in favour of the Defendant.

That Sowali Kamukamu was the brother to her father, he was previously involved but got a misunderstanding with the Respondents and left the case; and she did not attend the meeting of 2013.

In re-examination, she responded that she knew about the dispute between Kaija and the Defendants.

The Counter Claimants closed their case.

In their defence, the Plaintiff/ Counter Defendant presented four witnesses as follows:-

The defence opened with the evidence of **Stephen Balodha, a male adult aged 68 years old, carpenter and a resident of Naava Zone, Mbiko Parish, Njeru Town Council, Buikwe District (at pages 40-42 and at pages 72-74 of the certified record of proceedings, hereinafter referred to as DW1)**. His evidence in chief was by way of Witness Statement on **pages 40- 42 of the bound record of appeal** as availed to me.

He knew the Counter Claimants in the matter as his distant relatives whom he had sued in the instant suit for trespass to which they files a defence together with a Counterclaim. That originally the suit land was purchased by **DW1's** great grandfather known by the name Katongole who had several untitled land and because he was a generous man, he gifted some of his land to his relatives including Samson Kamukamu and another piece of land located at Ivunamba Budondo Sub-County Jinja District to Yayiro Kulwawo the Counter Claimants grandfather where they have homes and derive their ancestral land.

He continued that the suit land is comprised in Freehold Register Volume JJA 17 Folio 19 known as Block 3 Plot 1473 at Makenke village, Mafubira Sub-county, Jinja District. That he is the lawful owner and user of the suit land having acquired the same as a gift *inter vivos* from his paternal grandfather Samson Kamukamu who did not bear any child.

That because **DW1** was not of majority age, the suit land was left under the caretaker ship of Rev. Canon Aaron Isabirye to keep in trust for his own behalf. That when he attained majority age in 1976, the said Rev. Canon Aaron Isabirye handed over the suit land to **DW1** whereby he took firm and effective possession by planting thereon commercial trees, food crops like maize, cassava, jackfruit, sweet potatoes among others.)

He further testified that on the 24th day of August 1996, at Makenke village in Mafubira Sub-County, Jinja District, Rev. Canon Aaron Isabirye formally handed over the suit land to the Appellant in the presence of the area local authorities who were also witnesses to the said handover deed without any objection from either the public or his relatives including the Counter Claimants.

He further testified that having been in occupation and use of the suit land undisturbed since 1976, he got registered interest by processing a title in 2013 thereof. That no sooner had he procured the said Title, than the Counter Claimants who clearly witnessed the handover ceremony began laying baseless claims in respect of the suit land on which ground they registered a caveat on the Appellant's land. That they on the above account, **PW3** trespassed on the suit land by even constructing a small semi-permanent house as a ploy to take over his land.

Further, that the said suit land has never been family/clan and neither did it belong to the late Bagoole as claimed by the Counter Claimants, rather Aaron Isabirye had the authority to handover the suit land belonged to the Appellant and was keeping the deed as trustee on the Appellant's behalf; and therefore that he didn't own the suit land with the counterclaimants.

That ever since he took possession and utilization thereof, his land had never been subjected to any clan or family issues apart from the baseless claims by the counter claimants. That he has never sold any portion of the suit land as claimed but it's instead one Bassi Buwaya who sold part of it measuring approximately 2 acres on which account he has been approached by some people for purposes of signing for them some documents whose contents he doesn't understand.

During cross-examination, (pages 72- 74 of the bound record of appeal as availed to me), he answered that he studied up to P.3. That he couldn't read and write in English. That was a Cannon and teacher of the Bible. The land was given to him by the Reverend Aaron Isabirye who was the brother of his grandfather Yosia Katongole and his father was called Eraikasi Masajege and the Counter Claimants are clan mates.

That Rev. Aaron Isabirye was caretaker of the land. Samson Kamukamu was the real owner of the land. He died in 1958 when the Appellant was still very young. In 1957, he gave the land to these people to keep in trust. Rev Canon Aaron Isabirye told the Appellant that Kamukamu was the owner. The

Appellant's father had never had custody of the land. That **DW1-2** is the gift deed used to give the Appellant the land.

He continued that in the gift deed, Aaron Isabirye and Isabirye Aloni are one and the same people. That the Rev didn't sign but just thumb printed as his eyes were sick-the eyes were blind and the Reverend could not see and Yosowasi Kamukamu was present. That other clan people did not sign. That the gift deed was handed over to him the land in 1976, then he didn't give him a written document and he attended the meeting in 2013 and he was the defendant. That the clan was to return with Resolutions after 15 days.

That he gave the gift of witness to the clan people. That he presented the document during the meeting in 2013. That he never had proof that his great grandfather owned the land in Budondo and he did not get consent because it is his land. That they had never tried to register the land in the name of Isabirye.

He continued that there are some of his brothers and sisters who are using part of the land who are Mutwalibu Katongole, Goza Joyce and Erija Bessi. That Mutwalibu Katongole trespassed. That **DW1** didn't demolish his house but rather directed him and he destroyed it.

That Katongole was the eldest amongst his great grandparents and that he has never given anyone consent to use the land.

He further stated that there is a graveyard on the land of Sarah Akonerwa, Samson Kamukamu and Yayiro Kulwawo buried there his daughter, Reina Kabirwa a sister to Samson Kamukamu and Nakayima, a mother to his sister Eriya Bessi.

The Counter Defendant's second witness was **Bongeze Muhamad Eduluma, a male adult aged 54 years old, Mechanic and a resident of Kayunga, Mafubira Sub-County, Jinja District (at pages 43-44 and at pages 74-75 of the certified record of proceedings, hereinafter referred to as DW2).** His evidence in chief was by way of Witness Statement on **pages 43- 44 of the bound record of appeal** as availed to me.

He knew the parties in the suit as his clan mates from Baise Igulu who were in court over the land dispute comprised in Freehold Register Volume JJA 17 Folio 19 known as Block 3 Plot 1473 at Makenke village, Mafubira Sub-County Jinja District. That the suit land belongs to Balodha Stephen and that he

came to know about the dispute in a clan meeting that held at Makenke Hall chaired by the late JB Isabirye who was the clan leader then.

He added that the gist of the meeting was establish ownership of the suit land and then the Chairman asked each side to furnish proof of the ownership to which the Respondents failed to furnish proof of ownership whereas **DW1** did by presenting the gift deed. That when the **DW1** furnished the gift deed, the Respondents caused a lot of mayhem hence disrupting the meeting that ended pre-maturely without conclusively settling the matter on which account the meeting was adjourned for a month.

That although it was the clan meeting, other local leaders were in attended as the suit land was within their jurisdiction. That the local leaders confirmed the authenticity of the gift deed amongst whom was Okello Paul, the LC1 chairman of Makenke. That at all times since **DW2's** childhood, the Appellant has been using the suit land at Budondo Sub-County where he used to visit them.

That the local people of Makenke don't know the Respondents because they have never been in possession of the suit lands at any one moment save for the period when they temporarily stated with the Appellant for purposes of helping him construct his hoses as porters on several building sites. That claim by the Respondents is a mere gimmick or ploy aimed at grabbing the Appellant's land he lawfully acquired without any third party rights.

During cross-examination (pages 74- 75 of the bound record of appeal as availed to me), DW2 answered that he belongs to the Baise Iguru Clan and his late father is Bogeza Sulaiman and Walubo is his grandfather. That he attended the meeting in 2013, the late JB Isabirye chaired the meeting and knew about the land before the meeting of 2013.

That **DW1** uses the land and has spent there a long time, he started knowing about his use of the land around 1981 and that **DW2** has never lived on the disputed land. That he lives in Kayunga Mafubira. That he wasn't present when the gift deed was being made and first saw it in 2013.

That he knew Kako Christopher as a clan mate and he is the Publicity Secretary of the clan, he was there at the meeting and his account of the meeting of 2013 is the truth and he wasn't aware how the Respondents acquired the land. That the chairman Okello was present.

In Re-examination, he responded that he was first approached by the parties before 2013.

The Counter Defendants third witness was **Longa Wilson, a male adult aged 51 years old, self-employed and a resident of Makenke Village, Mafubira Sub-County, Jinja District (at pages 45 and at pages 75-76 of the certified record of proceedings, hereinafter referred to as DW3)**. His evidence in chief was by way of Witness Statement **on page 45 of the bound record of appeal** as availed to me.

He knew **DW1** as his past neighbor in Makenke Village before he shifted to Mbiko, but didn't know anything about the Respondents. That the parties were in court over a land dispute in Makenke; and he know as the suit land belongs to the Appellant because at all material times **DW3** was his neighbor, he was in possession and sole user of the same.

That only a one Anifa a distant relative to the Appellant who stayed with him and later on started claiming interest in the suit land but the dispute was resolved in favour of the Appellant.

During cross-examination on pages 75-76 of the bound record of appeal as availed to me, he answered that he is 52 years old and that the Defendant is his past neighbor and he is neighbor to the disputed land. That he was present during the signing of the gift deed and he used the name Ali Longa before he had changed to Christianity in 2000.

That Aaron Isabirye was present during the signing and he thumb printed as he was blind. They placed his thumbprint, the Secretary helped him who then was Alema Alfred and that Alema Alfred wrote the document. That Baligeya Charles was present when the gift deed was being made, there were many people and that the LC1 decided the dispute.

In Re-examination, he responded that the gift deed and the LC1 Judgment are the same.

The Counter Defendants fourth witness was **Olok Kalamero, a male adult aged 60 years old, Watchman at Masese Market and a resident of Walukuba Masese, Jinja District , (at pages 47-48 and at pages 77-78 of the certified record of proceedings, hereinafter referred to as DW4)**. His evidence in chief was by way of Witness Statement **on page 47-48 of the bound record of appeal** as availed to me.

He knew **DW1** as his past neighbor in Makenke Village, but didn't know anything about the Respondents. That at all material times the land belongs to the Appellant who has been in firm and effective possession and

occupation of the same as owner since the year 1992 when **DW4** first met him.

That on the 24/8/1996, the LC1, other committee members and other members of the public visited the land in dispute and by then **DW4** was the chairperson for the youth. That the suit land formerly belonged to the Appellant's grandfather known as Samson Kamukamu who left the suit land under the care taker ship of Reverend Canon Isabirye to keep it in trust for the Appellant.

That he established the above facts in the meeting that was convened on the 24/8/1996.

During cross-examination on pages 77-78 of the bound record of appeal as availed to me), he answered that he was born in 1961 in Kitgum, is an Acholi and he went to Makenke in 1987 to work in Nytil as a guard and he used to rent at Makenke. That in 1992 he was chosen as the Chairperson-Youth and has been using Swahili to speak; and it was the Secretary who used to do the work of writing.

That he first met the Defendant in 1992 in Makenke and the Defendant used to come and dig the land, he had no home on the land and up to today, he has no home on the land. That he was present when the Appellant was being given the land on the 24/8/1996 and that Samson Kamukamu owned the land, they came together with the LC1 and residents and gave the Appellant the land. That Samson Kamukamu gave the Appellant the land, he didn't know that it was family land and he was just told that Rev. Isabirye was the caretaker. That he handed the land to the Appellant and he personally saw the Rev. Isabirye in 1996.

In Re-examination, he responded that the residents and LCs came and handed the suit land to the Appellant. That the LCs moved around showing the boundaries of the land. That he saw Rev. Isabirye personally handover the suit land to the Appellant. That no one came out to show that the land belonged to family.

The Counter Defendants closed their case and Court visited the Locus in quo.

During the locus in quo visit, on pages 78 to 79 of the bound record of appeal as availed to me, Court noted that the suit land, there were graves with 'Grave C' containing the remains of Nakayima Ashraf, mother to the fourth Respondent and Buwaya Refi and also contains remains of son of

fourth Respondent; 'Grave B' contains Kamukama Samson and Eleanor Katabwirwa; and 'Grave' contains Senga Birowozo plus Sarah Akoberwa great grandmother to the Appellant.

Having summarized all the evidence led before the trial Court as availed to me, I have carefully analyzed all the three grounds in this Appeal and also examined the Judgment and Orders arrived at by the trial Court and the submissions of both sides as captured in this Judgement. In the first place, I have arrived at the following uncontested evidence:-

Original Owner of the suit land

There is a dispute amongst all parties as to who exactly was the original owner of the suit land, **PW1** stated that his grandfather was Iyayiro Kulwaawo, but be that as it is, it is also clear that the parties in this case are all interrelated and share a common ancestor /great grandfather in the names of Bagoole. The Defendant in the Counterclaim and also refers to one Kamukamu, Rev. Aaron Isabirye, Eresi and Erina as children of the late Bagoole.

The evidence also shows that the suit land had remained undivided and undistributed from the time the late Bagoole occupied it and after his demise was utilized by his children although Rev. Aaron Isabirye took on a care taking role. The one named Katongole whom the Appellant refers to as his direct grandfather gave birth to Masayanje who is the father of Balodha Stephen.

The above was confirmed by **PW2 Basoga Joseph**, who fully associated himself with the Witness Statement of **PW1**, his elder brother; and **in clarification to court, PW2** answered that his great grandfather called Bagoole was the original owner of the land and had 6 children; Yayiuro Kilirawo, Bagoole, Kamukamu and Aaron Isabirye and the 6th was a daughter whom he didn't remember the name; and that he did not distribute the land. Although **PW2** a grandson of Yayiro Kulwano the father of his father did not see Bagoole in person as he died before he was born, this evidence is also true as far as the Respondents in this case.

DW1 the Appellant in his own evidence and indeed also repeated on pages 1 and 5 of his submissions in this Appeal confirmed that he was minor in 1957 when his late grandfather Samson Kamukama allegedly gifted to him the suit land, so it goes without a assaying that he also never got to see Bagoole.

PW2 was also clearer of the family line that links the Respondents to the Appellant and was also supported by **PW3 Mutwalibi Katongole** who in his evidence stated that he had started using the suit land as his inheritance in around 2004 and has since remained thereon. The remains of his demolished house on the suit land during *locus in quo* is evidence of that. He confirmed that by the time of hearing, Kamukamu was sickly and can't talk and he is the only surviving uncle; and **in Re-examination**, he responded that Bagoole is the father to Sowali Kamukamu and that Kamukamu Katongole Nakayima (his mother), his son, Ali Mutwalibu, Eriana and Eliesi his grandmother were buried on the land.

The above was also supported by **PW4 Bawaya Bessi**, a biological brother to the Appellant and she was clear that the 1st, 2nd and 3rd Respondents are her cousins who share the same the paternal lineage of their great grandfather the late Bagoole who was the original owner of the suit land. She also threw a lot of light on the interrelationship of the parties and the role of Rev. Aaron Isabirye, as the last common caretaker of the suit land and stated that she and Mutwalibi Katongole are still using portions of the suit land.

On the other hand, the Appellant **DW1 Stephen Balodha**, son of Eraikasi Masayege confirmed knowing the Counter Claimants in the matter and referred to them as his distant relatives. Although he claimed that the suit land was originally purchased by his great grandfather known by the name Katongole, it is clear that he had no proof of such a purchase deed. He confirmed that he was a minor then and only attained majority age in 1976; but alleged to have acquired the same as a gift *inter vivos* from his paternal grandfather Samson Kamukamu who did not bear any child.

The Appellant **DW1** relied on the alleged gift deed handed to him on the 24th day of August 1996, at Makenke village in Mafubira Sub-County, Jinja District, by Rev. Canon Aaron Isabirye a brother of his grandfather Yosia Katongole; and referred to **PW3** as a trespasser on the suit land who constructed a small semi-permanent house. He denied that the said suit land has ever been family/clan and neither did it belong to the late Bagoole, but that in 1957, Rev. Canon Aaron Isabirye kept the land in trust and later told the Appellant that Kamukamu was the owner.

He in cross examination confirmed that there is a graveyard on the land of Sarah Akonerwa, Samson Kamukamu and Yayiro Kulwawo buried there his

daughter, Reina Kabirwa a sister to Samson Kamukamu and Nakayima, a mother to his sister Eriya Bessi.

DW1 was supported by **DW2 Bongeze Muhamad Eduluma**, who also knew the parties in the suit as his clan mates and **DW3 Longa Wilson**, and **DW4 Olok Kalamero**.

From the above, what can be discerned from the evidence of both sides is that the Appellant and Respondents all belong to the same clan of Baise Iguru. **DW2 and DW3** confirmed that this was their common clan. Whereas the Appellant and his witnesses claimed that the suit land was bought by his grandfather Samson Katongole, from the evidence presented by both sides, the conclusions I have drawn are that there was no proof of that, but instead, the evidence points to Bagoole a common grandfather to all the parties clan land and of the clan of Biase Iguru as the original occupier of the suit land.

My finding therefore are that the suit land was under in the hands of one common ancestor by the names of Bagoole who had several children among whom was Samson Kamukamu, Eriakasi Wasagya, the late Yayiro Kulwawo, Livingstone, Aaron Isabirye, Eresi and Erina. I have also found that the evidence reveals that none of the parties or their witnesses ever saw the late Bagoole as he had died long before they were even born, around 1957.

This is confirmed by **PW3 on pg.69 during cross-examination, DW2** testified that *"...Rev Aaron Isabirye was the last to die. I don't remember when he died. I did not see him face to face...He is a son to Bagole. He is a brother to my father Eriakasi Wasagya is my father. He is sickly... Kamukamu is sickly and can't talk. He is the only surviving uncle. Kamukamu is not among the counter claimants. I don't know why Kamukamu is not among the counter claimants..."*

The second conclusion I have drawn is that the suit land devolved around the children of the late Bagoole who sued it jointly as a family without being divided. I therefore agree with learned counsel for the Respondents on this. The evidence also proves that there were subsequent devolutions of the suit land; **PW4** was clear that the said land has been preserved and jointly used as family/clan land through successive generations till the death of their last grandfather Aaron Isabirye who was the last caretaker who also died and that before he died he said he had left the land undivided to be all the beneficiaries including **PW4**.

The above is confirmed by the evidence of **DW1** in para 5 of his Witness Statement. He testified that Rev. Isabirye was only a caretaker of the suit land and it had devolved as an undivided estate. It is also clear that all the said children of Bagoole passed on without distributing or dividing the land and Rev. Aaron Isabirye care took the land, still in its undivided form. This responsibility was later taken over by the Appellant Balodha Steven/ the counter defendant as the elder of the beneficiaries.

Secondly, while the Appellant claims the suit land as a gift *inter vivos*, but a critical analysis of the evidence confirms that the alleged doner Samson Kamukamu from whom he claims never wrote any gift deed document donating the suit land or any part of the suit land to him. Instead, the evidence on record is that the alleged gift deed document, **DW1-2 (gift deed)**, was a document allegedly thumb printed by Rev. Aaron Isabirye (who was by then blind) and it is also clear that he never wrote it himself as he was already blind.

Thirdly, The evidence of **PW1** during cross examination stated that; - *“Katongole gave birth to Masayanje who is the father of Balodha Stephen”*. He further testified that *“Reverend Isabirye was only a caretaker....”* The above confirms that while the Appellant alleged that Rev. Aaron Isabirye who purportedly handed over the land as a gift deed to **DW1** and also stated that none of his daughters had any claim to the said land and that if Kanifa wanted to do anything on the land, she should first ask the Appellant, it is also clear that he was not the original owner of the suit land, but just a caretaker.

As far as the law governing what qualifies to be a legally recognized gift *inter vivos* is concerned, learned counsel for the Appellant submitted on it elaborately. I only wish to elaborate that a gift *inter vivos* is defined in **Black’s Law Dictionary 8th Edition at page 710** as *“a gift of personal property made during the donor’s life time and delivered to the donee with the intention of irrevocably surrendering control over the property”*.

This was elaborated upon in the case of **Sajjabu John vs Zziwa Charles**, that a gift *inter vivos* was defined in **Halsbury’s laws of England Vol.18 pp.364 para 692** as:-*“The transfer of any property from one person gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true possessor to*

another person with full intention on the part of the receiver to retain the thing as his own without restoring it to the giver.”

Further , in the case of **Joy Mukobe vs. Willy Wambuwu HCCA No. 55 of 2005** relying on other decided cases, court held that for a gift *inter vivos* to take irrevocable roots, the donor must intend to give the gift, the donor must deliver the property and the donee must accept the gift.

Also in **George William Kalule vs Norah Nassozi & another Civil Appeal No. 29 of 2014** while faced with a similar case like the instant one and observed that;“*...on the facts of this case we find that the late Benalikaki had given as a gift inter vivos the two acres of land to the appellant long before he died and as such it could not have formed part of his estate upon his death.*” the court of Appeal further observed that; “*It is trite law that for a gift of personal property to be complete and irrevocable, the following condition must exist; the donor must intend to give the gift, the donor must deliver the property to the donee, the donee must accept the gift and take possession of it. In this case, all the above conditions were satisfied.*”

The law also provides that a gift *inter vivos* takes effect when the conditions are fulfilled as well established in **Ovoya Poli vs Wakanga Charles HC Appeal No. 13 of 2014** wherein a gift was defined to mean a voluntary transfer of personal or real property without consideration. It involves the owner giving with or without pecuniary consideration; and is essentially a voluntary conveyance of land or transfer of goods from one person to another, made gratuitously and not upon any consideration of blood or money. It has therefore been legally defined as the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called donor to another called donee and accepted by or on behalf of the donee.

Further in the same case at common law, the essential requisites of a valid gift are;

1. Capacity of the donor,
2. Intention of the donor to make a gift, absence of consideration completed delivery to or for the donee;
3. The donee's acceptance of the gift by the donee;

4. The donor of the gift must have had a present intent to make a gift of the property at the donee;
5. Transfer of the gift must be delivered to the donee; and the donee must accept the in order for transfer to take place.

See also ***Bulukidda and 3 others vs Kakembo Sulaiman HCT-06-LD-CA-0034-2018 (Arising from Civil Suit No. 081 of 2010)*** by this very court

Relating the above authorities to this Appeal, having confirmed that even the Reverend Aaron Isabirye to who the document **DW1-2 (gift deed)** is attributed never wrote it himself as he was already blind and could not see, but it was written by someone else (the Appellant's witnesses testified that he only appended his thumbprint thereon), this means that it cannot pass the test of a gift *inter vivos* in law.

The Appellant in his own evidence also repeated the above on pages 1 and 5 of his submissions in this Appeal clearly stated that he was minor in 1957 when his late grandfather Samson Kamukama allegedly gifted to him the suit land.

I therefore agree with learned counsel for the Respondents that this further confirms that the Appellant could not have met the two criteria of accepting and being delivered /handed to the land or being in position to take possession of the alleged gift. I have already pronounced myself on the alleged delivery by Rev. Aaron Isabirye which clearly does not have any legal basis.

The record of cross examination of the Appellant **DW1** on his alleged "gift" is clearly recorded on page 16 of the certified record of proceedings of the lower court and on page 73 of the Appellant's record of Appeal where the Appellant is recorded to have responded to specific questions in cross-examination relating to his alleged *gift "inter vivos"* as well the purported gift deed itself exhibited as **DW1-2**. He also asserted that Yayiro Kulwawo the counterclaimant's grandfather and the counter claimants have homes and derive their ancestral land, however, the evidence adduced also confirms that the parties have over time sat in several clan meetings concerning this land in dispute.

On the basis of the above, I have therefore not found any proof that the alleged doner intended to give the said gift to the Appellant admitted as exhibit **DW1-2 (gift deed)** because there is no document whatsoever

written by Samson Katongole or proof that the suit land was his personal property to give away.

Secondly, it is clear that whatever was purported to be a gift deed was never reduced into writing or delivered to the donee by the donor himself or his lawful agent. Instead, despite the fact that the Appellant allegedly took possession from Rev. Aaron Isabirye, the evidence reveals that he was not the donor.

I therefore find that as rightly found by the Learned Trial Magistrate, that apart from failing to adduce valid written proof or evidence of such gift deed made by the late Samson Kamukamu to the Appellant, there is no evidence that any effectual gift was made to the Appellant in this case.

I have also examined the trial Magistrate's Judgement at page 7 paragraphs 4, 5, 6 & 7 cited by learned counsel for the Appellant (*supra*), but despite that assertion, I have found no reason to disagree with the learned trial Magistrate who first heard this case because it is clear that the evidence of both parties points to the fact that they had a common ancestor who happened to be in possession of the suit land.

The above was also buttressed when the court visited the *locus in quo* and witnessed the features that existed on the land including the five people buried on the suit land who are related to all the parties in this Appeal. This included the Appellant's close relatives including Kamukamu Samson the Appellant's grandfather, Erina who was Kamukamu's sister, Sarah Akobera a grandmother to the Appellant, Nakayima Ashraf a mother to Bawaya Bessi the Appellant's biological sister; and in addition, were the grave of Mutwalibu Katongole's (4th Respondents son), his garden and the remains of his demolished house.

All the above confirms that this was a common clan land also used as burial grounds for the wider family where several of the relatives of both sides are buried as confirmed by the Respondents witnesses and the evidence at the *locus in quo*.

(b) Current occupation and use of the suit land

The evidence led by **PW1** shows that the Appellant/Counter-Defendant is currently in occupation of most of the suit land, but it is also clearly shows that **PW2 & PW3** are also using portions thereon to carry out cultivation. This was confirmed by **PW3** during examination in chief when she stated

that in paragraph 4 that “...I have continued to use the land for cultivation to date.”

Since it is therefore also undisputed by both sides that **PW3 & PW4** have used the land for cultivation for some time; and it is also undisputed that **DW1** has also lived on the suit land for some time as testified to by **DW2** in **paragraph 6** of the Witness Statement, **DW3 Longa Wilson** on pg. 45, of his evidence in chief Witness Statement in paragraph 3 and **DW4 Olok Kalemero** in paragraph 3 and **DW1 in cross examination** that some of his brothers and sisters are using parts of the land namely Mutwalibu Katongole, Goza Joyce and Erija Bessi, it is my finding and decision that these people cannot be taken as trespassers on the suit land. He was supported in this by his witnesses **DW2, DW3 and DW4.**

DW1 was however clear that Katongole was the eldest amongst his great grandparents and that he has never given anyone consent to use the land. This confirms further the claims of the Respondents to a beneficial interest in the suit land.

Although the Appellant testified that originally the suit land was purchased by his grandfather known as Katongole, as already held in this Judgement, I have not found this assertion substantiated by concrete evidence. The fact that the suit land originally belonged to the late Bagoole a great grandfather to both the Appellant and the Respondents are clan mates is established and proved as a material fact and also acknowledged and not denied by the Appellant himself.

The evidence of both sides points to the fact that the Respondents just like the Appellant are all descendants of the said late Bagoole and the finding of graves for both sides at *locus*; the trial Magistrate in line 10 on page 5 and lines 20-25 on page 7 of his Judgment made specific reference of the family graveyard.

All the Respondents asserted that they collected money and agreed that the Appellant should get the title to the suit land and distribute it to them, but he instead, took out a title in his own names excluding them and denying them of a share of their grandfather’s estate. The Appellant’s witnesses **DW2, DW3** and **DW4** also allude to the fact that meetings took place to resolve the ownership of this land and it was at those meetings that they believed the Appellants document admitted as **DW1-2.**

The above evidence that the Respondents contributed money towards the registration of the suit land was not rebutted by the Appellant with concrete evidence; I therefore also find that in view of the common ancestry of both parties, the Respondents have a beneficial interest/claim in the suit land. As such, I also agree with learned counsel for the Respondents on the **2nd ground of Appeal**, that the Learned Trial Magistrate evaluated the evidence at *locus*; and it is in line 10 on page 5 and lines 20-25 on page 7 of his Judgment and confirmed in the first paragraph on pg.5 of the submissions by the learned counsel for the Appellant.

My own findings are that the Learned Trial Magistrate properly addressed his mind to the law and considered the evidence of the Appellant (Defendant in Counterclaim) relating to “gift *inter vivos*”; It is as well as recorded on pages. 7 and 8 of the lower court Judgment and arrived at the proper conclusion the Appellant failed to prove his allegation that he obtained the land by way of “gift *inter vivos*”.

From the above, I have also found evidence confirming that the Appellant could not have met the criteria of accepting and being delivered /handed to the suit land as a gift deed or being in position to take possession from the donor thereof. As already found, the evidence also reveals that suit land was never administered and or distributed to any beneficiaries from the time it was held by their common ancestor Bagoole, but it was used by the entire family before it got into the hands of Katongole and finally Rev. Aaron Isabirye, who purported to perfect the gift deed to the Appellant.

The above leads me to the registration by the Appellant on the suit land in his sole names. As already stated above, it is clear that the Respondents have a beneficial interest in the suit land which the Appellant herein was aware of but neglected and or ignored at the time of acquiring the Certificate of Title. I therefore also agree with the learned Trial Magistrate on this finding.

Secondly, after critically analyzing the Plaintiff's Record of Appeal, it is clear that fraud and particulars of fraud as pleaded specifically in their Counter Claim were evidence. The evidence led by the Respondents prove the said particulars to the standard required by law and I have not found any reason to find that the learned Trial Magistrate erred when he held as such, I agree with the submissions of learned counsel for the Respondents on this.

It is also clear that as the said suit was still proceeding in court, the Appellant decided to change its status when he procured a registration of the said suit land into his personal names thereby acquiring a Title now comprised in FRV JJA 17 Folio 19 Block (Road) 3 Makenke in Jinja with full knowledge that the interests of the Respondents herein had not been fully resolved.

My findings are that the Learned Trial Magistrate on pages 8 & 9 of his Judgment (also pages 111 & 112 of the Appellant record of Appeal) clearly addressed himself to the law and applied it to the facts and evidence adduced before him to arrive at a proper conclusion that indeed the Appellant acted fraudulently in securing the said title in his sole names.

I having analyzed all the evidence led in this case have also arrived at the same finding; and I see no reason to find differently. My decision is that the claim that the Respondents are also beneficiary owners of the suit land is validly supported by evidence; and that the learned trial Magistrate was right to find so.

For those reasons, all the above three grounds of Appeal is FAIL.

Ground 4: That the Learned Trial magistrate erred in law and fact when he declared the registration of the Appellant on the suit land as void

In respect of this ground, it was submitted by learned counsel for the Appellant that in paragraph 4 page 9 of his Judgment, the trial Magistrate held as follows;

“Therefore looking at the averments made and evidence adduced in this case, and having found in issue 1 above that the counterclaimants have a beneficial interest in the suit land, which the defendant to the counterclaim herein was aware of but neglected or ignored at the time of acquiring his certificate of title, the arbitral registration of the suit land into the name of the defendant to the counterclaim, without regard to their interests, amounted to fraud”.

They added that the Trial Magistrate seems to have wholly based his decision that the registration of the Appellant on the suit land was void, on the fact that he had already found that the Respondents had a beneficial interest in the suit land which the Appellant herein was aware of but neglected and or ignored at the time of acquiring a certificate of title.

Further, that having already submitted that the Trial Magistrate erred when he held as such, then it automatically follows that subsequent decision which arose out of an error prejudiced the Appellant; and prayed that this Honorable Court on account of this error by the trial Magistrate 1 and allow this ground of Appeal.

In conclusion, they strongly submitted that the Trial Magistrate erred in his decision and for the reasons advanced above; they implored the court to allow the appeal, set aside the lower court Judgment and dismiss the Counterclaim.

In reply, learned counsel for the Respondents submitted that the Appellant didn't do any justice to his case and particularly this ground since he has not guided this Honourable Court to any contrary evidence rebutting the Respondent's submissions and the findings of fraudulent conduct in the Appellants actions by the Learned Trial Magistrate.

Further, that as seen on pages 94,95 & 96 of the Appellant's record of Appeal , the Respondents in their submissions in the lower court put forth a good case highlighting the particulars of fraud as pleaded specifically in their Counter Claim; and also led court to the evidence on record including the fact (which has not been denied by the Appellant) secretly and while the said suit was still proceeding, procured a registration of the said suit land into his personal names with Title now comprised in FRV JJA 17 Folio 19 Block (Road) 3 Makenke in Jinja with full knowledge of the interests of the siblings (the Respondents) herein.

They concluded that all the said facts and evidence were all considered by the Learned Trial Magistrate on pages 8 & 9 of his Judgment (also pages 111 &112 of the Appellant record of Appeal) clearly addressed himself to the law applied them to the facts and evidence adduced to arrive at a proper conclusion he did that indeed the Appellant acted fraudulently.

That as stated earlier, the Appellant in this Appeal has not led this Honourable Court to any evidence fact or authority on record that was overlooked or rebutted the conclusion of the Learned Trial Magistrate to which end, they prayed that this fourth and final ground of Appeal also fails.

In the result, they strongly submitted that the Appellant had failed to prove any of his grounds of Appeal; and prayed that the Appeal is dismissed with costs to the Respondents.

In resolving this ground, I have relied on Section 59 of the Registration of Titles Act which states that;-

“No Certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the Certificate, and every Certificate of title issued under this Act shall be received in all Courts as evidence of the particulars set forth in the Certificate and of the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person name in the Certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”

The above has been upheld in numerous decided cases have considered and applied the above provisions. In the case of **John Katarikawe vs Katwiremu & another [1977] HCB 187**, it was held inter alia that provisions of **Section 61 (now 59) of the Registration of titles Act, Cap 230** are clear that once a person is registered as proprietor of land, his title’s indefeasible except for fraud.

A similar position was taken in the case of **Olinda De souza vs Kasamali Manji [1962] E.A 756** that in absence of fraud, possession of a Certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the registered proprietor has indefeasible title against the whole world.

Be that as it is, Court cannot lose focus of **Section 176 (c) of the Registration of titles Act, Cap 230** which despite protecting a registered proprietor of land against ejection except on ground of fraud, provides as follows:

“No action of ejection or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases-

(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud.....” [Emphasis Mine].

Relating the above to this case, although it is clear that during the hearing that **DW1** told court that he is the registered owner of the suit land and

presented the Certificate of Title as proof of the same and the Title was admitted as exhibit **DW1-1**; and this Honorable Court is also alive to the law governing a registered Certificate of Title under **section 59 RTA**, the evidence in this case proves that the original owner of the whole of the suit land was Bagoole, a grandfather to all the parties and that the Appellant Stephen Balodha's getting registered on the Certificates of Title in respect of the suit land as a sole owner relying on a dubious gift deed that did not pass the test of the law and ignoring the beneficiary interests of the Respondents, confirms that he acted fraudulently thereby making his registration void in law.

I cannot therefore fault the decision of the learned Trial Magistrate who found so. My own findings are that the registration of the Appellant on the suit land was void and I agree with the Trial Magistrate on this. The Respondents have succeeded in defending this ground of Appeal.

My decision is that the Respondents in this Appeal are entitled to the reliefs granted to them in the lower court.

Finally, it is now well established law that costs generally follow the event. See **Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC) and Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27**, it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, the Respondents have succeeded in defending all the grounds in this appeal against the Appellant. I find no justifiable reasons to deny them costs on appeal and in the lower court; they are hereby awarded full costs.

Accordingly, Judgment is entered for the Respondents and it hereby ordered as follows;_

1. On the whole all the grounds of this appeal FAIL.
2. The Judgment and Orders of the learned Trial Chief Magistrate are hereby UPHELD in their entirety.
3. The Respondents are awarded costs in the appeal in the High Court and in the lower court.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
28/03/2024

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
28/03/2024