

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 125 OF 2010

LAWRENCE MARTIN MUGERWA MUSISI ::::::::::: PLAINTIFF

VERSUS

1. RICHARD BANJA
2. JUSTINE BANJA } ::::::::::: **DEFENDANTS**

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 The plaintiff through his lawyers M/s Niwagaba, Mwebesa & Co. Advocates filed this suit against the defendants jointly and/or severally. The plaintiff's claim against the defendants is for the following orders; that:

- (a) A declaration that the suit land is not part of the estate of the late Paulo M. Banja.**
- (b) A declaration that the plaintiff is the lawful and bonafide owner and occupant thereof.**
- (c) An order directing the defendants to deliver the Certificate of title and duly signed transfer forms to the plaintiff and in the alternative an order directing the Registrar of titles cancelling the defendants' names from the register and registering the plaintiff as owner thereof.**
- (d) A permanent injunction restraining the defendants from selling, entering and/or dealing with the said land.**
- (e) General damages**
- (f) Costs of the suit.**
- (g) Any other reliefs as the court may deem fit.**

1.2 The defendants through their lawyers Shwekyerera, Kalera & Co. Advocates filed a joint written statement of defence denying the plaintiff's claim.

2. The facts of the case of the plaintiff.

2.1: The plaintiff brought this case against the defendants in their capacity as the present registered proprietors of the land comprised in Busiro Block 263 plot 103 land at Senge by virtue of the grant of letters of administration in their favour in respect of the estate of the late Paulo M. Banja the former owner thereof. The plaintiff contends that he did purchase the suit land from the then owner the late Paulo M. Banja on 20th September 1990 and immediately after purchase thereof the plaintiff took possession of the land.

The plaintiff who was using the services of the firm of Advocates practicing under the name and style of Nicholas Lwanga & Co. Advocates to have the certificate of title transferred into his names could not subsequently get the same done on the ground that the same got lost in the land office prompting him later on to approach the defendants, who had obtained the grant of letters of administration, upon the advice of the Registrar of Titles to have fresh transfer forms signed by the Administrators upon obtaining a special certificate of title for the said land. The plaintiff paid for the process of obtaining the Special Certificate of title and when the same was obtained, the defendants declined to deliver the same to the plaintiff together with the signed transfer forms leaving the plaintiff with no other option than filing this suit claiming for the above mentioned reliefs.

2.2 The facts of the defendants' case

In their joint written statement of defence the defendants denied the plaintiff's averments and contend that the plaintiff is a kibanja holder (bonafide/lawful occupant) on a portion of land measuring only 3 acres and that he has no claim on the rest of the land. The defendants pray for the dismissal of the plaintiff's suit.

3. At the scheduling of the suit the following facts were agreed upon between the parties.

- (a) The land comprised in Busiro Block 263 plot 103 used to belong to the late Paulo M. Banja.
- (b) The defendants are the administrators of the estate of the late Paulo M. Banja.

- (c) The plaintiff paid for the process of obtaining the special certificate of title for the said land and registration thereof in the defendants' names as administrators of the estate of the late Paulo M. Banja.

4. The following issues were agreed upon by the parties for court's determination.

- (a) Whether the plaintiff has any lawful claim against the defendants.
- (b) Whether there has been any dishonest dealings by either party in respect of the suit land.
- (c) Whether the plaintiff is entitled to the reliefs sought in the plaint.

5. Witnesses for the parties

5.1 The plaintiff's witnesses:

The plaintiff called four (4) witnesses himself inclusive as shown herebelow:-

1. Mr. Obed Mwebesa, a lawyer by profession and a practicing advocate with Niwagaba, Mwebesa & Co. Advocates, hereinafter referred to as PW1 gave evidence for the plaintiff.
2. Ms Joyce Gunze Habaasa, the surveyor hereinafter referred to as PW2 gave evidence in connection with her surveyor's report in respect of the suit land.
3. Mr. Milly Mubiru, a neighbour to the plaintiff hereinafter referred to as PW3 gave a brief evidence for the plaintiff.
4. Lawrence martin Mugerewa Musisi, a valuation surveyor, the plaintiff hereinafter referred to as PW4 gave evidence on how he purchased the suit land and how the defendants refused to deliver to him a special certificate of title to the suit land. He prayed to Court that judgment be entered in his favour with all the reliefs prayed for the in the plaint.

All the plaintiff's witnesses were seriously cross examined by Counsel for the defendants.

5.2 The defendants' witnesses.

The defendants called four (4) witnesses, themselves inclusive as shown herebelow:-

1. Mr.Kakelewe Yusuf, the Registrar of Titles in the Mailo land Office in the Ministry of Lands, Housing and Urban Development, hereinafter referred to as DW1 gave evidence for the defendants.

2. Mrs Justine Banja, the widow of the registered proprietor and administrator of her husband's estate hereinafter referred to as DW2 gave evidence in support of their case, and against the plaintiff.
3. Mr. Richard Banja Mufuwa, the 1st defendant, son of the proprietor of the suit land, and joint administrator of the estate of his deceased's father hereinafter referred to as DW3 gave evidence in support of their defence case.
4. Mr. Ezati Samuel, the Handwriting expert, examined the questioned Paul Mr. Banja's signatures on the sale agreement and other documents relevant to this suit, hereinafter referred to as DW4, gave evidence in favour of the defendants.

All the defendants' witnesses were seriously cross examined by Counsel for the plaintiff.

6 Resolution of the issues by Court

6.1 Issue no.1: Whether the plaintiff has any lawful claims against the defendants.

The plaintiff (PW4) gave evidence that he has lawful claims against the defendants as administrators of the estate of the person from whom he bought land in 1990. He relied on several documents to support his case. That the vendor died before he could transfer the suit land into his names. He said that he facilitated the defendants to get a special certificate of title to the suit land who in turn would sign transfer form and the suit land then transferred into his names. That the defendants got the special certificate of title to the suit land and refused to sign transfer form in his favour in respect of the suit land.

PW1, PW2 and PW3 gave evidence that the suit land belongs to the plaintiff. Counsel for the plaintiff Mr. Niwagaba Wilfred in his submissions with the aid of authorities submitted that the suit land was bought by the plaintiff from the late Paul M. Banja and that he is entitled to get his certificate of title in respect of this suit land from the defendants.

The evidence of especially DW2 and DW3 is to the effect that their late husband and father respectively never sold the suit land to the plaintiff. They doubted the signatures of late Paul M. Banja on the sale agreement of the suit land. DW1 and DW4 in their respective evidence support the defendants' case.

According to Exh. PW2, the sale agreement between the plaintiff and Paulo M. Banja dated 20th September, 1990, the purchase price was shs 3,000,000/=. In paragraph 2 (c) thereof, the

purchaser paid Shs 2,000,000/=; leaving a balance of Shs 1,000,000/=. And according to paragraph 2 (b) of the said agreement that balance was to be paid with ninety 90 days from the date of execution of the agreement. That is, the last installment was supposed to have been paid to the vendor by 20th December, 1990. From the evidence on record, the plaintiff never paid the balance to the vendor (Paulo M. Banja) as agreed in the said sale agreement.

At the last pages of the said sale agreement there are writings in ink that were purportedly made by Paul M. Banja receiving shs 300,000/= on 18th October, 1990, and shs 350,000/= on 29th November, 1990 from the plaintiff. Those two documents are on their face written by two different persons; though they are allegedly written by Paul M. Banja. Even the signatures attributed to Paul M. Banja are different. The signatures are further different from the signature attributed to Paul M. Banja on the sale agreement. Even the plaintiff did not sign on it. These anomalies on the said sale agreement are seen with a naked eye.

Wherefore, my deduction in accordance with my above analysis is that the said two documents were not written by Paul M. Banja as alleged in the said in the said Exh. P2. Hence, I am of the considered opinion that the referred to two documents are a forgery. The plaintiff was trying to create false evidence in his endeavours to defeat clause 2 (b) in the said sale agreement. However, even if it was to be true, which is not the case, shs 1,000,0000/= according to the said sale agreement was to be paid in a single payment. The said payments of Shs 300,000/= and Shs 350,000/= in installments could not validate the said sale agreement. The plaintiff was in total breach of the disputed sale agreement.

My above findings are re-enforced by the late Paulo M. Banja's letter Exh. PW6 which terminated the said sale agreement on 5th March, 1991 on ground of non-payment of the last installment. Mark you; this is the evidence that is being relied upon by the plaintiff. This evidence is self defeating of the plaintiff's case.

For the sake of clarity, I hereby reproduce Exh. PW6 herebelow:-

“ On a head paper from Ntume-Nyanzi & Company

.....
.....
.....

5/3/91

Hand mail

**Ms. Nicholas Lwanga & Co. Advocates,
P.O Bo 6289
Kampala**

Dear Sir,

**Re: Rescission of sale agreement mailo register Busiro Blcok 263 Plot
No. 103 10 acres Senge**

We write for Mr. Paulo Mugabi Banja of P.O box 3215 who has given us instructions to notify you as advocates of Mr. Lawrence Martin Mugerwa Musisi that by this notice he is rescinding the agreement of sale of land dated 20th September, 1990 between himself and your client Mr. Lawrence Martin Mugerwa Musisi on the ground that your client has failed to pay the agreed purchase price in full within 90 (ninety) days from the 20th September, 1990 contrary to clause No 2 (b) of the agreement. Your client has paid only part.

By clause 2 (b) of the agreement, time was fixed and it was of essence in performance of the agreement. Our client is therefore no longer bound by the agreement which is now cancelled. Our client is ready to refund monies paid by your client to ours in pursuance of the cancelled agreement if your client lets us or our client know where to find him to pay him.

Your client is also required to vacate the premises and stop forthwith survey activities on our client's land which he started contrary to clause 4 of the sale agreement.

As advocates you are enjoined to return to our client through ourselves the duplicate certificates of title to the lands together with the transfer and consent documents that you took under clause 3 of the agreement and which you could only surrender to the purchaser if he had complied with clause 2 (b) but has not.

Should you attempt to have the transfer registered in favour of Mr. Lawrence Martin Mugerwa Musisi contrary to the agreement you drew up and in disregard of this notice our client will proceed against you as well as your client for the proper remedy. Be advised accordingly.

By copy hereof your client is also personally notified in case his disclaims you as his advocates.

Yours faithfully.

Sgd

Ntume-Nyanzi & Co. Advocates

cc:

cc:”

Strangely, part of Exh PW6 is a receipt from Ntume –Nyanzi & Co. Advocates dated 7th March, 1991 receiving shs 350,000/= from the plaintiff. The contract had already been terminated by Paul M. Banja and I wonder what was the plaintiff paying for. Again there is a document which is part of Exh. PW6 talking about the cancellation of the agreement of sale being withdrawn. The signature on that letter is different from that of Ntume –Nyanzi on Exh. PW6. That document, too, is a forgery. From this observation on those documents, which in effect were never talked about by PW4 in his evidence, I hold that the plaintiff in his dealings with late Paul M. Banja was dishonest.

Further, from the above analysis, it is evidently clear that the plaintiff breached the said sale agreement and the latter was lawfully terminated by Paul. M. Banja.

Accordingly, therefore, the plaintiff (PW4) cannot rely on the agreement which was lawfully terminated by the late Paul M. Banja, the vendor, in writing. The plaintiff in his witness statement admitted as PW4’s evidence-in-chief told Court that he purchased the suit land comprised in Busiro Block 263 plot 103 from the then registered owner Paul M. Banja and a sale agreement was admitted as “Exh P 2”. On that finding alone, the plaintiff’s suit would fail.

It is also noted that the plaintiff is the only sole witness to this sale agreement who testified in Court and who wants to benefit from the same agreement. The plaintiff alleges that after full payment of the purchase price to the late Paul M. Banja, he was given a duplicate certificate of the title and signed transfer forms and that the same were lodged in the lands office by his then lawyers M/s Nicholas Lwanga & Co. Advocates. DW1, the Registrar of Titles, gave evidence that there is no such evidence of lodging the transfer form and other related

documents in their office, according to the office file. DW1's evidence was never challenged in cross-examination by Counsel for the plaintiff.

The plaintiff during his examination-in-chief and in cross examination failed to prove to Court that the mentioned documents were ever lodged with the lands officer. He did not have a single photocopy of the alleged documents at least to convince Court that he has ever had in his custody a duplicate title for the suit land and the allegedly signed transfer forms.

"Exh P3" for instance talks about the white page missing and not the duplicate certificate. Whereas "Exh P4" talks about the duplicate Certificate of title missing and it is hard for one to tell which of the two was missing. These were the plaintiff's games at the time and more over, when these correspondences were being made and exchanged, the plaintiff was already appearing on the white page as a registered owner.

If I may reproduce the wordings in "Exh P3" 1st paragraphs:-

" Acting on behalf of the purchaser of the above described property, Mr. Martin Mugerwa Musisi, we submitted to the land office way back in August 1991, all documents relevant for effecting the requisite transfer of the property into the purchaser's names..."

This letter is dated 31/10/91 and the said lawyers are saying the relevant documents were lodged with the lands office in August, 1991.

A look at "ExhD5" a certified copy of white page from the Lands office clearly shows that **the plaintiff registered himself on the title on 26/07/1991 before the alleged documents were allegedly lodged. This alone is enough to show Court that the plaintiff is a fraudster who needs no protection from this Court.**

This issue had earlier on been settled by this same Court in High Court Miscellaneous Cause No. 035 of 2009; Lawrence Martin Mugerwa Musisi vs Commissioner Land Registration & Attorney General where Court ruled at pages 9 and 10 that **"the entry of the Lawrence Martin Mugerwa Musisi on the white page was tainted with fraud and that the Commissioner Land Registration was proper to ignore any hearing in that regard."** The plaintiff never appealed against the said order of the Court.

The plaintiff having been adjudged a fraudster in that application did not appeal. Counsel for the plaintiff laboured in his submissions to justify the wrongful entry of the plaintiff on the white page, he submitted that his efforts were in vain and this is a wastage of his good time not forgetting that he was the same lawyer who represented the plaintiff in Miscellaneous Cause No. 35 of 2009 and received a ruling clearly indicating the plaintiff as a fraudster and never appealed against the ruling.

DW1 in his examination- in -chief told Court that the entry of the plaintiff on the white page on 26/07/1991 under instrument No. KLA 148421 had no endorsement by the Registrar and the former commissioner Ms. Sarah Kurata Basangwa canceled it on grounds that it had been erroneously printed on the register. He further told Court that there was no transfers or such instruments on the file from Paul. M. Banja to Lawrence Martin Mugerwa Musisi.

Without wasting much time and avoiding repetition, the earlier decision in Miscellaneous cause No. 035 of 2009, confirmed that the plaintiff's entry on the registrar on 26/07/1991 under instrument No. 148421 was procured through fraud and the same entry should form no ground that the duplicate certificate and transfer forms were ever lodged with the Lands Office by the plaintiff.

The plaintiff exhibited in Court "Exh P6" as documents allegedly showing payment of the last installment on the purchase price. PW4 (plaintiff) failed to prove to Court that M/s Ntume Nyanzi & Co. Advocates were instructed by the late Paul M. Banja to receive the said monies when he had already terminated the said sale agreement. He did not also prove to court that the late Paul Banja received the purportedly last installment from the same lawyers. The plaintiff did not bother to call any witnesses from the said Law Firms or any body who has ever worked with them to support his allegations. All this go to the same point that the plaintiff failed to prove the said assertions on the balance of probabilities.

DW3 states at paragraph 2 of his testimony that before his father's death, he (late Banja Paul) was visiting and harvesting eucalyptus trees from the suit land and have always known the suit land as theirs. And at paragraph 3, he testified that around 2007, after four (4) years of his father's demise, the plaintiff started enlarging/expanding the boundaries of his kibanja by sending and ordering his workers to cut down the trees and graze on the area that is not

covered with trees. These pieces of evidence remained intact and were never touched in cross examination by the plaintiff's counsel.

DW2 testified that she jointly bought the suit land with her late husband and jointly paid for it between 1970 and 1976 and upon completion of payment of purchase price, the title was registered in her husband's names as a head of the family and kept at home. In her cross examination, she told Court that she made a photocopy out of the duplicate title between 1993 and 1994. A photocopy of the duplicate certificate title was admitted as "Exh D6".

If DW2 had the duplicate title for the suit land between 1993/4, and was able to make a photocopy out of it, how then did the plaintiff have the same duplicate title in 1991 as alleged? It is that the plaintiff has never touched the duplicate certificate of title for the suit land. DW2 testified that the same title went missing after the death of her husband. That she looked all over the house and failed to trace it. This piece of evidence corroborated their application for a special certificate of title of September, 2008 which application was prepared and lodged in the Land office by M/s Niwagaba, Mwebesa & Co. Advocates, a law firm now representing the plaintiff. The same application and its supporting statutory declaration were admitted in evidence as "Exh D8".

Therefore, the plaintiff's claims of possessing, lodging in the lands office and subsequently losing the duplicate certificate of title for the suit land in 1991 together with signed transfer forms sharply contradicts his other claims in 2008 that he has always been in possession and physical custody of the same duplicate certificate of title at his residence at Lubyu Rubaga Division up to December, 2007 when he started looking for it and could not find it.

The plaintiff during his cross examination tried to disown the contents of paragraphs 2 and 3 of the statutory declaration and his Counsel in support is relying on the case of **Kiiza Besigye vs Yoweri Kaguta Museveni, Supreme Court Presidential Petition No. 1 of 2001**. Besigye case 2nd holding as marked by counsel for the plaintiff does not apply to this instant case. The plaintiff simply disowned the contents of paragraphs 2 and 3 saying that the statement was not correct. He had this to say " on paragraph 2, the statement is not correct, it has errors. It's a mistake on the part of the lawyers. The declaration carries an error. Paragraph 3 also has an error". The witness (plaintiff) did not tell Court which information he had previously given to the lawyers to put in the said paragraphs.

In my considered view, PW4 disowned the contents of the paragraphs having realized that he was in a tight corner and his lies had been exposed to Court. Whereas the Kiiza Besigye case was based on swearing an affidavit based on hearsay, the present statutory declaration is not based on hearsay but allegedly on errors and or mistakes by the lawyers who drafted the application and the statutory declaration. In the instant case, the plaintiff made the statutory declaration based on his knowledge and belief. There is no paragraph based on knowledge from his lawyers in the said declaration to qualify it to fall under the Besigye case. The Besigye case therefore does not apply to the present facts.

Counsel while attaching the Besigye case to his submissions only photocopied areas which suits his area of concern. It is equally hard for any one to believe that the information the plaintiff gave M/s Makanda & Partners Advocates and Solicitors was altered and or left out and the same lawyers imported in their own information.

In the disowned paragraph 2, there is no way M/s Makanda & Partners would have known that the plaintiff had possession of the duplicate certificate of title in 1991 a year that corresponds to the alleged claims of lodgment of the same in the lands office. There is no way the said lawyers would have known the block number, plot number, and name of the residence of the plaintiff.

Paragraph 4 which was not disowned by the plaintiff is a continuation of paragraphs 3. Paragraph 4 alone can easily guide Court even if the disowned paragraphs were ignored. The plaintiff in paragraph 4 states that ever since December, 2007, he made all efforts to trace the duplicate certificate of title in vain, implying that he had always been in custody of the same title and only to discover it was missing in 2007. The plaintiff did not tell Court whether there were two duplicate certificates of title for the suit land or not.

The plaintiff (PW4) told Court, that the title was lodged in the Lands office in 1991 and at the same time, he is telling Court that he has always been in the custody of the same only getting irretrievably lost or misplaced in December, 2007. The plaintiff has never been in possession of the duplicate certificate of title for the suit at any one given time, as his assertions are not supported by evidence.

Counsel for the plaintiff in his submission tried to take Court to another line of thinking that since the document “ExhD3” was lodged in the lands office and rejected and not given an instrument number, there was no dealing with land based on the same documents. This is not satisfactory and not convincing at all. The plaintiff should own his document and the entire contents therein. At the time he made this application, he did it at his own free will and this was not a court document to suggest that he was under any hurry. He (plaintiff) told Court that he is a professional valuation surveyor and he gave his testimony in English. He is therefore an educated person who definitely deponed the statutory declaration on 7th August, 2008 before a commissioned for Oaths with full knowledge of the contents of the application and it’s supporting statutory declaration. I make a finding that the plaintiff should own the contents of this document “Exh D3”.

DW4 Samueil Ezati a hand writing expert made a report which was admitted in evidence “Exh D9”. His testimony is very clear on the court record. In his cross examination, Counsel for the plaintiff asked DW4 how he got samples (SI-S8). He submitted that there was no need for Counsel to put such a question to the witness well knowing that on 31/01/2012, both parties appeared in Court and counsel for the defendants informed Court that the hand writing expert had communicated requesting for more samples falling in the range of 1990s.

Counsel for the defendants made a prayer and the plaintiff’s counsel had this to say “ I have no objection to the additional documents and it is up to the hand writing expert, but I request that it should be done within 7 days from today that is 31/01/2012”. Based on this Court, allowed the application for additional documents/samples to be forwarded to the handwriting and directed/ordered the hand writing expert to file a report on 08/02/2012 and the matter was adjourned to 09/02/2012. On 31/01/2012, counsel for the defendants communicated to the hand writing expert and forwarded the questioned documents to him and the same communication was received on 02/02/2012 and Court was given a copy and M/s Niwagaba, Mwebesa & Co. Advocates also given a copy and later given photocopies of the same samples. Then the plaintiff’s Counsel’s cross examination on this point was unnecessary and that piece of evidence on that area is not taken into account by this Court.

DW4 further told Court how he compared the signatures on the original copy of memorandum of sale agreement dated 20th September, 1990 between Paul M. Banja and Lawrence Martin Mugerwa Musisi together with the specimens provided ranging from ‘IDI’

to 'ID3' then 'SI to S8' respectively. He told Court that the specimen signatures ranged from 1986 to 1999 and considered them to be a fair representation of the writer's normal range of writing and the questioned documents were made in 1990.

The findings of the hand writing expert are listed on page 3 of his report "Exh D9". The report is detailed and the samples based on were many. Even DW1 Kakerewe Yusuf, a Registrar of titles attached to Kampala Mailo Office and who testified on behalf of the defendants and appeared in Court with the whole file from the lands office to the suit land equally made his own observation on the signatures on the sale agreement on 20/09/1990 compared with "ID1, ID2 and ID3".

In his examination-in-chief, DW1 had this to say " the transfer instrument by Daniel Kawesa to Paul M. Banja bears signatures of both parties. There is a copy of the sale agreement between Paul M. Banja and Lawrence Martin Mugerwa. It is just on the file and no application. On this copy of the memorandum of sale, Paul M. Banja and Martin Mugerwa signed on each and every page. There is a mortgage instrument and an instrument for change of postal address. They both bear his (banja's) signatures. The signatures. The signatures on the documents and sales agreement differ. That at the start, the letter appears as if it is a "K" then on a sale agreement, it appears to be a "B". This was the testimony of a lay person who was not a hand writing expert. A mere look at the documents could easily tell that the late Paul M. Banja never executed the sale agreement of 20/09/1990 which the plaintiff is rely on. On how the sale agreement got into the register file in Lands Office, it could be the same way, Exh D3 got there and the right person to answer would be the plaintiff.

In his cross examination and later alone submissions, Counsel for the plaintiff endeavoured to discredit the report and the testimony of DW4. The same law firm of M/s Niwagaba, Mwebesa & Advocates claims to have been lawyers for the late Paul Banja though they deny being lawyers for the defendants. PW1 Obed Mwebesa told Court that the late Paul M. Banja was his client. Among the specimens provided to the hand writing expert, there is "S5" an agreement of sale dated 30/041999 between M/s Interstate Finance Company Limited and Mr. Allan Shonubi and Mr. Paul M. Banja. The agreement was witnessed among others by Counsel Obed Mwebesa on behalf of his client Paul M.Banja. If Counsel for the plaintiff is to challenge the other documents bearing the signatures of Paul M. Banja, I believe this instant

document “S5” is not challenged since it was witnessed by his colleague. (“ID1” to ID3 and “SI to S8” were admitted together with a report as bundle and marked “Exh D9”).

The defendants in their joint written statement of defence and their respective testimonies told Court that they recognize the plaintiff as their tenant for the three (3) acres of land comprised in the suit land and that as such the plaintiff falls under the provisions of the case cited law but that he is not a purchaser. The plaintiff’s case is that he purchased the suit land, which is not the case from my findings hereinabove in this judgment.

PW4 (plaintiff) in his cross examination told Court that he is the one who connected PW3 to the late Paul M. Banja. That PW3 later bought from Paul M. Banja plots 188 and 189 neighbouring the suit plot and this was after he (PW4) had purportedly bought the suit land. He told Court that he did not know how PW3 got registered and said he was not aware of any conflicts or problems PW3 might be having with the defendants. Of Course there are no conflicts or problems between the defendants and PW3 and PW3 stated so. The defendants know that PW3 bought from the deceased, the late Paul M. Banja the land she occupies. And from the evidence on record, the defendants have no land dispute with PW3.

Consequent to the above, the plaintiff failed to show to Court convincing reasons which prevented him from getting registered from 1990 the period he purportedly purchased the suit land to date. If the duplicate certificate of title together with signed transfer forms got lost at all in the lands office as alleged by the plaintiff, the vendor Paul M. Banja lived for more 13 years from 1990 when the sale agreement was allegedly executed. And as friends to one another as put by DW2, the plaintiff should have approached the vendor for the transfer of the suit land into his names. It is my considered opinion that he would not pursue his registration on the suit land simply because he had already fraudulently registered himself on the suit land. (See Miscellaneous Cause No. 35 of 2009 and my ruling arising therefrom for the considered opinion).

I am also concerned that even after the vendor’s death in 2003, the plaintiff took more five (5) years without taking any steps to register himself on the suit land. As already stated above, he does not give reasons why he delayed for this long if he genuinely purchased at all the suit land from the late Paul M. Banja.

In this judgment, I have already made a finding that the plaintiff breached the sale agreement and the late Paul M. Banja rescinded the same sale agreement. However, assuming that the said sale agreement was still valid, **which is not the case of course**, the same should have been enforced within a period of six (6) years as per Section 3 (1) of the Limitation Act, Cap. 80. Beyond that period, such a contract is unenforceable. From 1990 the time the plaintiff purports to have bought up to 2003 when Paul M. Banja died, the plaintiff was silent and this was a period of 13 years. From 2003 up to 2010 when his instant suit was filed, the plaintiff was silent and this was a period of 7 years. The plaintiff had no contract with the late Paul M. Banja to be enforced and that is the reason why he was silent all along.

The alleged oral agreement between the plaintiff and the defendants has not been proved by the plaintiff. His key witnesses PW1 told court that he did not deem it necessary to reduce the oral contract into writing. In **Bweya Steel works Ltd vs Nic [1985] HCB 59. Court held:**

“the plaintiff had failed to prove that a promise was made. Even if the promise was made, there was no contract between the defendant and the plaintiff as the terms of the contract were not spelt out. Parties must make their own contract and agree to its terms with sufficient certainty. If the terms are unsettled or indefinite, there will be no contract”.

The cited case of **Katarikawe vs Katwiremu & Anor** by Counsel for the plaintiff can only assist the plaintiff if he proves the existence of a contract between himself and the defendants. The plaintiff has failed to prove one. The plaintiff is claiming the suit land from the rightful administrators after a cool 22 years of his purported purchase. Equity even helps the vigilant. In **John Oitamong vs Mohamed Olinga [1985] HCB 86. Odoki J.** (as he then was) held that;

“ Laches means unreasonable delay in asserting or enforcing a right, for equity aids the vigilant and not the indolent. The rationale behind the doctrine of laches is that it would be unjust to give a plaintiff a remedy where he has by his conduct done that which might fairly be regarded as equivalent to a waiver of it.”

The issue of the defendants leaving the suit land out when applying for the Letters of administration of the estate of late Paul M. Banja came out vividly in this case. The petition for letters of administration was drafted and filed on behalf of the defendants by M/s Niwagaba, Mwebesa & Co. Advocates way back in 2004. DW2 in her cross examination

told Court that they gave a list of all proprietors including the suit land to counsel who drafted the petition and does not know why the suit property was left out. From the way M/s Niwagaba, Mwebesa & Co. Advocates got involved in the transactions between the parties, I would agree that the said Firm of Advocates might have messed up the defendants. That Firm used to deal with late Paul M. Banja as their client. It then represented the defendants in the application for letters of administration and the registration of their names on the certificate of title of the suit land and to acquire the special certificate of title of the suit land. Then it made around turn and represented the plaintiff in this case against the defendants. In the process this law Firm developed a biased interest as far as this suit is concerned. Hence, the defendants are right to complain about the conduct of the lawyers in at law Firm. I thus agree with that defendants' piece of evidence. The defendants therefore cannot be faulted for the mistakes by their then Counsel, Mr. Obed Mwebesa, PW1.

But what is the legal position if a petitioner does list all the proprietors comprised in the estate of a deceased person. S. 279 of the Succession Act cap 162 provide that an administrator shall collect with reasonable diligence, the property of the deceased, and the debts that were due to him or her at the time of his/her death. An administrator has a statutory right to comply with the duty of collecting the known properties of the deceased and deal with such property according to powers entrusted upon him. It is not the fault of the defendants that M/s Niwagaba, Mwebesa & Co. Advocates left out in the petition the suit property, counsel for the plaintiff by citing Sections 24 and 25 of the succession Act is giving no solution to the plaintiff's predicament but only defining what intestacy is all about.

It is the same law firm which later acted on behalf of the defendants to apply for a special certificate of title. See Exh D8 and later applied to land office to have the names of the defendants entered on the title.

Why would they do it if the suit property did not form part of the estate of the late Paul M. Banja? Under S. 134 RTA Cap 230 upon an administrator being entered on register book, that administrator shall become the transferee and be deemed to be the proprietor of such land and shall be deemed to be the absolute proprietor thereof. It is not surprising that the same law firm acting on behalf of the plaintiff acted against the defendants and filed Misc. Cause NO. 039 of 2009 seeking to deregister them (defendants) from the same title citing fake grounds. It is also not surprising that it is the same advocate from the same law firm

vehemently submitting that the suit property does not form part of the estate of late Paul M. Banja.

In the premises the suit land belongs to the estate of late Paul M. Banja and the defendants as administrators have all the rights to deal with the suit land. And for the reasons given hereinabove in this judgment issue no.1 is answered in the negative.

6.2 Issue no.2: whether there has been any dishonest dealings by either party in respect of the suit land.

Counsel for the plaintiff in his submission portrayed the plaintiff as a just and honest person. He instead faulted the defendants of being dishonest in their dealings with the plaintiff in respect of the suit land. On the other hand, the defendants' lawyer in his submissions and even according to the defence evidence submitted and maintained that the plaintiff had dishonesty dealings in respect of the suit land. The defendants relied on the documentary evidence on Court record.

It is true in the written statement of defence, the defendants at paragraph 8 (n) plead particulars of fraud. It is also true that the plaintiff is not the current registered proprietor of the suit land and fraud would not be attributed to him currently. But it is also true that in 1991, the plaintiff who fraudulently got registered on the title (white page) was cancelled out by the Commissioner Land Registration and Court subsequently confirmed him (plaintiff) to having fraudulently entered on the register vide Misc. Cause No. No. 39 of 2009, filed by himself.

The issue of whether the plaintiff had dishonest dealings in the suit was answered when I was resolving issue no.1 hereinabove in this judgment. I held that the plaintiff was fraudulent. Therefore I need not labour too much on this issue no. 2. In the same vein, I do not fault the defendants. The defendants did not commit any dishonest dealings in respect of the suit land.

May be, allow me in brief to state herebelow the dishonest dealings of the plaintiff as picked from the evidence and submissions by both parties; that:-

1. The plaintiff fraudulently registering himself on the white page under instrument No. KLA 148421 on 26/07/1991 without a duplicate certificate of title and transfer forms.

2. The plaintiff applying for a special certificate of title of the suit land without the consent/knowledge of the defendants who were the administrators at the time to date.
3. The plaintiff after assisting in the processing a special certificate of title for the suit land together with the defendants and after the defendants got registered on the title, turned against them and the Lands Office and moved Court to have the defendants cancelled from the same title without their knowledge and or consent (See Miscellaneous Cause no. 35 of 2009 between the plaintiff and Commissioner Land Registration and Attorney General).
4. The plaintiff purporting to have paid to the defendants Ushs 1,000,000/= as an ex-gratia in exchange for the signing of the transfer forms by the defendants and handing over the title to him when such an arrangement has never existed.
5. The plaintiff changing his position on the earlier arrangement of paying for the three (3) acres of land and instead claiming the entire land after knowing that a special certificate of title came out.
6. The plaintiff suing and relying on that terminated sale agreement the fact which was within his knowledge.

The plaintiff had dishonest dealings in respect of this suit land. In the premises, issue no.2 is answered in favour of the defendants.

6.3 Issue no.3: whether the plaintiff is entitled to the reliefs sought in the plaint.

Having found issues nos.1 and 2 hereinabove in this judgment in favour of the defendants, I hold that the plaintiff is not entitled to the reliefs sought in the plaint. This issue no.3, too, is answered in negative.

7 Conclusion

- 7.1 In the premises and for the reasons given hereinabove in this judgment, the evidence adduced by both parties, and the authorities cited hereinabove, the plaintiff's suit has no merit. It fails. It is accordingly dismissed with costs.
- 7.2 Judgment is entered in the favour of the defendants in the following orders:-
 1. The plaintiff's suit is dismissed.

2. The defendants are the lawful owners of the suit land.
3. The plaintiff shall give vacant possession of the suit land to the defendants within ten (10) days from the date of this judgment.
4. Failure to comply with the order in 3 above the plaintiff shall be evicted with maximum speed by either the Court bailiffs or police of the area as the case shall be and a return of execution shall be made and filed in this Court immediately but not later than five (5) days from the date of eviction of the plaintiff.
5. In the alternative, but without prejudice to order no.3 above, on the basis of willing seller and willing buyer, the plaintiff may pay to the defendants the purchase price equivalent to the current market price of the land in that area where the suit land is located within thirty (30) days from the date of this judgment.
6. The plaintiff shall pay the defendants costs of this suit.

Dated at Kampala this 20th day of February, 2013.

sgd
JOSEPH MURANGIRA
JUDGE