



(c) The 1<sup>st</sup> defendant be evicted from the suit land and the plaintiffs be put in possession thereof.

(d) General damages.

(e) Costs of the suit be met by the defendants.

1.2 On the other hand the 1<sup>st</sup> defendant through his lawyers Nyanzi, Kiboneka & Mbabazi Advocates filed a written statement of defence to the plaint. The 2<sup>nd</sup> defendant through the Administrator General's Department filed a written statement of defence to the plaint.

1.3 The plaintiffs filed a joint reply to the 1<sup>st</sup> and 2<sup>nd</sup> defendants' written statement of defence.

1.4 On 8<sup>th</sup> April, 2013 when this suit came up for scheduling both the plaintiffs and defendants as parties to the suit raised the following preliminary objections:-

1.4.1 The plaintiffs raised the following preliminary objection:-

**“ the defendant's written statements of defence does not disclose a reasonable answer to the plaintiffs' claim.”**

1.4.2 The defendants raised the following preliminary objection:

1. **That the plaintiffs lack locus standi to sue the defendants for the recovery of the estate property of late Lekobowamu Mukiibi who died intestate.**
2. **That it is an absolute bar to bring an action for ejection or recovery of land against a registered proprietor of land.**
3. **That the plaintiffs' action against the defendants jointly or / and severally is time barred.**

## **2. Brief facts of the case**

The plaintiffs instituted a suit vide no. 187 of 2012 against the defendants for recovery of unascertained portion of land and eviction of the 1<sup>st</sup> defendant from 12 acres purchased out of private Mailo land comprised in Kyadondo Block 107 plot 127 situate at Nakyesanja. The 2<sup>nd</sup> defendant as the Administrator of the Estate of the late Lekobowamu Mukiibi issued the 1<sup>st</sup> Defendant with a certificate of Succession which was the document used by the 2<sup>nd</sup> defendant to pass title to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant denied plaintiffs claims and stated that the plaintiffs have no cause of action against him, hence these points of law.

## **3. Resolution of the preliminary objections raised by each party**

### **3.1 The plaintiffs' preliminary objection**

**The defendants' written statements of defence do not disclose a reasonable answer to the plaintiffs' claim.**

Counsel for the plaintiffs Mr. Muhwezi Eric in his submissions argued that the defendants' written statements of defence does not disclose a reasonable answer to the plaintiffs' claims. In reply, Counsel for the 1<sup>st</sup> defendant Mr. Richard Kiboneka and that of the 2<sup>nd</sup> defendant Mr. Robert Nashiero Ekirita, Senior State Attorney in the 2<sup>nd</sup> defendant's department filed joint written submissions. Both Counsel put up spirited arguments in support of their respective parties' cases.

I evaluated and analysed the written submissions by both counsel for the parties, read the defendants' joint written statement of defence and I am of the considered opinion that the said written statement of defence validly poses a defence to the plaintiffs' pleadings in the plaint.

Further during the scheduling of the suit the parties sorted out facts of the case and framed issues in accordance with the plaint and the written statement of defence. The issues framed are issues of both law and fact. Thus, the above raised preliminary objection by Counsel for the plaintiff shall be dealt with after parties have adduced evidence.

Counsel for the parties argued at length in their respective written submission and from my own analysis, their respective said written submissions are mostly arguments based on facts. There is need for the parties to adduced evidence for proof of their individual cases.

In the premises, therefore, the plaintiff's preliminary objection is answered in the negative.

### **3.2: The defendants' preliminary objections.**

I now turn to consider the joint defendants' three preliminary objections as stated hereinabove in this ruling.

In the plaint (paragraph 3), plaintiffs challenged the 1<sup>st</sup> defendant's registration on the suit certificate of land title as proprietor on the basis of an invalid certificate of Succession issued by the 2<sup>nd</sup> defendant in 1999.

In paragraph 4(ii) of the plaint, the plaintiffs pointed out that the 2<sup>nd</sup> defendant issued the said certificate of succession in 1975 under a repealed law and in paragraph 5, that a certificate of succession was not a substitute for Letters of administration.

Again in paragraph 5 of the plaint, the plaintiffs pointed out that there was no credible evidence of purchase that the 1<sup>st</sup> defendant's predecessor/father bought the suit land from Late Lekobowamu Mukiibi.

In paragraph 2 of the plaintiffs' reply to the 1<sup>st</sup> and 2<sup>nd</sup> defendants' written statement of defence, the plaintiffs pleaded that the 1<sup>st</sup> defendant's documents annexed to his written statement of defence, paragraph 6(iii) and (v), did not amount a valid sale and that even the law obtaining at the time was not complied with to sell a Muganda's private mailo.

In paragraphs 3 and 6 of reply to the defendants' written statement of defence, the plaintiffs pointed out that the defendants did not deny lack of legal authority of the 2<sup>nd</sup> defendant to issue a certificate of Succession to the 1<sup>st</sup> defendant based on for his registration on the suit land certificate of title.

From the pleadings and submissions by both parties and considering the authorities cited therein I am of the considered opinion that the three (3) preliminary objects by the defendants have no merits. The arguments by Counsel for the defendants are argumentative and only meant to prove their preliminary objections. Again, I evaluated and analysed the plaintiffs' Counsel's submissions on those said preliminary objections and I agree with his submissions.

The said preliminary objections are all based on issues of law and facts and therefore they could be resolved after the parties have adduced evidence in proof of either party's case on balance of probabilities.

In the result I answer the said three (3) preliminary objections in the negative.

#### **4. Conclusion**

In conclusion, all the preliminary objections raised by the parties are hereby dismissed without costs.

The suit shall be fixed for hearing in the August- September, 2013 Civil Session by any of the incoming Judges.

Dated at Kampala this 21<sup>st</sup> day of June, 2013.

**sgd**  
**MURANGIRA JOSEPH**  
**JUDGE**