

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 273 OF 2018

5 **1. NAMAZZI JUSTINE**
 2. NALUWOZA AMINAH.....PLAINTIFFS

VERSUS

10 **JOSEPH KASUMBA ATEENYI.....DEFENDANT**

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

The plaintiffs are some of the administrators to the estate of the late kaboyo jane
15 sanyu and registered proprietors of the suit land **Block 265 plot 6894,**
Kyaddondo Wakiso.

The late Kaboyo Jane Sanyu died in 2008, leaving behind three (3) roofed rental
uncompleted units which the family went ahead to complete following her death.

They filed this suit seeking the following orders:

- 20 a) *A declaration that the plaintiffs are the beneficial owners of the suit
 land;*
- b) *A declaration that any sale to the defendant was null and void;*
- 25 c) *A declaration that the defendant is a trespasser;*

d) *An order against the defendant to deliver up vacant possession within a specified time and/or an order of eviction against the defendant;*

e) *An order of permanent injunction restraining the defendant and/or his agents from ever trespassing on the suit land;*

f) *General damages; interest and costs of the suit.*

10 It is the plaintiffs' case that the defendant who was unknown to the plaintiffs claiming as owner in the company of weight lifters and assisted by the police and without a court order forcefully took possession of the late Kaboyo's property confiscating all the materials. They arrested all the beneficiaries.

15 The defendant claiming as owner had purchased the property from one Wasswa Musa a son of the deceased who was not the administrator of the estate. It is the plaintiffs' further claim that he has been illegal possession since 2018, deriving his livelihood from the estate to the detriment of the *bona fide* beneficiaries to the estate.

20 In his WSD the defendant claimed he was a *bona fide* purchaser for value for the suit land comprised in **Kyadondo Block 265 plot 6894 land at Bunamwaya**, having purchased the same in 2016 from the beneficiaries of the estate of the late Kaboyo Jane Sanyu and taken possession thereof.

Furthermore, that the beneficiaries needed the finances to stream line the estate; and that he entered into the purchase agreement with their knowledge and consent.

25 After receiving the initial purchase price, the beneficiaries appointed one Bogere Ahmed to apply for the grant over the estate on 13th January, 2016. The beneficiaries requested for further payment and signed a deed of acknowledgment which showed that the money was for the processing letters of administration.



According to him therefore the plaintiffs had actual and constructive notice of his interests and activities since 2009 when he purchased the same from Wasswa Musa. He therefore denied any acts of trespass on the land.

5 Upon agreement of both sides court on 23rd February 2022 directed parties to engage office of Chief Government valuer to assess the value of the land comprised in **Block 265 plot 6894**, measuring 0.0570 hectares in the names of the administrator of the estate.

On 8th September, 2022 the two sides were also directed to file submissions be for court to address the issues raised, the gist of which is the validity of the
10 transaction between the defendant and Wasswa Musa.

Timelines were given in court but only the plaintiffs' side filed submissions.

The following were the issues for court to determine:

Issues:

- 15 **1) Who owns the suit property;**
- 2) Whether there is a valid sale between Wasswa Musa and the defendant;**
- 20 **3) Whether the forceful eviction of the beneficiaries by the defendant was legal.**

Representation:

The plaintiffs were represented by **M/s Mwina, Wananda & Co. Advocates**. The defendant on his part was represented by **M/s Jambo & Co. Advocates**

25 **The law:**

By virtue of **section 101 (1) of Evidence Act, Cap. 6**, whoever desires court to give judgment to any legal right or liability depending on the existence of any



facts he/she asserts must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**).

The burden of proof lies therefore with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more
5 probable the conclusion which the plaintiff contends, on a balance of probabilities. (**Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004**).

In the case of: **Justin Lutaya v Stirling Civil Engineering Company, Supreme Court Civil Appeal No. 11 of 2002**, the Supreme Court defined trespass as an
10 unauthorized entry upon land that interferes with another person's lawful possession.

A tort of trespass to land is committed, not against the land, but against the person who is in possession of the land and such possession may be physical or constructive.

15 A party alleging that the tort was committed against him ought to satisfy court that the disputed land belongs to him; that the other party had entered upon that land; and that the entry was unlawful in that it was made without permission or had no claim or right or interest in the land. (**Sheikh Mohammed Lubowa vs Kitara Enterprises Ltd SCCA No. 04 of 1987**).

20 In this instance, the plaintiffs being two of the administrators of the estate had to prove that suit property rightfully belonged to the estate and also had to discharge the burden to prove that trespass had been committed by the defendant.

Analysis of the documentary evidence:

25 As proof of ownership, the plaintiffs relied on several admitted documents. Annexure F is a copy of the letters of administration granted **vide AC No. 0434 of 2016** for the estate of the late Kaboyo Jane Sanyu.



It is undisputed evidence that the 1st and 2nd plaintiffs, both sisters of the deceased together with the five children of the deceased had been issued with letters of administration by this court on 14th December, 2016.

5 A special certificate of title had subsequently been issued in the names of the administrators for the land comprised in **block 265, plot 6894 Kyadondo Wakiso district** .(Annexure G).

The certificate of title also indicates that the previous owner was the late Kaboyo Sanyu who on 24th August, 2010 became registered on the title. It also shows that the administrators of her estate subsequently got registered onto the title
10 on 4th October, 2017, under *Instrument No. WAKOO143618*.

A search report dated 6th May, 2022 (*Annexure L*) exhibited through the witness statement of Ahmed Bogere, **Pw3** corroborates such evidence of ownership.

The certificate shows that a caveat had been lodged by Ahmed Bogere on 18th May, 2017. On 12th February, 2018 the defendant lodged a caveat on the same
15 land.

This court noted that the two caveats were lodged several years after the impugned transaction between the defendant and one Wasswa Musa, one of the children of the late Kaboyo.

There is also no dispute that the defendant had bought the suit property on 24th
20 November, 2009, before letters of administration had been issued; and some eight years before the title was issued in the names of the administrators. There is nothing to show that at the time he bought the suit land, the estate of Kaboyo had already been distributed to Wasswa who sold the property to him.

Going by the contents of the family consent dated 13th January, 2016 attached
25 as *annexure B*, nine of the children/beneficiaries had endorsed this document, the sole purpose of which however was to consent to the appointment of Bogere Ahmed one of the sons of the deceased, to administer the estate.



There was nothing to show that they actually knew about the sale transaction of 2009 and consented to it. The vendor, Wasswa Musa was among those who consented to the appointment of his brother Ahmed Bogere as an administrator.

5 It was also noted by this court that although had been proposed as administrator, some others were subsequently appointed by court as administrators, none of whom however had been a party or witnesses to the 2009 sale agreement between the defendant and Wasswa Musa.

After the initial transaction by which the defendant had deposited part payment of **Ugx 10,000,000/=**, a deed of acknowledgment (*Annexure C*) was made, 10 signed by the beneficiaries on 13th January, 2016 and a further sum of **Ugx 5,000,000/=** was paid to Ahmed Bogere their representative, to facilitate the process of securing the grant.

This court could not find any proof from the record that the entire purchase sum of **Ugx 40,000,000/=** was paid to Wasswa or Bogere or to any other member of 15 that family for that matter.

Section 59 of the RTA provides that every certificate of title issued under the Act is conclusive evidence that the person named therein is the proprietor of the land. (***Yekoyasi Mulindwa vs Attorney General [1985] HCB80***). The exception to the general rule is where fraud is proved against the registered owner.

20 Fraud must not only be pleaded but also strictly proved; and the burden lies with the party who wishes to prove fraud. It is heavier than the balance of probabilities generally applicable in civil matters. (***Kampala Bottlers Ltd vs Damaniaco (U) Ltd SCCA No. 22 of 1992***).

The defendant in this suit however did not plead fraud or prove any fraud against 25 the administrators of the estate. The above leaves no other conclusion that the suit property was part of the estate of the deceased long before the defendant conducted the eviction and took physical occupation thereof.



The suit land was accordingly duly registered in the names of the administrators of the estate of Kaboyo who could only hold it and deal with the same as trustees for the rest of the beneficiaries.

That therefore addresses **issue No. 1**

5 **Issue No. 2: Whether there is a valid sale between Wasswa Musa and the defendant:**

Section 10(1) of the Contracts Acts 2010 defines a contract as an agreement enforceable by law, made with free consent of the parties with capacity to contract for a lawful consideration and with a lawful object, with the intention
10 to be legally bound.

The essentials of a legally binding contract are offer and acceptance; a promise or obligation supported by valuable consideration; intention to create legal obligation; and capacity to enter into the contract.

Under **section 11(1)**, a person has capacity to contract where that person is of
15 eighteen years or above; of sound mind; and not disqualified from contracting by any law to which he or she is subject.

It is now settled law that once a contract is valid, it automatically creates reciprocal rights and obligations between the parties thereto and when a document containing contractual terms is signed, then in the absence of fraud,
20 or misrepresentation the party signing it is bound by its terms. (**See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000**).

Among the key elements of a valid contract which I find most relevant to this case is the capacity by both sides to enter into legally binding relationship.

A perusal of the agreement indicates clearly that Wasswa the vendor had signed
25 the agreement in his individual capacity, but not as the administrator of the estate or legal representative of the family since by that time no person had applied for, or been appointed as administrator of the estate.



Wasswa had no written consent/authority to give him any powers to deal with the property of his deceased mother.

Indeed as earlier noted by this court, none of the other beneficiaries had consented to or endorsed the said agreement, by which the defendant was to pay
5 Wasswa an agreed sum of **Ugx 50,000,000/=** as consideration for the transaction. By that said agreement, **Ugx 10,000,000/=** was acknowledged by Wasswa as part payment of the full sum.

The balance was to be paid within a period of three months, upon satisfactory fulfillment of a number of conditions, that is, obtain letters of administration;
10 procuring a transfer into the names of the son of the late Kaboyo, among others.

The vendor in that agreement committed himself among other undertakings, to refund the money which would attract an interest at commercial rate. The conclusion is inevitable therefore that the eviction by the defendant took place even before the full amount was paid and before the beneficiaries had consented
15 to the sale of the suit property is inevitable.

The capacity to transact in any part of the deceased's estate is clearly laid out under the provisions of the **Succession Act, Cap. 162**. By virtue of **section 192** of this Act, letters of administration entitle the person appointed by court as administrator to all rights belonging to the intestate as effectually as if the
20 administration has been granted at the moment after his or her death.

Thus also no right to any part of the estate of an intestate is to be established in any court of justice unless letters of administration have been granted by a court of competent jurisdiction. (**section 191**)

Section 25 of the Succession Act, Cap. 262 in addition provides that all
25 property in the estate devolves upon the personal representative of the deceased as trustee for all persons entitled under the Act; and by virtue of **section 180** he/she is his or her legal representative for all purposes. As such all the property



of the deceased vests in that person. No other person has powers to act as such until probate or letters have been recalled or revoked. **(Section 264).**

By virtue of **section 134 (2) of the RTA** a certificate of title upon which an entry is made therefore relates back to and is deemed to have risen upon the death of the proprietor as if there had been no interval of time between such death and entry.

The above provisions read together imply that all powers over intestate property are vested in the hands of the administrator. Even though Wasswa Musa is a son of the deceased, he had no powers, authority to deal with or commit the estate on behalf of the rest of the beneficiaries.

At the time the transaction was made with Wasswa, the defendant was fully aware or had constructive knowledge of the fact that no authority had yet been issued to support any dealing with that estate. It was his duty as the prospective buyer to prove as alleged by him that he was a *bonafide* purchaser for value.

A *bona fide* purchaser for valuable consideration of land derives protection under **section 181 of the RTA**. The term is defined in **Black's Law Dictionary 8th Edition at page 1271** to mean:

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has good faith paid valuable consideration without notice of prior adverse claims.”

In the case of **Omar Salim Mukasa Vs Haji Muhammed & another CACA NO 114 of 2003**; it was held that in equity constructive knowledge is deemed to constitute fraud.

Whether or not there was fraud and whether or not a party was a *bonafide* purchaser for value without notice the question that a court would pose is whether the defendant honestly intended to purchase the suit property and did



not intend to acquire it wrongfully. (**David Sejjaka Nalima vs Rebecca Musoke SCCA No. 12 of 1985**).

The defendant in this case could not have been bona fide as he was fully aware of the ownership on the suit land before, during and after he purchased it. As
5 such therefore, Wasswa who never presented any letters of administration was intermeddling with the estate, contrary to the provisions of **section 268 of the Succession Act**.

An illegality once brought to the attention court overrides all questions of pleadings. (**Makula International ve H.E Cardinal Nsubuga [1982] HCB 11**).

10 In **Mulato Joseph vs Katama Syvano CA No. 11 of 1999** court held that an agreement purporting to sell and transfer land was not sufficient proof of acquisition in absence of proof of essential fact that would have constituted creation of the *kibanja* holding, namely consent of the mailo owner.

In the premises, there was no valid sale of the suit land since the consideration
15 was not paid in full and the vendor had no capacity to sell that land.

In **George Kasede Mukasa v. Emmanuel Wabende & Others, Civil Suit No. 459/1998** trespass to land was held to be committed where a person wrongfully and unlawfully sets foot upon or takes possession or takes material from the land belonging to another.

20 It is inconceivable that the defendant could have evicted the beneficiaries of Kaboyo, assume ownership of property which he purportedly bought from a beneficiary who never had the consent of the rest or the authority to deal with the property.

In **Bishopgates Motor Finance vs. Transport Brakes Ltd [1949] 1 KB 332**,
25 **at page 336-7** it was held that:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give better title than he himself possesses.”

5 That legal principle was emphasized by the Supreme Court in ***Halling Manzoor vs. Serwan Singh Baram, SCCA No.9 of 2001*** that a person cannot pass title that he does not have. Wasswa had no title to pass onto the defendant. The defendant was therefore a trespasser on the suit property.

Issues 1,2, and 3 are accordingly answered in favor of the plaintiffs.

Remedies:

10 The prayers sought by the plaintiffs were:

- a) *A declaration that the plaintiffs are the beneficial owners of the suit land;*
- b) *A declaration that any sale to the defendant was null and void;*
- c) *A declaration that the defendant is a trespasser;*
- d) *An order against the defendant to deliver up vacant possession within a*
15 *specified time and/or an order of eviction against the defendant;*
- e) *An order of permanent injunction restraining the defendant and/or his agents from ever trespassing on the suit land;*
- f) *General damages; interest and costs of the suit.*

General damages:

20 General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim.

These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. ***See; Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293.***



Black's Law Dictionary 9th Edn at page 445 defines damages as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong.

It is trite law that damages are the direct probable consequence off the act
5 complained of. (**Ref: Storms versus Hutchison (1905) AC 515.**)

In the case of **Assist (U) Ltd. versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35** it was held that the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering.

General damages consist of items of normal loss which a party is not required to
10 specify in his pleading to permit proof. These damages are presumed by law to arise naturally in the normal course of things. Court may award them where it cannot measure the way in which they are assessed, except the opinion and judgment of a reasonable person. (**See RONALD KASIB KASIBANTE VS SHELL (U) LTD [2008] HCB AT 163.**)

15 The circumstances as highlighted demonstrated the highhandedness of the acts during the process of evicting the beneficiaries by the agents of the defendant who had no honest claim of right.

In the premises an award of **Ugx 40,000,000/=** would be justified.

Compensation:

20 Counsel for the plaintiffs in submissions expressed willingness by the plaintiffs to sell the property at a cost of **Ugx 250,135 000/-** (*shillings two hundred and fifty million, one hundred and thirty-five thousand*). The current market value was placed at **Ugx 443,130,000/=**

25 It was argued that during period of 2016 the structural buildings on the subject property were built at approximately 60%. The said sum was the precasted value of the property in 2016.



The above were the findings by the firm of *OSI International Consultations* which carried out the assessment and compiled a report, filed in court on 11th April, 2022 as directed.

The report described the suit property as land measuring 0.057 hectares or 0.140 acres developed with residential buildings all enclosed with a wall fence. It was property located within a well-planned residential area actively developed with a mixture of medium to very high class residential and commercial developments. I was not provided with any clear basis to doubt the accuracy of that report.

In the final result, the following orders/declarations are hereby made:

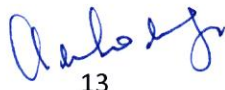
a) The land comprised in Block 265 plot 6894, Kyaddondo Wakiso constitutes part of the estate of the late Kaboyo Sanyu;

b) The sale of the suit property to the defendant was therefore null and void. Accordingly, the defendant is a trespasser on the suit property;

d) The defendant is ordered to pay a sum of Ugx 250,135 000/- (shillings two hundred and fifty million, one hundred and thirty-five thousand) within a period of 90 days and upon failure to do so, he shall deliver immediate vacant possession of the suit property which he currently illegally occupies;

f) A compound figure of Ugx 40,000,000/= is awarded as damages for the illegal actions of the defendant who shall be free to claim a refund of the Ugx 10,000,000/= irregularly paid by him to Wasswa Musa;

g) The defendant is entitled to a refund Ugx 5,000,000/= payable out of the estate of the late Kaboyo Sanyu which was advanced to Ahmed Bogere to facilitate the processing of the letters of administration and other processes;



h) Interest of 15% payable per annum is awarded against the defendant from the date of delivery of this judgment, till payment is made in full;

Costs awarded to the plaintiff.

5

Ashoga
Alexandra Nkonge Rugadya

Judge

10

24th May, 2023

Delivered by email

Ashoga

24/5/2023