

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
CIVIL SUIT NO. 045 OF 2021**

MARGARET TIBULYA J. ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. PEACE KUSASIRA KANYESIGYE MUBIRU

2. DDIBYA HENRY WAGABA ::::::::::::::::::::::::::::::::::::::DEFENDANTS

BEFORE: HONOURABLE JUSTICE DAVID MATOVU

JUDGMENT

Introduction

1. Margaret Tibulya J. (hereinafter referred to as the “Plaintiff”) instituted Civil Suit No. 045 of 2021 in High Court of Uganda at Mukono against Peace Kusasira Kanyesigye Mubiru and Ddibya Henry Wagaba (hereinafter referred to as the “Defendants”) seeking the annulment of any transactions of sale between the defendants over the land at Kyaggwe Block 94 Plot 470 Land at Budugala (hereinafter referred to as the “suit land”), a declaration that the Plaintiff owns the suit land, eviction of defendants from the suit land, general damages for trespass, a

permanent injunction, mesne profits, punitive damages, interest on the above and costs of the suit.

2. Peace Kusasira Kanyesigye Mubiru also (hereinafter referred to as the “Counter Claimant”) filed a Counter claim against Margaret Tibulya J. and Ddibya Henry Wagaba (hereinafter referred to as the “Counter defendants”) for a declaration that the subdivision of land at Kyaggwe Block 94 Plot 151 into Kyaggwe Block 94 Plots 470 and 471 was illegal null and void and should be restored back to Plot 151 and then they should survey off the Counter claimant’s 3.6 Acres of land, an order for cancellation of the Counter defendants’ title to Kyaggwe Block 94 Plot 470 at Budugala, general damages or in the alternative that the 2nd Counter defendant pays for the price of 3.6 Acres of land with interest at 40% per annum.

Back ground facts

3. The suit land was originally part of the land at Kyaggwe Block 94 Plot 18 and approximately 40 Acres was the property of Late Yokana Lwanira.

4. The office of the Administrator General applied for Letters of administration to the estate of the late Yokana Lwanira vide High Court Administration Cause No. 69 of 2007.
5. The second defendant being a beneficiary of the estate of the late Yokana Lwanira as indicated in SR/2B/738 was given 6.072 hectares of land at Kyaggwe Block 94 Plot 151 and this was registered in his names on 19th March, 2009 vide Instrument No. MKO101815.
6. On 30th May, 2009 the 2nd defendant sold ten (10) Acres of his land at Kyaggwe Block 94 Plot 18 to the Plaintiff at a price of Ug Shs 30, 000,000/= (Thirty million shillings).
7. It also turns out that on 20th June, 2008 a one Kawombe Emmanuel sold a Kibanja interest of 3½ Acres at Budugala to the 1st defendant/Counter claimant at a price of Ug. Shs 8, 000,000/= (Eight million shillings).
8. The Plaintiff filed Civil Suit No. 101 of 2013 in the High Court of Uganda at Jinja against Ddibya Henry Wagaba for the recovery of the ten (10) Acres of land she bought on 30th May, 2009 and the learned trial Judge in his Judgment dated 10th January, 2014 found in favour of the Plaintiff and issued a

vesting order for the 10 (Ten) Acres, vacant possession of the said land, general damages of Ug Shs 5, 000,000/= (Five million shillings) and costs.

9. Pursuant to the Court order in Jinja High Court Civil Suit No. 101 of 2013 the Plaintiff got registered as proprietor of 4.0470 Hectares of Land at Kyaggwe Block 94 Plot 470 vide Instrument No. MKO-00017980 of 23rd June, 2015.
10. That sometime in 2020 the Plaintiff discovered that the 1st defendant had encroached onto her land by slightly more than one (1) Acre claiming to have bought land from the 2nd defendant hence the instant suit.
11. The 1st defendant/Counter claimant contended in her counter claim that she bought a Kibanja of approximately 3.6 Acres on the land at Kyaggwe Block 94 Plot 151 which was subdivided into plots 470 and 471 and later in 2013 she bought the mailo interest from the 2nd defendant/2nd Counter defendant.
12. The 1st defendant contended that Ddibya Henry Wagaba sued in Jinja High Court Civil No. 101 of 2013 is different from Ddibya Henry who gave her the certificate of title to Kyaggwe Block 94 Plot 151.

13. The Deputy Registrar visited the locus in quo in this case on 25th November, 2021 and her findings are part of the Court record.
14. This suit was heard on its merits and all Counsel filed their respective written submissions.

Legal representation

15. Mr. Rashid Babu together with Mr. Gideon Raphael Masaba represented the Plaintiff while Mr. Geoffrey Serwanga and Mr. Samuel Ssebadduka represented the 1st defendant.
16. The 2nd defendant having been served with summons on 13th April, 2021 and failing to file a defence a default Judgment was entered against him under order 9 Rule 10 of the Civil Procedure Rules on the 10th May, 2021.

Issues for determination

17. As set out in the joint scheduling memorandum filed on 2th September, 2021 the issues for determination are as follows:-
 - i) Whether the 1st defendant/Counter claimant has a valid equitable interest in the suit land.

- ii) Whether the 1st defendant is a bonafide purchaser for value of the suit land.
- iii) Whether the 1st defendant lawfully purchased a Kibanja on the suit land.
- iv) Whether the 1st defendant committed acts of trespass on land comprised in Kyaggwe Block 94 Plot 470 land at Budugala village.
- v) Whether Ddibya Henry Wagaba is the same person as Ddibya Henry who transacted with the Plaintiff.
- vi) Whether the suit land was erroneously sub divided from Plot 151.
- vii) Whether the Plaintiff acquired a valid interest in the suit land.
- viii) What remedied are available to the parties?

Plaintiff's Evidence

18. **Kakooza Paul (PW1)** in his witness statement filed on 5th April, 2022 stated that he was the LC1 Chairman of Budugala Village.

19. That in 2014 she got to know the Plaintiff when her agents were to subdivide land she had bought and he actually participated in this exercise.
20. That during the survey exercise they met Mzee Ddibya who confirmed that he knew the Plaintiff and had sold ten (10) Acres of land at Ug. Shs 3,000,000/= (Three million shillings) each.
21. That the survey exercise was done peacefully in the presence of Mzee Ddibya and his children and the said Mzee Ddibya did not mention anything to do with peace of 2nd defendant.
22. That he first learnt of Peace in 2013 when she was buying two (2) acres of land from Ddibya but at this time he did not know that Peace was buying the same land which Mzee Ddibya had already sold to the Plaintiff in 2009.
23. That he even tried to resolve this dispute when he and Lwanira Tadeo (a son to Ddibya) met Tibulya but Ddibya alleged that he was trying to steal his land and he abandoned his efforts to resolve this case.
24. While under cross examination he confirmed that on 6th June, 2013 he witnessed the sale agreement when the 2nd

defendant was buying land but at this time he had not met the Plaintiff.

25. That he did not visit the land bought by Peace in 2013.
26. While under reexamination he confirmed that Mzee Ddibya sold land to Tibulya in 2009 and it was 10 (Ten) Acres of Mailo land.
27. **Ntaate Ronald (PW2)** in his statement filed on 5th April, 2022 stated that he was a surveyor working with Terrain Consult.
28. That in 2014 he did some work on the suit land in the presence of Court bailiffs, police officers and Chairman LC1 of the area.
29. That they actually surveyed off 10 (Ten) Acres of land from a larger piece of land and this was done peacefully and he left without any incident.
30. While under cross examination he confirmed that he was a registered surveyor by 2014 and he did work for Madam Tibulya and it was to survey off 10 (Ten) acres from a larger piece of land.

31. **Tibulya Margaret (PW3)** in her witness statement filed on 5th April, 2022 stated that she knew Ddibya Henry Wagaba as the person who sold to her 10 (Ten) acres of land at Budugala Village in Mukono District.
32. That she first interacted with the said Ddibya Henry Wagaba around 2009 when he had acquired a beneficial interest in the Budugala land from the office of the Administrator General and he wanted to sell part of his land to PW1.
33. That she visited the land together with Mr. Ddibya Henry Wagaba and it was basically bushes and some gardens that belonged to Ddibya Henry Wagaba and his children.
34. That Ddibya Henry Wagaba agreed to sell to her 10 (ten) acres out of his land described as Kyaggwe Block 94 Plot 18 land at Budugala which was part of the estate of the late Lwanira Yokana.
35. On 30th May, 2009 a sale agreement was drawn Exhibit P1 between PW1 and Ddibya Henry Wagaba and part of the purchase price was paid at the law firm of M/s Sensuwa & Co. Advocates.

36. That the balance of the purchase price was to be paid upon Mr. Ddibya executing a transfer in favour of PW1 but Mr. Ddibya started avoiding PW1 and this is when PW1 filed Jinja High Court Civil Suit No. 101 of 2013 and Judgment was entered in favour of PW1 on 10th January, 2014 Exhibit P3.
37. According to the Judgment in Jinja Civil Suit No. 101 of 2013 PW1 was awarded general damages of Ug. Shs 5, 000,000/= (Five million shillings) which she deducted from the balance due to Mr. Ddibya and the said Mr. Ddibya picked the balance of Ug. Shs 1, 700, 000/= (One million seven hundred thousand shillings) from Jinja Court and he left his identification documents in Jinja Court Exhibits P13, P15 and P16 in the Plaintiff 's trial bundle.
38. PW1 engaged the services of a Court bailiff Mr. Moses Kirunda who executed the decree in Jinja High Court Civil Suit No. 101 of 2013 and handed over vacant possession of the suit land to PW1 in the presence of the local authorities and all neighbours and there were no adverse claims on the land at this time and PW1 obtained her certificate of title for 10 (Ten) acres

of land described as Kyaggwe Block 94 Plot 470 on 23rd June, 2015.

39. Upon realization that PW1 had obtained a certificate of title Mr. Ddibya sent his son Mr. Lwanira Tadeo to convince PW1 to part with some of her land which she registered in her names see Exhibit P17.
40. As PW1 was preparing to develop her land, the first defendant went with surveyors to PW1's land and attempted to survey off three (3) acres but the 1st defendant was stopped by the local authorities who recognized PW1 as the rightful owner of the land.
41. PW1 later learnt that Mr. Ddibya had sold three (3) acres of land to Hon. Peace Kusasira (1st defendant) in 2013 but unfortunately Mr. Ddibya had no more land in the area and this is why they wanted PW1 to surrender a portion of her land.
42. That initially the first defendant claimed to have bought a registered interest in the land but later in her written statement of defence she claimed to have bought a Kibanja interest.
43. That the 1st defendant took advantage of the Covid 19 lock down in 2020 and forcefully entered part of the suit land

planted eucalyptus trees on it and started claiming three (3) acres of PW1's land. PW1 confirmed that Ddibya Henry Wagaba who appears in a photograph marked exhibit PII is the person she bought land from in 2009.

44. While under cross examination she confirmed that she executed a sale agreement with Ddibya on 30th May, 2009 and she visited the land before buying the same and there are small gardens belonging to Ddibya and his children.

45. That she confirmed that the suit land belonged to Henry Wagaba Ddibya from the Administrator General's office and even the land registry.

46. She established that Ddibya was in occupation of the land at time she bought and there were no kibanja owners at that time.

Defence Evidence

47. **Kawombe Emmanuel (DW1)** in her witness statement filed on 7th April, 2022 he stated that he was the former owner of a Kibanja at Budugala village having acquired the same from his late father Evalisto Bukulu.

48. That his late father knew Dibya Henry as his land lord (mailo owner) although he initially paid busulu to Nkolo Ganda a brother to Ddibya Henry and after the death of Nkolo busulu was paid to Ddibya Henry.
49. That he sold his Kibanja to Peace Kusasira Kanyesigye in 2008 with the consent of the mailo owner Ddibya Henry which consent was provided by Ddibya through his son Tadeo Lwanira witnessing the sale agreement for the Kibanja.
50. That although he did not know the exact size of his Kibanja he used the same but it has boundaries with Ddibya Henry's land, a forest, a path to Ddibya Henry's home and Mulokole's Kibanja.
51. While under cross examination he stated that he did not buy his Kibanja and he had proof of ownership which he did not attach to his witness statement.
52. That he had no document to prove that his father gave him the Kibanja in issue but he was utilizing the said Kibanja prior to the sale.
53. He did not know when Ddibya Henry started opening the suit land.

54. **Kayima Kayemba Steven (DW2)** in his witness statement filed on 7th April, 2022 stated that he was a resident of Budugala Village and a neighbor to Kawombe Emmanuel who knew his Kibanja now in dispute.
55. He also stated that he knew Bukulu Evalisto who used to cultivate the suit Kibanja and it was Bukulu Evaristo who granted a gift of the suit Kibanja to his son Kawombe Emmanuel.
56. That he never saw Ddibya Henry utilizing the suit Kibanja.
57. That he actually knew the boundaries of the Kibanja in dispute and he planted coffee and eucalyptus trees on the suit Kibanja in 2008 upon the instructions of the 1st defendant.
58. That he knew Ssebugwawo David as a resident of Budugala and he confirms that the 1st defendant was using the suit Kibanja since 2008 having bought the same from Kawombe Emmanuel.
59. While under cross examination he stated that he was not present when the 1st defendant bought the suit Kibanja from Kawombe Emmanuel.

60. That he was also not present when Kawombe Emmanuel was gifted the suit Kibanja by Bukulu Evaristo.
61. He stated that the Kibanja he personally occupied (DW2) did not belong to Ddibya and for that reason he had not paid any Busulu to Ddibya.
62. **David Ssebugwawo (DW3)** in his witness statement filed in Court on 10th May, 2022 stated that he was a resident of Budugala village and was the LCII Chairperson of Nyenje Parish in 2008.
63. That the 1st defendant and Kawombe Emmanuel approached him in 2008 to write for them a sale agreement for a kibanja since the LC1 Chairperson of the area was absent.
64. That he visited the suit Kibanja before preparing the sale agreement Exhibit D1 and he concluded that the suit Kibanja belonged to Kawombe Emmanuel having acquired the same as a gift from his father Bukulu Evaristo.
65. That he saw Kawombe Emmanuel's father and Kawombe Emmanuel himself utilizing the suit Kibanja.

66. That he also knew that the Mailo owner of the suit Kibanja and he consented to this sale through his son Lwanira Tadeo who was a witness to the sale agreement.
67. That he knew the family of Ddibya Henry to be the mailo owners of the suit Kibanja.
68. While under cross examination he stated that it was the 1st defendant who approached him to make a sale agreement Exhibit D1 but he did not see any document vide which Kawombe Emmanuel acquired the suit Kibanja.
69. He stated that he did not see the gift deed by Bukulu Evaristo in favor of Kawombe Emmanuel nor written authority to Lwanira Tadeo authorizing him to witness the agreement of sale Exhibit D1.
70. He confirmed that in 2008 the registered proprietor of the suit land was Henry Ddibya but when he was shown Exhibit D4 he was surprised that Henry Ddibya got registered on the suit land in 2009.
71. He stated that he did not see any Busulu tickets in this case and he did not even see the certificate of title in this case.

72. **Lwanira Tadeo (DW4)** in his witness statement filed on 7th April, 2022 stated that Ddibya Henry was his biological father.
73. DW4 confirmed that he knew the Plaintiff in this case and he went to her office together with John Bosco Mukanga to discuss issues relating to Kyaggwe Block 94 Plot 151 land at Budugala.
74. He also stated that he knew the 1st defendant as the person to whom his father sold 3.6 acers of land out of Kyaggwe Block 94 Plot 151 land at Budugala.
75. That he first met the 1st defendant in 2008 when she was buying a Kibanja from Kawombe Emmanuel and actually his father authorized him to witness the transaction between Kawombe Emmanuel and the 1st defendant.
76. That the 1st defendant took possession of her Kibanja and cultivated crops on the same.
77. That in 2013 the 1st defendant approached Henry Ddibya to sell her the mailo interest and this was done and she was given the original certificate of title and transfer for Kyaggwe Block 94 Plot 151.

78. That the 1st defendant and her surveyor were shocked to learn that plot 151 had been subdivided into plots 470 and 471 by the Plaintiff pursuant to a Court order to which Henry Ddibya was not a party.
79. That the Plaintiff bought land at Kyaggwe Block 94 Plot 18 but went ahead to use a decree in Jinja High Court Civil Suit No. 101 of 2013 against a one Ddibya Henry Wagaba to subdivide Kyaggwe Block 94 Plot 151.
80. That he had never seen the Plaintiff on the suit land and his father did not sell any land to the Plaintiff as he never owned land at Kyaggwe Block 94 Plot 18.
81. That DW4's father is Ddibya Henry and not Ddibya Henry Wagaba.
82. While under cross examination he admitted that during her meeting with the Plaintiff he confirmed that his father sold 10 (Ten) acres of land to her and this is a recording Exhibit P17.
83. He informed Court that they did not report any case of illegal sub division of land to the police.

84. She was shown Exhibit D1 and he told Court that the Kibanja was 3.6 acres and yet the agreement relates to 3.5 acres of land he was also shown exhibit P7 where it is only 2 acres.
85. He told Court that by 2008 his father was not yet the registered proprietor of the suit land and their area LC1 Chairperson at that time was Kakooza Paul.
86. That prior to 2009 the suit land was in the names of the Administrator General and they did not get authority from the Administrator General to sell the Kibanja to the 1st defendant.
87. When shown Exhibit P10 he confirmed that it bore the Photograph of his father Ddibya Henry and he is the one who signed the transfer in favour of the Plaintiff and the same Photograph appeared in Exhibit P5.
88. **Ddibya Henry (DW5)** in his witness statement filed in Court on 7th April, 2022 stated that he was 95 years old and a resident of Budugala Village.
89. He confirmed that he knew the 1st defendant to whom he sold 3.6 Acres of land at Kyaggwe Block 94 Plot 151 after she first bought a Kibanja from Kawombe Emmanuel which transaction he accepted through his son Tadeo Lwanira.

90. That the sale agreement for land between him and 1st defendant was witnessed by LC1 Chairperson Kakooza.
91. That he handed over the certificate of title, mutation form and transfer form for Kyaggwe Block 94 Plot 151 only to learn that Plot 151 had been sub divided into Plots 470 and 471 by the Plaintiff using a Court order from a suit to which he was not a party.
92. That he dealt with a one John Bosco who lent him money and he actually signed several documents for the said John Bosco but Joh Bosco later claimed that he sold land to him.
93. That he never sold any land to the Plaintiff and his names are Ddibya Henry and not Ddibya Henry Wagaba.
94. While under cross examination he was shown exhibit P16 which was an acknowledgment of receipt of money and he confirmed that it is his signature.
95. He confirmed that he knew Mukanga John Bosco as his friend for over five (5) years.
96. That he also knew Masajjage Dan as an aide to JohnBosco Mukanga he also knew an advocate called Muyonjo.
97. He also knew Muledhu as an aide to John Bosco.

98. When he was shown Exhibits P1 and D5 he denied that they did not have his signatures.
99. He confirmed that in 2008 he did not have the certificate of title.
100. Although he claimed to have reported the illegal subdivision of his land to Mukono Police Station he had no reference number to prove this report.
101. He did not report any criminal case against John Bosco Makanga to any Police Station.
102. He confirmed his date of birth to be 1st January, 1927 and NIN as CM2705210D2LLT Exhibit D3.
103. He also acknowledged to be the owner of voter's card which was an exhibit in Jinja High Court now exhibit P15.
104. During re-examination he confirmed that it was John Bosco Mukanga who paid him money.
105. **Peace Kusasira Kanyasige Mubiru (DW6)** in her witness statement filed on 7th April, 2022 confirmed to be the 1st defendant and a resident of Nantabulirwa village.
106. She denied knowledge of the Plaintiff and Ddibya Henry Wagaba.

107. She stated to be an equitable/lawful owner of 3.6 acres of Kibanja/land at Budugala village having purchased the Kibanja interest in 2008 from Kawombe Emmanuel and the Mailo Interest in 2013 from Ddibya Henry.
108. That he bought 3.5 acres of Kibanja from Kawombe Emmanuel in 2008 at a price of Ug. Shs. 8, 000,000/= (Eight million shillings).
109. That prior to the sale of the Kibanja Kawombe Emmanuel took her to Ddibya Henry who approved the same in his capacity as the land owner.
110. That after purchase of the Kibanja she took possession of the same and has been growing bananas, coffee, sweet potatoes, cassava and she even planted eucalyptus trees on the said Kibanja.
111. That in 2013 she got the mailo interest of 3.6 acres from Ddibya Henry and she engaged a surveyor called Kedi Richard to open boundaries to her Kibanja.
112. That she conducted a search in the land office which confirmed that Ddibya Henry was the registered owner of land at Kyaggwe Block 94 Plot 151.

113. That she executed two (2) sale agreements with Ddibya Henry on 6th June, 2013 for 2 acres and on 20th December, 2013 for the 1.6 acres and Mr. Tadeo Lwanira a son of Ddibya Henry witnessed the agreements.
114. That Ddibya Henry gave her the original certificate of title and transfer form for Kyaggwe Block 94 Plot 151 but her surveyor Kedi Richard informed her that Plot 151 had been subdivided into Plots 470 and 471.
115. That when she approached Ddibya Henry with the new developments he told her that he had never sold land to the Plaintiff.
116. That the Plaintiff bought land at Kyaggwe Block 94 Plot 18 and even the Judgement and decree in Jinja High Court Circuit Suit No. 101 of 2013 against a one Ddibya Henry Wagaba referred to Plot 18 and there was no lawful justification for the Plaintiff to sub divide Plot 151 into Plots 470 and 471.
117. That she has never seen the Plaintiff on the Suitland since 2008 and seeks a declaration that she is the owner of 3.6 Acres of Kibanja on land at Kyaggwe Block 94 Plots 470 and 41 formerly Plots 151 and also a declaration that the sub division

of Plot 151 into Plots 470 and 471 was null and void and the certificate of title be cancelled and restored to Plot 151 and an order be made for the 1st defendant to survey off her 3.6 Acres of land.

118. While under cross examination she stated that after conducting a survey it was established that her Kibanja was 3.6 acres.

119. That in 2008 the suit Kibanja was on the mailo land of Yokana Lwanira and Ddibya Henry was in charge of the land.

120. She confirmed that Ddibya Henry got registered on the land on 19th March, 2009 and she actually saw exhibit D4 in 2010.

121. She confirmed that Tadeo Lwanira did not have powers of Attorney to transact business on behalf of Ddibya Henry.

122. That in 2008 she saw gardens belonging to Emmanuel Kawombe and got convinced that he owned the suit Kibanja and she inquired from the neighbors like Kayima and Tadeo Lwanira who confirmed Kawombe's ownership of the Kibanja.

123. That she came to know of the Plaintiff's interests in the suit land in 2015 or 2016 and the Plaintiff bought Plot 18 while she bought Plot 151.
124. She stated that according to Exhibit P7 Plot 151 originates from Plot 18 and according to Exhibit P10 the Administrator General transferred Plot 18 Block 94 Kyaggwe in favour of Ddibya Henry.
125. She stated that she lodged a caveat on Plot 470 because her Kibanja is on this Plot.
126. During re-examination she confirmed that she got the exact size of her Kibanja as 3.6 acres after her surveyor opened boundaries to this Kibanja.

Legal arguments by Counsel for the Plaintiff/Counter defendant

127. In his written submissions filed on 30th March, 2023 Counsel for the Plaintiff/Counter defendant submitted that the Plaintiff bought ten (10) acres of land on 30th May, 2009 from Henry Wagaba Ddibya who refused to transfer the land in favour of the Plaintiff and the process of transfer was completed through Court action in Jinja High Court Civil Suit No. 101 of 2013.

128. Counsel submitted that the 2nd defendant Ddibya Henry Wagaba was duly served with Court summons in Civil Suit No. 45 of 2021 but he did not file a written statement of defence hence the default Judgment against him on 10th May, 2021.
129. Counsel framed the following issues:-
- i) Whether or not the 1st defendant has any valid claim to the suit land.
 - ii) What remedies are available to the parties?
130. Counsel submitted that the Plaintiff bought ten (10) acres of land at Kyaggwe Block 94 Plot 18 which was later subdivided into Plot 151 and plots 470 and 471 and the Plaintiff is the current registered owner of ten (10) acres of land at Kyaggwe Block 94 Plot 470 land at Budugala.
131. Counsel submitted that the Plaintiff bought the ten (10) acres of land from Henry Wagaba Ddibya who is one and the same person as Henry Ddibya as indicated in Exhibit P6,5,10,15,16 and 17 and also exhibit D3 which documents bear the same pictures and date of birth of Ddibya Henry and Ddibya Henry Wagaba.

132. Counsel argued that the alleged sale of a Kibanja by Kawombe Emmanuel to the 1st defendant was a nullity as it contravened sections 34 (8) and 34(9) of the Land Act and Counsel relied on the case of **Ndimwiho Sande & 3 others Versus Allen Peace Ampaire** Court to Appeal Civil Appeal No. 65 of 2011 to support his argument that the sale of a Kibanja interest without the consent of the land owner is a nullity.
133. Counsel prayed for the nullification of the transactions of sale between the defendant in relation to land at Kyaggwe Block 94 Plot 470 and the Plaintiff be declared to be the owner of the said land.
134. Counsel also prayed for the 1st defendant to be declared a trespasser on the suit land and be evicted and vacant possession granted to the Plaintiff for the ten (10) acres of land at Kyaggwe Block 94 Plot 470.
135. Counsel prayed for general damages of Ug. Shs 500,000,000/= (Five hundred thousand shillings) and an order to vacate the 1st defendant's caveat from the Plaintiff's land and compensation for lodging such a caveat.
136. A permanent injunction and costs of the suit.

Legal arguments by Counsel for the 1st defendant/Counter claimant.

137. In their written submissions filed on 13th April, 2023 Counsel for the 1st defendant/counter claimant submitted that they sought an order declaring the sub division of land at Kyaggwe Block 94 Plot 151 into plots 470 and 471 as illegal, null and void and cancellation of the title to Kyaggwe Block 94 Plot 470.

138. Counsel submitted that they wanted the counter claimant to be declared as the owner of 3.6 acres of land at Kyaggwe Block 94 plots 470 and 471 formerly plot 151.

139. Counsel submitted that in their joint scheduling memorandum three (3) facts were agreed upon.

- i) The subject suit land is comprised in Kyaggwe Block 94 Plot 470 land at Budagala.
- ii) The Plaintiff is the current registered proprietor of the suit land.
- iii) The 1st defendant/counter claimant purchases a Kibanja by agreement dated 20th June, 2008 from Kawombe Emmanuel situate on the suit land.

140. Counsel for the 1st defendant/Counter claimant set out eight (8) issues for determination as follows:-

- i) Whether the 1st defendant/counter claimant has a valid equitable interest in the suit land.
- ii) Whether the 1st defendant is a bonafide purchaser for value of the suit land.
- iii) Whether the 1st defendant lawfully purchased a Kibanja on the suit land.
- iv) Whether the 1st defendant committed acts of trespass on land comprised in Kyaggwe Block 94 Plot 470.
- v) Whether Ddibya Henry Wagaba is the same person as Ddibya Henry who transacted with the Plaintiff.
- vi) Whether the suit land was erroneously or illegally subdivided from Plot 151.
- vii) Whether the Plaintiff acquired a valid interest in the suit land.
- viii) What remedies are available to the parties?

141. Counsel submitted that it was important to establish the history of the Kibanja in question and according to him the evidence of DW1 set out this history very well and according to

him the 1st defendant lawfully dealt with Kawombe Emmanuel and no consent was required since there was no registered proprietor at the time.

142. Counsel argued that the Plaintiff had no locus standi to raise issues of lack of consent of the registered proprietor because in 2008 she was not yet the registered proprietor of the suit land.

143. Counsel at great length submitted that DW1 got the suit Kibanja from his father Bukulu Evaristo and there was enough evidence to prove this and Counsel put Court on notice that given an opportunity he will raise a ground of appeal that DW1 was denied a chance to exhibit three (3) busulu receipts dated 10th June, 1998, 7th February, 1999 and 21st September, 2020.

144. Counsel combined his issues 1, 2, 4, 5 and 6 and argued them together to prove that the 1st defendant/Counter claimant bought the suit Kibanja from Kawombe Emmanuel and suit land from Henry Ddibya DW5 and she is in possession of the same.

145. Counsel argued that by 30th May, 2009 when Exhibit P1 was executed no land on Plot 18 Kyaggwe Block 94 and DW6

had the Judgment in Jinja High Court Civil Suit No. 101 of 2013 referred to land at Kyaggwe Block 94 Plot 18 and not Plot 151.

146. While resolving issue No. 8 Counsel reproduced all the prayers in the Counter claim and in the alternative submitted that the 1st defendant/claimant is only interest in 3.6 acres of land and she is not concerned about the remaining portions of land.

147. Court has also carefully read the Plaintiff/Counter defendant's submissions in rejoinder filed on 19th April, 2023.

Decision of Court

148. There are certain facts that this Court finds pertinent in the determination of this dispute and the most important fact is that the Late Lwanira Yokana owned land on Kyaggwe Block 94 land at Budugala Village as indicated in Succession Register /2B/738 kept by the office of the Administrator General.

149. On the 27th January, 2009 the office of the Administrator General issued a transfer for 10.12 hectares out of the land at Kyaggwe Block 94 Plot 18 in favour of Ddibya Henry a resident of Nyenje Village, a beneficiary of late Lwanira Yokana and this evidence is contained in Exhibits P9 and P10.

150. When the office of the Administrator General transferred the 10.12 hectares of land out of Plot 18 this is when Plot 151 was created and it was later sub divided into Plots 470 and 471 which plots were registered in the names of Ddibya Henry Wagaba as indicated in the area schedule form for Kyaggwe Block 94 Exhibit P7.
151. With the above findings by Court, I can now delve in the resolution of issues framed by both Counsel in their Joint Scheduling Memorandum filed on 29th September, 2021. Court will combine the 1st, 2nd 6th and 7th issues together, then the 3rd and 4th issues, the 5th and 8th issues are to be handled each separately.
152. According to Exhibit P1 the Plaintiff on 30th May, 2009 bought from Ddibya Henry Wagaba ten (10) acres of land situated at Budugala from Kyaggwe Block 94 Plot 18 at an agreed price of Ug. Shs. 30, 000,000/= (Thirty million) the sale agreement was witnessed by Mukanga JohnBosco and Masagye Ben as witnesses for Ddibya Henry Wagaba and Muledhu as one of the witnesses for the Plaintiff.

153. When the Plaintiff realized that the said Ddibya Henry Wagaba was not performing the terms of the agreement dated 30th May, 2009 she filed Jinja High Court Civil Suit No. 101 of 2013 where Court issued a Judgment on 10th January, 2014 Exhibit P3.
154. The Judgment of Jinja High Court Civil Suit No. 101 of 2013 was enforced on 23rd June, 2015 when the Registrar of Titles Mukono passed Instrument No. MKO-00017980 a vesting order which made the Plaintiff the registered owner of 4.0470 Hectares (10(ten) acres) of land at Kyaggwe Block 94 plot 470 as indicated in exhibit P11.
155. This Court finds that the decision of Court in Jinja High Court Suit No. 101 of 2013 is still valid and enforceable unless set aside by a competent Court see case of **Cooper Motors Corporation (U) Ltd Versus Genesis Transporters & 2 others** Court of Appeal Civil Appeal No. 41 of 2009 and therefore the creation of titles for land at Kyaggwe Block 94 Plots 470 and 471 pursuant to the Judgment in Jinja High Court protected the Plaintiff's interest in the land at Kyaggwe Block 94 Plot 470

and this Court is not clothed with the Jurisdiction to tamper with status quo established by another High Court Judge.

156. The 1st defendant/Counter claimant contends that she bought 3.6 acres of land from Ddibya Henry in 2013 and these were comprised in Kyaggwe Block 94 Plot 151 which land was illegally sub divided by the Plaintiff.

157. With all due respect to the 1st defendant/counterclaimant, the sub division of Plot 151 was done in pursuance of a court order issued in Jinja High Court Civil Suit No. 101 of 2013 and the mere fact that the suit land had been mutated from Plot 18 cannot be used to defeat the Court order provided the suit land was properly traced from the mother plots to the sub divided plots and the Plaintiff got off only ten (10) acres being her entitlement in exhibit P1 and also in the Judgment in Jinja High Court Civil Suit No. 101 of 2013.

158. Court is therefore not surprised that the 1st defendant/counterclaimant lodged her caveat claiming to be a purchaser of Kyaggwe Block 94 Plot 470 on 28th September, 2020 which was after five (5) years from the date when the Plaintiff was registered as proprietor of this land.

159. This Court therefore finds that the Plaintiff Tibulya Margaret J. is the lawful and registered owner of ten (10) acres of land at Kyaggwe Block 94 Plot 470 which finding is supported by the Judgment of my brother Justice Godfrey Namundi in Jinja High Court Civil Suit No. 101 of 2013 and the 1st, 2nd, 6th and 7th issues are accordingly resolved in favour of the Plaintiff.

160. When it comes to the 3rd and 4th issue, Court finds the evidence of DW1 Kawombe Emmanuel as believable in that he inherited a Kibanja from his late father Evaristo Bakuru and this witness was well aware that his Kibanja was located on the land belonging to Ddibya Henry and was obliged to obtain the written consent of the landlord prior to disposing off any part of his Kibanja and perhaps this explains why he relied on Lwanira Tadeo as a witness to the sale agreement dated 20th June, 2008.

161. The law governing transactions of Bibanja interests regarding the requisite consent of the land owner is well settled in sections 34(8) and 34(9) of the Land Act Cap 227 which provides as follows:-

34(8) A copy of every consent, signed by the owner or, where the consent has been granted by the land tribunal,

by the secretary of the tribunal, shall be delivered or sent to the recorder who shall keep a record in the prescribed form of all such consents.

34 (9) No transaction to which this section applies shall be valid and effective to pass any interest in land if it is undertaken without a consent as provided for in this section, and the recorder shall not make any entry on the record of any such transaction in respect of which there is no consent.

162. Whereas Court is satisfied that DW1 Kawombe Emmanuel owned a Kibanja on the land belonging to Ddibya Henry which fact also comes out of the locus in quo visit carried out on 25th November, 2021, the purported transaction of sale between the said Kawombe Emmanuel and the 1st defendant /counter claimant on 20th June, 2008 without the consent in writing of Ddibya Henry invalidated such a sale.

163. It has been argued by the 1st defendant that Ddibya Henry sent his son Lwanira Tadeo to witness the sale agreement between Kawombe Emmanuel and this was proof of consent of the land owner.

not surprised that these same friends of DW5 are his witnesses to the sale agreement between Ddibya Henry Wagaba and the Plaintiff dated 30th May, 2009.

168. Court has also looked at Exhibits P13, 14 and 15 relating to Jinja High Court Civil Suit No. 101 of 2013 where Ddibya Henry Wagaba was the defendant and he actually received the balance from his sale of land as directed by the Deputy Registrar Jinja High Court.

169. DW4 Lwanira Tadeo confirmed that his father's photographs appeared in Exhibits P5 and P10 which documents were executed in favour of the Plaintiff.

170. Court had an opportunity to see Ddibya Henry testifying before it as DW5 and observed that this witness had a selective memory whereby he could answer questions in his favour fast and those that would reveal his true identity would be answered relevantly.

171. Court listened to the recording in Exhibit P17 where Lwanira Tadeo was discussing with the Plaintiff and it is apparent that Ddibya Henry Wagaba sold 10 (ten) acres of land to the Plaintiff.

172. Whereas in his letter Exhibit P9 the Administrator General refers to Ddibya Henry of Nyenje zone the area schedule form Exhibit P7 indicates that Plots 181, 470, 471 belonged to Ddibya Henry Wagaba.
173. Court is therefore satisfied that Ddibya Henry born on 1st January, 1927 who testified in this case as DW5 is the same person as Ddibya Henry Wagaba the defendant in Jinja High Court Civil Suit No. 101 of 2013wher he left his voter's card Exhibit P15 who actually sold ten (10) acres of land at Kyaggwe Block 94 Plot 470 but he is now trying to sell the same land to the 1st defendant.
174. Court finds therefore resolves issue No. 5 in the affirmative.
175. Finally, with regard to the remedies Court must be satisfied that the 1st defendant was not colliding with the said Ddibya Henry Wagaba in order to defeat the Plaintiff's interest in what legally belongs to her, Court cannot order Ddibya Henry Wagaba to transfer his land at Kyaggwe Block 94 Plot 471 in favour of the 1st defendant/counter claimant because this aspect was not pleaded and the 1st defendant/counter claimant

needs to prove her case against the said Ddibya Henry Wagaba.
Accordingly the Counter claim is hereby dismissed with costs.

176. Without prejudice to the foregoing, Court hereby grants the Plaintiff vacant possession of her land at Kyaggwe Block 470 land at Budugala.

177. Considering the suffering the Plaintiff has gone through by virtue of the 1st defendant's acts of trespass court hereby awards the Plaintiff general damages of Ug. Shs 30,000,000/= (Thirty million shillings).

178. Court hereby issues a permanent injunction restraining the 1st defendant/counterclaimant together with Ddibya Henry Wagaba and their respective agents from further trespass on the land at Kyaggwe Block 94 Plot 470 land at Budugala.

179. The defendants are to pay the costs of this suit to the Plaintiff and the Counter claimant is to pay costs of the Counter claim to the 1st Counter defendant.

Dated this 2nd day of October 2023.

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David Matovu
Judge