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The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Civil Suit No. 009 of 2011

Eitu Benard (*administrator of the estate of the late Amunya Maneri*) ::::::::::::::::::::::::::: Plaintiff

Versus

10 Epilau Juma Juve

Amuge Kevin Juma

Amuge Janet Juma

Atim Florence Juma

Opolot Samuel

15 Epilau Juma

Oduude Mathias Moses (*Minor sued through the next friend Epilau Juma Juve*)

:: Defendants

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

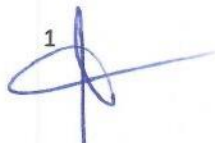
1. Introduction:

20 The plaintiff filed this suit against the defendants for a declaration that he is the lawful owner of approximately 14.540 hectares of land located in Pacoto/Aminit village, Kanyangan Parish, Kateta sub-county in Serere District, cancellation of title in the names of the defendants, vacant possession, permanent injunction and costs of the suit.

25 2. The Plaintiff's case

The plaintiff avers that he is the rightful owner of the suit land, having inherited it from his late father, Amunya Maneri, who inherited it from his father, Ewonyu s/o Oduude.

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5 That in 1997, the plaintiff's father, the late Amunya Maneri, litigated with the
father of the 1st defendant, one Christiano Opolot, vide Civil Case No. 77 of 1967
and Civil Appeal No. 68 of 1967 wherein the said land in dispute was decreed to
him. That one Okello Wilson S/o Egau and Oluka John - his brother, who is also
10 prompted the plaintiff's father to file a matter before the Magistrate's Court of
Soroti at Kateta and the same was rejected as being *res judicata*.

In 2006, the 1st defendant, with eight (8) others, again trespassed onto the
plaintiff's land, and the plaintiff's father, vide Civil Claim No. 003 of 2006, filed a
suit against the 1st defendant and eight others in the Chief Magistrate's Court of
15 Soroti, and judgement was passed in his favour.

Like the 1st defendant's father, Christiano Opolot, the 1st defendant, with his
brother, has deliberately continued trespassing onto the plaintiff's land to date.

In 2010, the 1st defendant and others again trespassed onto the suit land and
were charged with criminal trespass vide Criminal Case No. 537 of 2010 before
20 the Chief Magistrate's Court of Soroti. However, during the trial against the 1st
defendant and nine others vide Criminal Case No.537 of 2010, the 1st defendant
surprisingly produced a title insinuating ownership of the disputed land.

The 1st defendant, with full knowledge of the plaintiff's ownership of the land in
dispute, fraudulently processed the land title without the plaintiff's knowledge.
25 Accordingly, the plaintiff seeks the remedies in her plaint against the defendants.

3. Exparte order

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5 On 15/03/2023, after proof of substituted service, the court was satisfied that effective service of the amended plaint had been made against the defendants pursuant to the advert for substituted service that ran in the Daily Monitor newspaper of 17/01/2023 of national circulation accompanied by an affidavit of one Ikopit Tinah dated 17/01/2023 and filed in court on the same day. That being
10 the case, the instant suit was allowed to proceed ex-parte in accordance with the provisions of Order 9 r 20 (1) of the CPR. In effect, the defendants had not filed their defence. Consequent to the *ex parte* order, the suit was set down for formal proof.

4. Representation:

15 M/s Legal Aid Project of the Uganda Law Society, Soroti Office, represented the plaintiff. In proof of his case, the plaintiff led Eitu Benard as PW1 and Eperu Michael as PW2 as the only witnesses. The plaintiff's counsel filed submissions for which this court is grateful, and they have been considered in resolving the dispute.

20 5. Evidence:

The plaintiff relied on the following documents, one of which was exhibited and the others, identified and later exhibited as secondary documents, the plaintiff having failed to produce their original copies;

- 25 a) PID1 – A letter confirming that the plaintiff's father litigated with the 1st defendant vide Civil Suit No. 77 of 1967 and Civil Appeal No. 068 of 1967.
- b) PID2 – A copy of the Order before the Magistrate's Court of Soroti at Kateta.
- c) PEX1 – A copy of the proceedings, judgment and decree vide Civil Claim No. 0003/2006.
- 30 d) PID3- A copy of the Certificate of Title of the suit land.

5 e) PID4- A copy of the Bailiff's Warrant.

6. Issues:

Three issues were proposed in the plaintiff's submissions filed in court on 27 February 2024. I have perused them, and they suffice to determine this instant suit. They are;

- 10 a) Was the certificate of title for the suit land fraudulently obtained by the defendants?
b) Whether the suit land belongs to the plaintiff?
c) What are the available remedies?

7. Burden and Standard of Proof:

- 15 This being a civil suit, the burden of proof lies with the plaintiff (sections 101 and 102 of the Evidence Act, Cap 6) to prove her case on a balance of probabilities.

See: *Nsubuga vs Kawuma* [1978] HCB 307.

In the case of *Erumiya Ebyetu v. Gusberito* [1985] HCB 64, it was held that

- 20 *"where the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."*

8. Locus report:

- 25 The court visited locus in quo on 18/12/2023 at Aminit village, Kanyangan parish, Kateta sub-county, Serere district (the suit land), and the plaintiff showed the court the boundaries of the suit land. The court observed that the suit land is separated by Atapar Road on the west, and above the road is Eonyu Bosco and Odir's land. Okello Wilson is a neighbour in the east, a swamp in the west, and Omuba is a neighbour in the south. The Court also observed that Erienyu has a

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- 5 home on the suit land, Abilu has cultivated cassava and sorghum on part of the suit land and has an incomplete house constructed, Opeduno Omar has constructed a home on the suit land, and Epilau Juma has cultivated cassava on the suit land.

9. Determination:

- 10 The plaintiff submitted on the first two issues, and I will resolve them concurrently.

a) Was the certificate of title for the suit land fraudulently obtained by the defendants?

b) Whether the suit land belongs to the plaintiff?

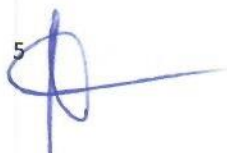
- 15 Upon perusing the pleadings and the adduced evidence, the plaintiff and his witness allude that the declaration of ownership of approximately 14.50 hectares of land comprised in Pacoto/Aminit village, Kanyangan Parish, Kateta sub-county in Serere District (the suit land) sought by the plaintiff was dealt with before in Civil Suit No. 77 of 1967, Civil Appeal No. 68 of 1967 and Land Claim No. 003 of
20 2006, thereby rendering the instant suit *res judicata*.

i. Res judicata:

Section 7 of the Civil Procedure Act, Cap 71, stipulates that;

- No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same
25 parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and had been heard and finally decided by the court.

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- 5 According to Section 7 of the CPA, the expression "former suit" means a suit that has been decided prior to the suit in question, whether or not it was instituted prior to it.

As deduced from the doctrine of *res judicata* to apply, it must be evident that the suit or issue raised was directly and substantially in issue in a former suit, the
10 former suit was between the same party or parties under whom they or any of them claim., those parties were litigating under the same title, the issue in question was heard and finally determined in the former suit and that the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.

- 15 Further still, the case of ***Kamunye & others vs. the Pioneer General Assurance Society Ltdd (1971 E.A 263*** gives the test to be applied by the court to determine the question of *res judicata*. It states:

20 *"The test whether or not a suit is barred by res judicata seems to me to be – is the plaintiff in the second suit trying to bring before the court in another was and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applies not only to points upon which the first court actually required to adjudicate but to every point which properly belonged to the*
25 *subject of litigation and which parties, exercising reasonable diligence, might have brought forward at the time. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply".*

5 It is also trite that for a matter to be res judicata, the matter directly and substantially in issue must have been heard and finally disposed of in the former suit (see: *Lt David Kabarebe v. Major Prossy Nalweyiso C.A Civil Appeal No.34 of 2003*).

10 According to the instant facts, the plaintiff and his witness contend that the matter before the court was litigated by his father with the 1st defendant's father and relatives vide Civil Suit No. 77 of 1967 and Civil Appeal No. 068 of 1967.

A perusal of PID1 – A letter confirming that the plaintiff's father litigated with the 1st defendant vide Civil Suit No. 77 of 1967 and Civil Appeal No. 068 of 1967, indicated that Mr Amunya, the apparent father of the plaintiff won Civil Appeal
15 No. 068 of 1967 which upheld the decision of Magistrate Grade III in Civil Case No. 77 of 1967 where Mr Amunya was Manueri, was declared the owner of the disputed land. PID1 does not list the location of the land upon which the plaintiff's late father was declared the owner.

The location of the disputed land is also not indicated in PID2. However, in PEX1
20 vide Claim No. 003 of 2006, which is between Amunya Maneri against Epilau Yuventino and eight others, the suit land is mentioned, and in the judgement thereof, Amunya Maneri is declared as the owner of the suit land measuring 100 acres. The instant suit is, however, about titled land of 14.50 hectares, and the previous suit deals with unregistered land.

25 PW2 corroborated the plaintiff's testimony of the claims instituted in courts of law regarding the suit land. PW2 stated that a suit was instituted, vide Land Claim No. 003/2006, against the 1st defendant and eight others before the Land Tribunal, where the judgement was passed in favour of the plaintiff. The 1st

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5 defendant and eight defendants refused to vacate the suit land as ordered by the court.

I will, therefore, hold that the instant suit is barred by *res judicata* as regards the ownership of the unregistered interest, but I will still determine the evidence adduced in proof of the plaintiff's ownership of the suit land.

10 ii. Ownership:

Hon Justice Stephen Mubiru, in a decision that I associate with, defined ownership of land in the case of ***Odiya v Lukwiya & 3 Others (CIVIL APPEAL NO. 53 OF 2018) [2019] UGHC 69 (26 November 2019)*** as "*Ownership of land is acquired by either; purchase, inheritance, gift, transmission by operation of law,*
15 *prescription or adverse possession.*

The plaintiff told the court that he owns the suit land through customary inheritance.

Section 1 (l) of the Land Act, Cap 227 as amended, stipulates that "customary tenure" means a system of land tenure regulated by customary rules which are
20 limited in their operation to a particular description or class of persons the incidents under Section 3(1) (a-h) of the Land Act which are;

(a) applicable to a specific area of land and a specific description or class of persons;

(b) governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;

25 (c) applicable to any persons acquiring land in that area in accordance with those rules;

(d) characterised by local customary regulation;

5 (e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;

(f) providing for communal ownership and use of land; (g) in which parcels of land may be recognised as subdivisions belonging to a person, a family or a traditional institution; and

10 (h) which is owned in perpetuity.

Section 56 (3) of the Evidence Act permits a court to take judicial notice as a fact of the existence of practices that are not subject to reasonable dispute because they are generally known within the trial court's territorial jurisdiction.

PW1 told the court that he inherited the suit-land, which is approximately 14.540
15 hectares of land located in Pacoto/ Aminit village, Kanyangan parish, Kateta s/c, Serere district from Amunya Maneri, who inherited it from his father Ewonyu, son of Oduude in 1945.

The plaintiff did not provide expert evidence to prove the custom of inheritance, but the testimony of the plaintiff and his witness of inheritance of the suit land
20 was successively unchallenged.

The plaintiff also testified that he grew up seeing his father utilising the suit land peacefully until 1977 when his father litigated with the 1st defendant's father, Christiano Opolot, vide Civil Suit No.77 of 1967 and Civil Appeal No. 68 of 1967, the outcome from which the disputed land was decreed to the plaintiff's late
25 father.

The testimony of the plaintiff and his witness was fortified by a letter confirming that the plaintiff's father litigated with the 1st defendant vide Civil Suit No. 77 of 1967 and Civil Appeal No. 68/1967, a copy of the order before the magistrate's

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- 5 court of Soroti at Kateta exhibited which confirms that the suit land belonged and reverted back to the plaintiff by then who happens to be the father of the plaintiff (Amunya Maneri), a copy of the proceedings, judgment and decree vide Civil Claim No. 003/2006 exhibited as PEX1, and a copy of the bailiff's warrant which was ordering for vacant possession of the suit land.
- 10 In further asserting his ownership of the suit land, the plaintiff told the court which evidence was not controverted that when the 1st defendant's brothers, Okello Wilson s/o Egau and Oluka John, attempted to grab the suit land forcefully, the plaintiff's father instituted another case in Soroti Magistrate Court in Kateta, which was dismissed as being res judicata and that when the 1st defendant and
- 15 eight others trespassed on the suit land in 2006, the plaintiff's father instituted Civil Claim No 0003/2006 in the Chief Magistrate's Court of Soroti, and judgment was passed in his favour.

The plaintiff told the court that the defendants in that land claim were all ordered to vacate the suit land, some of whom Epilau, Abilu, and Emwogo disobeyed even

20 after the plaintiff had taken a bailiff to execute the order – PID5. PW1 also told the court that in 2010, the 1st defendant and others again trespassed on the suit land and were charged with criminal trespass vide Criminal Case No. 537 of 2010 before the Chief Magistrate's Court of Soroti.

PW2 corroborated the plaintiff's testimony of the claims instituted in courts of

25 law regarding the plaintiff's ownership of the suit land in which he asserted that there was a suit vide Land Claim No. 003/2006 instituted against the 1st defendant and eight others before the Land Tribunal, where the judgement was passed in favour of the plaintiff; however, the 1st defendant and eight defendants refused to vacate the suit land as ordered by the court.

5 PW1 told the court that, like the 1st defendant's father, Opolot Christiano, the 1st defendant and his family have deliberately continued trespassing on the land to date.

It is the finding of the court that the plaintiff was able to trace the uncontroverted root of his ownership of the suit land. The plaintiff's claim rested on the root of
10 title in customary inheritance, which, through his witness, he established. The plaintiff and his witnesses also averred uncontroverted evidence that the grandfathers of the defendants, Opolot Christiano and Amunya Maneri, were all children of Ewonyu. Ewonyu had seven children: Opolot Christiano, Amunya Maneri, Amuriat, Egino, Matias Odude, Omagor, and Benefasio Eitu, and each
15 person was given a large portion of land, which PW1 could not quantify since he was young but everyone settled with their family on their portion. Opolot Christiano's land is about a half mile away from the suit land and does not neighbour the suit land.

Upon his death in 1989, Opolot Christiano was buried on his land. PW2
20 corroborated the above evidence and told the court that their grandfather Ewonyu distributed land to all his seven children, and PW2's father Omagor was given 36 acres. PW2 told the court that he did not know how many acres the others got, but they were smaller portions compared to the plaintiff's father's share because he stayed in the village cultivating and was given a larger portion.
25 PW2 told the court that Opolot had his own land in Aminit and Pacoto, just like all the children.

Between Amunya and Opolot, it is the land of Abocoi and Constant, their relatives who are the immediate neighbours, and not Epilau.

5 The plaintiff also adduced uncontroverted evidence of the neighbours to the suit land who are Okello Wilson and Atipa on the East, Lake Kyoga on the west, Ewonyu John Bosco on the north and Abocoi Steven and Ejoru south of the suit land.

Eperu Michael, W2's testimony, corroborated the plaintiff's evidence on the
10 location of the land, size, and trace of inheritance of the suit land from the plaintiff's grandfather to his father and now to the plaintiff. In addition to PW2's corroboration of the plaintiff's evidence on inheritance, he testified that prior to the insurgency, the 1st defendant had not lived on the land and that none of his people were buried on the suit land but in their portion. PW2 testified that when
15 Epilau's rebel group failed to overthrow the government, the 1st defendant joined the army and started forcefully living on the plaintiff's land, threatening anyone who claimed the suit land, though before that lived, the 1st defendant lived on his father's side of the land and has never lived on the suit land. PW2 testified that when Amunya, the plaintiff's father, returned to the suit land in 1992 after the
20 insurgency, he got the defendant on the suit land and started litigating.

I am convinced that the plaintiff's case and the evidence adduced by PW1 and PW2, who corroborated PW1's evidence on ownership of the suit land through inheritance and decree by the court on a balance of probabilities, means that the suit land belongs to the estate of the late Amunya Maneri.

25 iii. Fraud:

Under paragraph 5(i) of the amended plaint, the plaintiff avers that the 1st defendant, with full knowledge of ownership of the land in dispute, fraudulently processed the land title without the plaintiff's knowledge. The plaintiff lists the particulars of fraud as Processing a certificate of title of the suit land without the

- 5 plaintiff's knowledge; Acquiring letters from local authorities with the aim of titling the land without the plaintiff's knowledge and his neighbours, Taking the Area Land Committee to the disputed land with full knowledge of ownership by the plaintiff, Forging all documents and signatures of the neighbours to the disputed land without their knowledge and the knowledge of the plaintiff.
- 10 The plaintiff's counsel submitted that PID3 is a copy of the certificate of title insinuating ownership of the disputed land by the 1st defendant in the names of the defendants and it leaves no room to doubt concerning ownership of the suit land and how the said certificate of title was acquired by the defendants without prior knowledge of the plaintiff and his family.
- 15 PW1 Eitu Benard informed the court that during the trial of the criminal trespass case against the 1st defendant and eight others, the 1st defendant surprisingly produced a title insinuating ownership of the disputed land. PW2 also corroborated the plaintiff's testimony regarding the surprise in knowing that the 1st defendant, who had an ongoing criminal matter in court, presented a land title
- 20 insinuating that he and his wives and children are the owners of the 14.540 hectares of land indicated in the title. PW2 testified that after the plaintiff's father discovered that the defendants had title to the land, he decided to file the instant suit against Epilau, his wives and children, the defendants in this case.
- PW1 told the court that the defendants in that land claim vide of 2006 were all
- 25 ordered to vacate the suit land, but some of them, Epilau, Abilu, and Emwogo, disobeyed even after we took a bailiff to execute the order. Epilau and other defendants went to Serere District for the grant of freehold land title on the suit land, which was granted even when the court declared them trespassers.

5 The certificate of title of land comprised in FRV 836 Folio 5 of 14.540 hectares, Serere County, Soroti district, was identified and marked as PID3. PID3 is in the name of Epilau Juma Juve, Amuge Kevin Juma, Amuge Jenet Juma, Atim Florence Juma, Opolot Samuel, Oduude Mathias Moses (minor till 2017) and Epilau Juma (minor till 2016), the defendants in this suit.

10 Section 59 of the Registration of Titles Act Cap 230 (RTA) states that a certificate of title is conclusive evidence of ownership of land and takes priority over any adverse claims. However, Section 176 of the RTA states that save for fraud, possession of a title is also an absolute bar and estoppel to an action of ejectment or recovery of any land under section 64(1) of the Registration of Titles Act Cap
15 230. The impugned certificate of title can be impeached on account of fraud.

Section 176 (c) of the Registration of Titles Act Cap 230 provides that no action of ejectment or other action for the recovery of land shall lie or be sustained against the person registered as a proprietor under the RTA except in any case of a person deprived of any land by fraud as against the person registered as
20 proprietor of that land through fraud.

The Black's Law Dictionary, 9th edition, page 731, defines "fraud" as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.

The tenets of fraud are intentional perversion of the truth or false representation
25 of a matter of fact by words; conduct aimed at deceiving another, concealment or to cheat another unfairly; and it must be attributable to the transferee.

In the case of ***Fredrick Zaabwe Vs Orient Bank & Others SCCA No. 4 of 2006***, fraud was defined fraud to mean the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable

5 thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or concealment of that which deceives, and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

In *Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No. 22 of 1992*, it was held that;

10 *"fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters."*

It was further held in that case that;

15 *"The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."*

The conduct that the plaintiff avers was fraudulent was the processing of the certificate of title to the suit land without full knowledge of the ownership of the
20 land in dispute. That the defendants fraudulently processed the land title without the plaintiff's knowledge. The plaintiff through PID1, PID2, PID4 and PEX4, all documents avers that his father litigated over the suit land vide Civil Suit No.77 of 1967 and Civil Appeal No. 68 of 1967 and Civil Claim No. 0003 of 2006, and in all, the suit land was decreed to him as the owner, yet these suits, some of them
25 were with the 1st defendant's father.

PW1 told the court that in 2010, the 1st defendant and others again trespassed on the suit land and were charged with criminal trespass vide Criminal Case No. 537 of 2010 before the Chief Magistrate's Court of Soroti.



5 PW1 told the court that during the trial of the criminal trespass case against the
1st defendant and eight others, the 1st defendant surprisingly produced a title
insinuating ownership of the disputed land. The defendants in that land claim
were all ordered to vacate the suit land, some of whom Epilau, Abilu, and
Emwogo disobeyed even after the plaintiff had taken a bailiff to execute the
10 order. Epilau and other defendants went to Serere District for a grant of freehold
land title on the suit land, which was granted even when the court declared them
trespassers.

PW2 corroborated the plaintiff's testimony of the claims instituted in courts of
law regarding the suit land. PW2 stated that a suit was instituted, vide Land Claim
15 No. 003/2006, against the 1st defendant and eight others before the land
tribunal, where the judgement was passed in favour of the plaintiff. The 1st
defendant and eight defendants refused to vacate the suit land as ordered by the
court. PW2 also corroborated the plaintiff's testimony regarding the surprise in
knowing that the 1st defendant, who had an ongoing criminal matter in court,
20 presented a land title insinuating that he and his wives and children are the
owners of the 14.540 hectares of land indicated in the title. PW2 testified that
after the plaintiff's father discovered that the defendants had title to the land, he
decided to file the instant suit against Epilau, his wives and children, the
defendants in this case.

25 This is on top of the uncontroverted evidence led by the plaintiff and his witness
that the plaintiff inherited approximately 14.540 hectares of land located in
Pacoto/ Aminit village, Kanyangan parish, Kateta s/c, Serere district (the suit-land)
from Amunya Maneri, who inherited it from his father Ewonyu, son of Oduude in
1945.

5 Moreover, the plaintiff and his witness provided evidence that the grandfathers of the defendants, Opolot Christiano and Amunya Maneri, were all children of Ewonyu.

Ewonyu had seven children, that is; Opolot Christiano, Amunya Maneri, Amuriat, Egino, Matias Odude, Omagor, and Benefasio Eitu, and each person was given a
10 large portion of land, which PW1 could not quantify since he was young but everyone settled with their family on their portion. Opolot Christiano's land is about a half mile away from the suit land and does not neighbour the suit land. Upon his death in 1989, Opolot Christiano was buried on his land. The neighbours to the suit land are Okello Wilson and Atipa on the East, Lake Kyoga on the west,
15 Ewonyu John Bosco on the north and Abocoi Steven and Ejoru south of the suit land. This was information that was in the knowledge of the defendants before they could process a grant of freehold land title on the suit land from Serere district.

Having processed the grant of the freehold by evidence of PID3, a certificate of
20 title in their name with the knowledge that the suit land has been a subject of the aforesaid litigations and ownership by inheritance, the defendants were fraudulent in processing the grant of title with the knowledge that the land belonged to the plaintiff's father.

- 25 a) Acquiring letters from local authorities with the aim of titling the land without the plaintiff's knowledge and his neighbours,
b) Forging all documents and signatures of the neighbours to the disputed land without their knowledge and the knowledge of the plaintiff and Taking the Area Land Committee to the disputed land with full knowledge of ownership by the plaintiff.



5 The plaintiff and his witness presented uncontroverted evidence that the
neighbours to the suit land are Okello Wilson and Atipa on the East, Lake Kyoga
on the west, Ewonyu John Bosco on the north and Abocoi Steven and Ejoru south
of the suit land. During locus, the plaintiff showed the court the boundaries of
the suit land where the court observed that the suit land is separated by Atapar
10 Road on the west, and above the road is Eonyu Bosco and Odir's land, Okello
Wilson is a neighbour in the east, a swamp in the west, and Omuba is a neighbour
in the south.

The Court also observed that Erienyu has a home on the suit land, Abilu has
cultivated cassava and sorghum on part of the suit land and has an incomplete
15 house constructed, Opeduno Omar has constructed a home on the suit land, and
Epilau Juma has cultivated cassava on the suit land.

A perusal of the letter of the Office of the Area Land Committee that was attached
to the pleadings which the defendants allegedly used to process PID3, the Area
Land Committee listed the neighbours of the suit land as Olupot Robert, Okiror
20 Ben, Olupot Joh and Eilu Benefasio who were so different from the neighbours
observed by the court during locus and who the plaintiff told the court about
through his uncontroverted evidence.

Therefore, it is my finding that, indeed, the defendants clearly forged all
documents and signatures of the neighbours to the disputed land without their
25 knowledge and the knowledge of the plaintiff and that the defendants took the
Area Land Committee to the disputed land with full knowledge of ownership of
the same by the plaintiff.

The defendants, as established, did not attempt to look for the plaintiff, they
disregarded the existing interests of the plaintiff and clearly implying that they



5 had constructive knowledge of such fraud because they had sufficient knowledge
that the plaintiff had interests in the suit land with the circumstances being such
that the defendants had the intention to acquire title to the suit land stealthily.
The fraud was orchestrated by the defendants who went to Serere District for a
grant of freehold land title on the suit land as transferees despite having been
10 declared as trespassers on the suit land.

The defendants sneakily obtained, the certificate of title to the suit land, despite
the evident information regarding ownership.

The plaintiff and his witness' testimony was consistent regarding ownership of
the suit land belonging to the estate of the late Amunya Maneri and the
15 defendants' fraudulently processed PID3, certificate of title of the suit land.

It is thus my finding that on a balance of probabilities, the plaintiff has been able
to prove that the suit land belongs to the estate of the late Amunya Maneri.

I cannot, on the other hand make a finding that the suit land belongs to the
plaintiff because no letters of administration were not adduced in evidence. The
20 plaintiff must secure Letters of Administration which will guide the distribution
of the land of the Amunya Maneri.

10. What remedies are available?

According to the plaint, the plaintiff prayed for a declaration that he is the lawful
owner of approximately 14.540 hectares of land located in Pacoto/Aminit village,
25 Kanyangan Parish, Kateta sub-county in Serere District, cancellation of the title of
the suit land in the names of the defendants, vacant possession, permanent
injunction and costs of the suit.

a) Declaration of ownership:

5 Having resolved issues one and two in favour of the plaintiff, it is my finding that
the plaintiff has on a balance of probabilities, adduced evidence to prove that the
suit land of approximately 14.540 hectares of land located in Pacoto/Aminit
Village, Kanyangan Parish, Kateta Sub-County in Serere District belongs to the
estate of the late Amunya Maneri, his late father, thus it is hereby declared that
10 the suit land is the property of the estate of the late Amunya Maneri.

b) Cancellation of the Certificate of title.

Section 177 of the Registration of Titles Act CAP 230 provides that upon the
recovery of any land, estate or interest by any proceeding from the person
registered as proprietor thereof, the High Court may, in any case in which the
15 proceeding is not herein expressly barred, direct the registrar to cancel any
certificate of title or instrument, or any entry or memorial in the register Book
relating to that land estate or interest and substitute such certificate of title or
entry as circumstances of the case requires and the registrar shall give effect to
that order as discussed in the case of *Mwesige v Commissioner Land Registration*
20 *(Misc. Application No. 613 of 2013) [2014] UGHCLD 101 (30 April 2014)* Before
Honourable Lady Justice Eva K. Luswata.

Having found that the land title to the suit land was obtained through fraud, I
hereby order its cancellation in addition I do issue an order of eviction against the
defendants evicting them from the suit land.

25 c) Permanent injunction:

The plaintiff's counsel referred this court to the case of the *American Cyanamid
Co. Ltd vs Ethicon Ltd [1975] AC 396*, where it was held inter alia that an injunction
is granted to restrain the Defendant from doing acts alleged to be in violation of
the Plaintiff's legal right.

5 According to the locus report, the defendants are said to be in occupation of the land, which, as per my holding and finding the land belongs to the estate of the late Amunya Maneri; a permanent injunction is hereby issued against the defendant, their agents, servants from further interfering with the suit land.

d) General damages for inconvenience:

10 The plaintiff's counsel submitted that damages are the direct probable consequence of the act complained of. The consequences may be loss of use, profit, physical inconvenience, mental distress, pain and suffering. The plaintiff's counsel submitted that there was overwhelming evidence adduced by the plaintiff to prove that he was inconvenienced by the defendants' actions. To that
15 end, counsel submitted that there was evidence during locus that the defendants have been utilising the suit land and that this instant suit has stayed for approximately 23 years, and the plaintiff has been moving up and down to ensure that the case is prosecuted to the end.

I hereby award the plaintiff general damages of Shs. 8,000,000/= for the
20 psychological and mental inconvenience, he was subject to and the deprivation of his right to quiet enjoyment and possession of the suit property belonging to his father's estate which was violated by the defendants who are fully aware that the suit land belongs to the estate of the late Amunya Maneri.

e) Costs of this Suit:

25 The general principle under Section 27 (2) of the Civil Procedure Act is that costs follow the event, and a successful party should not be deprived of costs except for good reasons. I hereby award the costs of this suit to the plaintiff, to be paid by the defendants jointly.

11. Orders:

5 This suit succeeds as against the defendants and the following orders issued.

- It is hereby declared that the suit land is the property of the estate of the late Amunya Maneri, the late father of the plaintiff.
- It is hereby declared that the land title to the suit land was obtained through fraud and as such I hereby order its cancellation by the Registrar of Titles.
- An order of eviction is hereby issued against the defendants evicting them from the suit land belonging to the late Amunya Maneri.
- A permanent injunction is hereby issued against the defendants, their agents, servants from further interfering with the suit land.
- The plaintiff is awarded general damages of Shs. 8,000,000/= for the psychological and mental inconvenience suffered.
- The costs of this suit is awarded to the plaintiff in any event to be paid by the defendants jointly in equal amounts.

I do so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

26th March 2024