



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-LD-CS-057-2018

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JANE KYORAYENDE ----- PLAINTIFF

VERSUS

1. EFURANSI KYOMUKUNDI

2. ELIZABETH KICONCO

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3. JOY MBABAZI ----- DEFENDANTS

4. ANNAH KWEBAZA

5. PROFESSOR ELLY KATUNGUKA

BEFORE: Hon. Justice Nshimye Allan Paul M.

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JUDGMENT

REPRESENTATION

Adv. Paul Tusubira from Paul Tusubira & Co Advocates for the plaintiff, Adv. Dr Benson Tusasirwe from M/S Tusasirwe & Co Advocates for the 1st – 4th defendant and Adv. Paul Muhimbura from M/S Muhimbura & Co Advocates for the 5th defendant.

INTRODUCTION

The plaintiff and defendants (1st, 2nd, 3rd and 4th parties) save the 5th defendant are beneficiaries of the estate of the late Kezekiya Katukura. When the suit was commenced there were two plaintiffs (Eseza Kahwa and Jane Kyorayende), but before scheduling of the case, Eseza kahwa passed on, so the Court ordered on 18th January 2023 that the suit proceeds with only the surviving plaintiff (Jane Kyorayende). The timelines and summary of the pleadings is detailed below.

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1. On 26th September 2018, the plaintiff along with Eseza Kahwa filed a suit against the defendants. The plaintiff's claim as stated in the plaint was that they are beneficiaries of the estate of the late Kezekia Katukura, they sought revocation of Letters of Administration granted to the 1st

defendant Vide Mbarara High Court AC 154 of 2012, an order for an account of dealings of the estate of the late Kezekia Katukura and a cancelation of the 1st defendant's name as proprietor of Igara Block 4 Plot 10 at Nyakabirizi Igara Bushenyi. The plaintiff also sought a declaration that the 5th defendant fraudulently purchased land from the 1st defendant. (See paragraph 5 of the *plaint.*)

2. On 29th October 2018, the 1st, 2nd, 3rd and 4th Defendant's filed a Written Statement of Defence denying the allegations in the *plaint*, stating that 1st defendant managed the estate with the uttermost good faith and denied transferring Igara Block 4 Plot 10 illegally. They also contended that a portion of Igara Block 4 Plot 10 at Nyakabirizi was sold without fraud, after the 2nd plaintiff (Jane Kyorayende) agreed to execute a withdraw of caveat (See Paragraphs 6,7, 8 and 15 of the 1st, 2nd, 3rd and 4th Defendant's WSD).

3. On 30th October 2018, the 5th defendant filed a Written Statement of Defence stating that the 1st defendant was the lawful administrator of the estate of the late Katukura Kezekiya. He denied fraudulently purchasing the 13 acres on part of Igara Block 4 Plot 10, which is part of the estate. He contended that he occupied the land after receiving the instrument of removal of the caveat, and further stated that he is a bonafide purchaser for valuable consideration. (See Paragraphs 5, 6,7 and 8 of the 5th Defendant's WSD)

ISSUES

The parties, through their respective Advocates, filed a joint scheduling memorandum on 21st February 2023 wherein they framed seven issues as follows;

1. Whether the plaintiffs have a cause of action against the defendants or any of them.
2. Whether the 1st defendant sold land at Bushenyi, being a part of the estate of the late Kezekia Katukura that was being occupied by the 2nd plaintiff's mother.
3. whether the 2nd plaintiff is entitled to a share out of the land comprised in Igara Block 4 plot 10 at Nyakabirizi.

4. Whether the 2nd defendant has mismanaged the estate of the late Kezekia Katukura.
5. Whether the 1st defendant unlawfully obtained letters of administration for the estate of the late Kezekia Katukura and if so whether the grant to the 1st defendant should be revoked.
6. Whether the 5th defendant is a bonafide purchaser for value of 13 acres out of Igara Block 4 plot 10 at Nyakabirizi.
7. What remedies are available to the parties?

EXHIBITS

The parties filed a Joint Exhibit Bundle (JEB) on 28th March 2023, wherein they listed documents to be relied upon by both parties. Some documents therein were exhibited by the parties on 31st March 2023 as shown in its index. They are;

Plaintiffs Exhibits

1. **PEX1** Letters of Administration of late Katukura Kezekiya granted to James Kahingiriza vide Magistrates Court MMB 20 of 1983. *(See page 1 of the JEB)*
2. **PEX2** Letters of Administration of late Katukura Kezekiya granted to Efuransi Kyomukundi vide Mbarara High Court AC 154 of 2012. *(See page 1 of the JEB)*
3. **PEX3** Application for Letters of Administration made by Efuransi Kyomukundi. *(See page 3 of the JEB)*
4. **PEX4** A Search Report dated on 21st February 2018 made by the Commissioner of Land Registration in respect to land comprised in Igara Block 4 Plot 10. The Registered Proprietor is Kyomukundi Efuransi as administratrix of the estate of the Late Katukura Kezekiya, having been registered on 04/02/2014. The land has a caveat lodged by the Jane Kyorayende on 18th July 2012. *(See page 8 of the JEB)*
5. **PEX5** photographs by the plaintiff of the 5th defendant's structures on the suit land. *(See page 9 of the JEB)*

Defendants exhibits.

1. **DEX1** sale agreement executed on 8th July 2017 between the 1st defendant and the 5th defendant with another for 10 acres out of land comprised in Igara Block 4 Plot 10. *(See page 11 of the JEB)*

2. **DEX2** Proof of payment transaction made on 10th July 2017 and 06th January 2018. *(See page 17 & 18 of the JEB)*
3. **DEX3** Removal of caveat made by the plaintiff on 14th August 2017 in respect to land comprised in Igara Block 4 Plot 10. *(See page 19 of the JEB).*
4. **DEX4** photographs by the 5th defendant's showing developments he has made on the suit land. *(See page 21 of the JEB).*

WITNESSES

10 The plaintiff presented two witnesses, PW1 Jane Kyorayende and PW2 Rev John Wilson Barya, while the defendants presented three witnesses DW1 Efuransi Kyomukundi, DW2 Proff. Katunguka Elly and DW3 Molly Barigye.

DETERMINATION

15 I have read the pleadings and submissions filed by all parties. I also had the benefit of listening to the witnesses brought by each party and I also visited the suit land during the locus visit on 30th November 2023. The evidence on court record will guide the resolution of the issues.

ISSUE 1: Whether the plaintiff has a cause of action against the defendants or any of them.

The plaintiff stated in her submissions that she is a daughter of the late Katukura Kezekiya and argued that the suit property is part of the estate of the late Katukura Kezekiya, as such she has a cause of action against the defendants. *(see page 6,7 & 8 of the plaintiff's submissions)*

Counsel for the 2nd, 3rd and 4th defendant's submissions stated that the plaintiff does not make any allegations against them, save for a mention in paragraph 6 (i) of the plaint that they are her siblings. Counsel highlighted the fact that the plaintiff's evidence does not show that the 2nd, 3rd and 4th defendants are joint administrators with the 1st defendant to the estate of the late Katukura Kezekiya. He concluded that no reliefs are sought against the 2nd, 3rd and 4th defendants making the point that there is no cause of action against the 2nd, 3rd and 4th defendants. *(see page 5 & 6 of the 1st – 4th defendant's submissions)*

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Counsel for the 5th defendant submitted that there is no cause of action against his client, stating that the plaintiff has failed to adduce evidence to prove a cause of action against the 5th defendant. Counsel contended that the 5th Defendant's purchased 10 acres for valuable consideration of UGX 400,000,000/= in good faith from the 1st defendant who was a holder of letters of Administration of the estate of the Late Katukura Kezekiya. Counsel further submitted that the 1st defendant was registered on the title as proprietor, had full possession of the land, and the caveat that was lodged by the plaintiff was willingly withdrawn by executing an instrument of withdraw exhibited as DEX 3. He also stated that the 5th defendant was after given vacant possession of the land whereon he has made developments to wit a residential home banana plantation and farm. (See page 6,7 & 8 of the 5th Defendants submissions)

It is trite law that a plaint must disclose a cause of action. The Supreme Court in **TORORO CEMENT CO. LTD VS FROKINA INTERNATIONAL LIMITED SC. CIVIL APPEAL NO. 2 OF 2001** defined and laid out the ingredients of a cause of action as follows;

"It is now well established in our jurisdiction that a plaint has disclosed a cause of action even though it omits some fact which the rules require it to contain, and which must be pleaded before the plaintiff can succeed in the suit. What is important in considering whether a cause of action is revealed by the pleadings are the questions whether a right exists and whether it has been violated. Cotter -vs- Attorney General (1938) 5 EACA 18. The guidelines were stated by the Court of Appeal for East Africa in Auto Garage -vs- Motokov (No. 3) (1971) EA. 514. There are;

- (i) the plaint must show that the plaintiff enjoyed a right;*
- (ii) that right has been violated; and*
- (iii) that the defendant is liable."*

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The question to determine is whether the plaintiff has a cause of action against the defendants. I note from the plaint that the suit is in respect to the estate of the late Katukura Kezekiya.

It is principle of law that a beneficiary of an estate has a right to file a suit to protect an interest in an estate as was held in **ISRAEL KABWA V MARTIN**

BANOBA MUSIGA SUPREME COURT CIVIL APPEAL NO. 52 OF 1995. The evidence on court record is clear that PW1 Jane Kyorayende, the plaintiff, testified in paragraph 3 that she is a daughter of the late Katukura Kezekiya and she seeks to get a share in that estate. DW1 Efuransi Kyomukundi in her evidence in paragraph 3 confirms that she knows the plaintiff as a beneficiary. I would thus conclude that that the plaintiff has a right to file the suit in respect to the estate of the late Katukura Kezekiya, to claim a share in the estate of her father.

10 The question, that must now be addressed is to determine if the defendants are liable for violating any right of the plaintiff in respect of the estate of the late Katukura Kezekiya.

In respect to the 1st defendant, the evidence on court record shows that the 1st defendant is the administrator of the estate of the late Katukura Kezekiya as shown in the Letters of Administration exhibited as **PEX2** granted to Efuransi Kyomukundi vide Mbarara High Court AC 154 of 2012. This means that the Administrator has a legal duty as a legal representative of the deceased as stipulated in section 180 of the Succession Act. This duty includes distribution of the estate property that is available for distribution among the beneficiaries. There is no evidence that the 1st defendant has in her capacity as an administrator distributed the estate, so to that extent the plaintiff has a cause of action against the 1st defendant, the administrator of the estate of the late Katukura Kezekiya.

25 In respect to the 2nd, 3rd and 4th defendants, the pleadings and evidence on court record do not show any duty expected of the 2nd, 3rd and 4th defendants in respect to the estate of the late Katukura Kezekiya. I agree with their counsel that there is no cause of action against them, I have reached this decision because it is not alleged that the 2nd, 3rd and 4th defendants have led to the plaintiff failing to attain a right as a beneficiary to the estate of her father. I find that there is no cause of action against 2nd, 3rd and 4th defendants.

35 In respect to the 5th defendant, the claim against him in the plaint is that he proceeded to purchase land from the 1st defendant well knowing that it was estate property with a caveat thereon (*see paragraph 6 xvi, xvii of the plaint*).

This ought to be contrasted with the evidence on court record, which shows that 5th defendant and 1st defendant executed a land sale agreement for 10 acres on 8th July 2017 (See *DEX1 at page 11 of the JEB*), at the time of the purchase the 1st defendant was the proprietor of the land as shown in **PEX4**, A Search Report dated on 21st February 2018 made by the Commissioner of Land Registration in respect to land comprised in Igara Block 4 Plot 10 (See *PEX4 at page 8 of the JEB*). When the contract was executed thr 1st defendant was empowered under the law at the time in Section 270 of the Succession Act that stipulated that;

"270. Disposal of property

An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he or she may think fit, subject to section 26 and the Second Schedule".

This law in section 270 of the Succession Act was amended by the Succession (Amendment) Act 2022 that was signed by His Excellency President Yoweri K. Museveni on 10th April 2022 to now state that;

"270. Disposal of property

(1) Subject to sections 27 and 36 (6), an executor, executrix or administrator may, with the written consent of the surviving spouse and all the lineal descendants of the deceased person, dispose of the property of the deceased either wholly or in part."

Considering that the Succession (Amendment) Act 2022 was not the law when the 5th defendant purchased the 10 acres from the 1st defendant, it means that the 1st defendant as an administrator of the estate of the late Katukura Kezekiya had all the power at that time to exclusively sale part of the land comprised in Igara Block 4 Plot 10 as she did.

The evidence on record also shows that the plaintiff executed an instrument for removal of caveat exhibited as **DEX3** from land comprised in Igara Block 4 Plot 10. (See *DEX3 at page 19 of the JEB*).

The plaintiff in her evidence during cross examination by Counsel Muhimbura identified the instrument exhibited as DEX3 and her photograph thereon, before

confirming on oath that she withdrew the caveat she put on the suit land, but added that, she put it back, but did not produce any evidence of any caveat lodged after withdrawing the earlier one she lodged, after she executed the instrument exhibited as DEX3.

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In my analysis, I realise that the plaintiff's withdrawal of caveat was executed on **14th August 2017** yet this plaint was filed in court on **26th September 2018**, which means that at the time the plaintiff filed this suit against the 5th defendant, she knew that she had executed an instrument to Withdraw the caveat and as such there was no bar to actualization the purchase agreement between 5th and 1st defendant. I find that that at the time of filing the suit the plaintiff had no cause of action against the 5th defendant, whose only involvement regarding the estate is purchasing 10 acres from an administrator of the estate of the late Katukura Kezekiya, who as stated above, had legal power at the time under section 270 of the Succession Act to sale to him.

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ISSUE 2: Whether the 1st defendant sold land at Bushenyi, being a part of the estate of the late Kezekia Katukura that was being occupied by the 2nd plaintiff's mother.

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It is trite law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side as provided in Section 102 of the Evidence Act.

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The plaintiff testified that one Rev Barya purchased land of the estate at Bushenyi from the 1st defendant. She also produced Rev Barya who testified as PW2 , stating that he purchased a Kibanja at Bushenyi with developments in October 1980 (*see paragraph 3 of PW2's witness statement*). This evidence has to be contrasted against the evidence of DW1 who testified during cross examination that she never sold to Rev Barya any land, stating that she only sold to Prof Katunguka (5th Defendant).

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In my analysis of the above evidence, I note that the 1st defendant was not an administrator of the estate in 1980 so could not have any legally power to sell any kibanja to Rev. Barya. I also note that Rev Barya, stated that he did not have any agreement of purchase and he did not bring any witnesses that were present or had knowledge of the alleged purchase of the Kibanja in Bushenyi

from the 1st defendant. I am of the considered opinion that the evidence on court record is not sufficient to prove that the 1st defendant sold a Kibanja to Rev. Barya. In any case, no one had letters of administration to the estate of the late Katukura Kezekiya until 1983 when James Kahigiriza was granted letters of Administration by the Magistrates Court vide AC 20 of 1983 exhibited as PEX1 on court record. This implies that any purchase by Rev Barya would be illegal in law.

I find that the evidence on court record does NOT prove that the 1st defendant sold land at Bushenyi, or any Kibanja that was part of the estate of the late Kezekiya Katukura that was being occupied by the plaintiff's mother.

ISSUE 3: whether the plaintiff is entitled to a share out of the land comprised in Igara Block 4 plot 10 at Nyakabirizi.

It is not in doubt that the plaintiff has a right to part of the estate of her late father, but the question as to whether she is entitled to a share out of Igara Block 4 Plot 10 at Nyakabirizi ought to be considered within the frame work of a spouses right to a matrimonial residential holding.

It is trite law that a widow or widower has a right to the matrimonial home, protected from distribution among the estate properties as was held in the landmark decision by Hon Justice Namundi in **KOLYA Vs KOLYA HIGH COURT CIVIL SUIT NO. 150 OF 2016.**

The principle governing the position of the residential holding has been fortified by the Succession (Amendment) Act 2022, which amended sections 26, 27 and 29 of the Succession Act that read as follows;

*“Section 26 (2a) Upon the **death of a surviving spouse**, the residential holding or any other residential holding shall devolve to the lineal descendants equally, who shall occupy it subject to terms and conditions set out in the Second Schedule to this Act”. (Emphasis mine)*

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"27. Distribution on death of intestate

(1) Subject to sections 29 and 30, the estate of an intestate, **except for his or her residential holding or other residential holding**, shall be divided among the following classes in the following manner-

(a) where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir-

(i) the spouse shall receive 20 percent;

(ii) the dependent relatives shall receive 4 percent;

(iii) the lineal descendants shall receive 75 percent; and

(iv) the customary heir shall receive 1 per cent;

of the whole of the property of the intestate." (Emphasis mine)

"29. Reservation of principal and other residential property

A spouse or lineal descendant of an intestate **occupying a principal residential property** or any other residential property under section 26 **shall not be required to bring that occupation into account in assessing any share in the property of an intestate** to which the spouse, lineal descendant or child may be entitled under section 27." (Emphasis mine)

The evidence on court record by the 1st defendant in paragraph 2 of her witness statement is that she is a widow of the late Katukura Kezekiya, and the suit land comprised in Igara Block 4 plot 10 at Nyakabirizi was her matrimonial home as she avers in paragraph 4 of her witness Statement. This evidence of the 1st defendant is collaborated by the plaintiff's evidence, who confirmed in paragraph ix of her witness statement that the 1st defendant was a widow of the late Katukura Kezekiya. During cross examination by counsel Muhimbura the plaintiff further testified that;

"The 1st defendant is a widow of my father. the home in Nyakabirizi was her matrimonial home, where she stays to date" (Emphasis mine)

When court visited the locus on 30th November 2023, it was able to see the residence of the 1st defendant, banana plantations, paddocks for grazing animals and some parts of the land developed with commercial buildings. The 1st defendant that was recalled as DW1 stated that her husband left her with the land, which she developed putting permanent structures on the land. She also

stated that she built a building from the consideration that the 5th defendant paid her.

5 On the same day court visited locus, the plaintiff was recalled as PW1, where she stated that her mother was not buried at the suit land at Nyakabirizi, she also stated that neither does she reside on the suit land nor utilise any part of it because she has not got her place.

10 In my analysis of the above evidence, I find that both the plaintiff and the 1st defendant testify that the 1st defendant was a widow of the late Katukura Kezekiya and the land comprised in Igara Block 4 plot 10 at Nyakabirizi was her matrimonial home. This evidence means that the suit land falls under the category of a residential holding that remains with the surviving spouse in line with the principle laid out in **KOLYA Vs KOLYA HIGH COURT CIVIL SUIT NO. 150**
15 **OF 2016.**

The land comprised in Igara Block 4 plot 10 at Nyakabirizi being the matrimonial residential holding of the 1st defendant ought to stay with her as a widow as provided in **Sections 27 and 29 of the Succession Act as amended.** It can only
20 be available for distribution to the beneficiaries after the passing of the surviving spouse, as provided in **Section 26 (2a) of the Succession Act as amended** which states that;

25 *“Upon the **death of a surviving spouse**, the residential holding or any other residential holding **shall devolve to the lineal descendants equally**, who shall occupy it subject to terms and conditions set out in the Second Schedule to this Act”.*(Emphasis mine)

30 During the Locus visit, the court made observations of the developments on the land, it is clear that the 1st defendant has a home and enterprises that comprise of an animal farm with paddocks, a banana plantation and commercial buildings that are used for her wellbeing as one unit.

35 The plaintiff during her cross examination stated that her Brother James Kahingiriza was granted Letters of Administration of late Katukura Kezekiya vide Magistrates Court MMB 20 of 1983. (See *PEX1 at page 1 of the JEB*). She went

on to state that her brother distributed the estate and alleged that he showed her a part of land located at Nyakabirizi , which is the basis of her demand for 5 acres out of the land comprised in Igara Block 4 plot 10. I have perused the evidence on record and find that the plaintiff neither produced any witness to corroborate her claim nor exhibited on court record any certified inventory or any document to confirm James Kahingiriza distributed the estate when he was an administrator vide MMB 20 of 1983. In absence of any exhibited document on court record, this court cannot conclude that James Kahingiriza distributed any land of the late Katukura Kezekiya.

In conclusion on this issue, having discussed the law in respect to matrimonial residential holdings, and also having interrogated the plaintiffs claim that the late James Kahingiriza distributed the estate of the late Katukura Kezekiya, I find that the plaintiff is NOT currently entitled to a share out of the land comprised in Igara Block 4 plot 10 at Nyakabirizi because it is still under the control of the surviving spouse (1st defendant) until her death, when it will then devolve to the lineal descendants as provided in the law in Section 26 (2a) of the Succession Act as amended.

I will now proceed to handle issue 4 and 5 together.

Issue 4: whether the 2nd defendant has mismanaged the estate of the late Kezekia Katukura. And

Issue 5: Whether the 1st defendant unlawfully obtained letters of administration for the estate of the late Kezekia Katukura and if so whether the grant to the 1st defendant should be revoked.

The law in Section 201 of the Succession Act provides that those connected to the deceased by marriage may apply for letters of administration to his estate. The law after the passing of the Succession (Amendment) Act states in section 201A of the Succession Act as amended that priority to apply for letters of Administration is given to the surviving spouse. In this regard the 1st defendant had a right to apply for letters of Administration of the estate of the late Katukura Kezekiya because she was his Widow, therefore connected to him as was then provided by the law in section 201 of the Succession Act as it was then.

The question that has to be considered is whether she adhered to the obligations in the grant of Letters of Administration to the Estate of the Late Katukura Kezekiya.

5 It is trite that a grant of letters of administration may be revoked for just cause as is stated in Section 234 (1) of the Succession Act. It therefore follows that if any administrator wilfully and without reasonable cause fails to exhibit an inventory, it amounts to just cause according to section 234(2) (e) of the Succession Act.

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The plaintiff in her submissions has stated that the 1st defendant has in 11 years of holding letters of administration failed to file an inventory. The evidence on court record shows that Letters of Administration of late Katukura Kezekiya were granted to Efuransi Kyomukundi vide Mbarara High Court AC 154 of 2012
15 on 22 August 2012. The grant that was exhibited as PEX2, provided that she had to file an inventory within 6 months. This was not done, the 1st defendant as an administrator of the estate of the late Katukura Kezekiya did not file an inventory as required by law and she did not apply to court for extension of time to file the said inventory. I find that this is just cause to revoke the letters of administration
20 held by the 1st defendant based on Section 234(1) & (2) (e) of the Succession Act, considering that the 1st defendant has not filed an inventory as required of her in the grant of Letters of Administration to the estate of Katukura Kezekiya.

Issue 6: Whether the 5th defendant is a bonafide purchaser for value of 13 acres out of Igara Block 4 plot 10 at Nyakabirizi.

25 Counsel for the 5th defendant has submitted that the 5th defendant is a bonafide Purchaser for value without notice, and he cited the case of Ndimwiba Sande and 3 Others Vs Allan Ampaire COA Civil Appeal NO 65 Of 2011 in support of his submissions. He then stated that the 5th defendant purchased land on the
30 understanding that the plaintiff would withdraw her caveat which she withdrew as per the instrument exhibited as DEX3 . He contended that having withdrawn the caveat she was estopped from challenging the 5th defendant's transaction with the 1st defendant.

Counsel for the plaintiff in his submission stated that the 5th defendant bought part of the land comprised in Igara Block 4 plot 10 at Nyakabirizi when there was a caveat.

5 In principle a Bonafide purchaser for value without notice cannot be faulted. The Supreme Court in **GRACE ASABA VS GRACE KAGAIGA SCCA 14 OF 2014** defined bonafide Purchaser as “one who acts in good faith, honesty without fraud, collusion or participation in wrong doing”.

10 In my opinion for a party to stand on the doctrine of Bonafide Purchaser for value to protect his interests, the following must be fulfilled.

1. That purchaser purchased from a vendor with apparent title. (*See Hannington Njuki V. George William Musisi [1999] KALR 794*)
2. The purchaser ought to have purchased property in good faith.
- 15 3. The Purchaser ought to have paid valuable consideration.
4. The Purchaser should not have had any notice of fraud or been party to any fraud or wrongdoing. (*See Kampala Bottlers Ltd V. Damanico (U) Ltd SCCA NO 22 OF 1992*)
5. The Purchaser must not be defeating an equitable interest of any part or
- 20 having notice of its existence.
6. The purchaser ought to have inquired from the persons in possession of the land (*Uganda Posts & Telecommunication V. Abraham Katumba [1997] iv KALR 103*)

25 The evidence on court record shows that by the time the 5th defendant purchased 10 acres out of land comprised in Igara Block 4 Plot 10, from the 1st defendant, it was the 1st defendant that was the Proprietor of the said land (*see PEX4 and DEX1*) this means that the 1st defendant as an administrator of the estate registered on the title had conclusive proof of

30 ownership as stipulated in **SECTION 59 OF THE REGISTRATION OF TITLES ACT** and furthermore had every right at the time of executing the agreement with the 5th defendant in July 2017 to deal with the land as is provided in **SECTION 180 OF THE SUCCESSION ACT**. In my analysis of the evidence above it is clear that the 5th defendant purchased from a person that had title and was at the

35 time empowered to transact.

The evidence on court record also shows that the 5th defendant inquired from the Local Authorities on the ground. DW3 Molly Barigye testified that she is the LC1 Chairperson where the suit land is located, she confirmed that she witnessed the agreement between the 1st and 5th Defendants (*see paragraph 3-5 of DW3's witness statement*). she testified that the agreement went ahead because the plaintiff agreed to withdraw the caveat (*see paragraph 3-5 of DW3's witness statement*). Indeed, the plaintiff executed an instrument of withdraw of caveat from the land that has been exhibited as DEX3. She admitted executing the withdraw of caveat during her cross examination as PW1 and did not say it was forged.

A perusal of the document for removal of caveat shows that it was signed on 14th August 2017 and the 5th defendant made a further payment on the agreed consideration on 06 January 2018 (See *DEX2B*), which implies that he acted on the fact that the caveat was withdrawn and went ahead to make further payment of the consideration.

In my analysis of the evidence above it is clear that the 5th defendant interacted with the Local Authorities about the land to enabled him to know that the 1st defendant was the owner and was in possession of the land, he also purchased in good faith which is shown by his engaging of the plaintiff who voluntarily executed a withdraw of caveat.

Lastly on this issue, I have already ruled in the resolution of issue 1 that there is no cause of action against the 5th defendant. I find that the plaintiff has not adduced any evidence of notice of fraud on the part of the 5th defendant or to impute any participation of fraud on his part. The allegation directed to the 5th defendant is in respect to a caveat by the plaintiff, which I have addressed above. I will nonetheless interrogate whether any dealings of the 5th defendant were meant to defeat any unregistered interest of the plaintiff, by highlighting the following;

1. The plaintiff in her testimony during cross examination as PW1 stated that the suit land in Igara Block 4 plot 10 at Nyakabirizi was the matrimonial home of the Widow of her father who is the 1st defendant. she also stated that she (the Plaintiff) is not residing or utilizing the land. This means that the plaintiff had no interest by virtue of

possession that was threatened or extinguished by the 5th defendant's transaction with the 1st defendant.

2. The plaintiff lodged a caveat on the land comprised in Igara Block 4 Plot 10, when she testified, she only adduced the search certificate (see PEX4), but did not put on record the actual caveat that would have shed light on the basis of her claim in Igara Block 4 plot 10. This means that we must discern her interests in the land from the evidence she gave on record.

a. She testified during cross examination by Counsel Muhimbura that *"if I am given my 5 acres I would have no problem"*

b. She testified during re-examination by Counsel Tusubira that *"I have no problem with the 5th defendant staying where he is as long as I get my 5 acres"*

It is clear from the evidence of the plaintiff in cross examination and re-examination that she wants 5 acres out of the 49 acres in the land comprised in Igara Block 4 Plot 10 (See PEX4). The 5th defendant only purchased 10 acres (See DEX1), developed it with house and farm (See PEX5 and DEX4) and the plaintiff testified that she has no problem with the 5th defendant staying where he is, in his purchased land that he is now occupying.

In my analysis of all the evidence above it is clear that the 5th defendant purchase of 10 acres from the 1st defendant, this purchased land doesn't not extinguish any claim of 5 acres by the plaintiff, so he is not defeating any equitable interest of the plaintiff since there is still a further 44 acres.

In Conclusion, on this issue, I find that the 5th Defendant is a bonfide purchaser for value without notice of fraud, or participation in any fraud, and has not extinguished any unregistered interest of the plaintiff.

Issue 7: What remedies are available to the parties?

I found in the discussion in issue 1 that the plaint does not disclose a cause of action against the 2nd, 3rd 4th and 5th defendants.

I found in the discussion of issue 3 that the land comprised in Igara Block 4 Plot 10 at Nyakabirizi has the matrimonial residential holding of the 1st defendant, it ought to stay with her, free of distribution until her passing.

5 I found in the discussion of issue 5 that the 1st defendant did not file an inventory as required and as such it is just cause to revoke the letters of administration she holds basing on section 234(1) & (2) (e) of the Succession Act. I note that section 234 (5) of the Succession Act as amended states that

10 *“Court may, in the same process for revocation of letters of administration, grant letters of administration to another person where court determines that such a person is a fit and proper person to be granted letters of administration under this Act.”*

15 Considering that the plaintiff states that there is still alot of her late father’s property that she lists in paragraph xii of her witness statement as 49 acres at Nyakabirinzi, customary land at Bushenyi with a house, a tea estate at Kyamuhunga, customary land north east of the original 49 acres, eucalyptus plantation, cattle, and shares in Igara Ranch no 5. And considering that this court could not ascertain if indeed Rev Barya purchased the land in Bushenyi. It is clear
20 that there are issues that ought to be interrogated by an Administrator of the estate, who can collect the land of the late Katukura Kezekiya and distribute it in accordance with the law. I find that the fit and proper person to appoint is the Administrator General, since he will be neutral in the family matter, but will also be able to adhere to the law.

25 I found in the discussion on issue 6 that the 5th Defendant is a Bonafide purchaser for value. The transactions leading to transfer of the 10 acres of land from Igara Block 4 plot 10 be concluded, and the consideration balance will be paid as stipulated in the purchase agreement exhibited as DEX1.

30 In conclusion, I order that;

1. The plaint does not disclose a cause of action against the 2nd, 3rd, 4th and 5th defendant.
2. The land sale agreement for 10 acres out of land comprised in Igara Block
35 4 Plot 10 executed between the 1st defendant and 5th Defendant along with another, is valid.

3. The Commissioner Land Registration shall conclude the Withdraw of Caveat lodged by the plaintiff (JANE KYORAYENDE) on Igara Block 4 Plot 10, if the withdraw has not yet been effected.
4. The land comprised in Igara Block 4 Plot 10 that will remain after surveying off the 10 acres sold to the 5th defendant constitutes the matrimonial residential holding of the 1st defendant (EFURANSI KYOMUKUNDI) the widow of the late katukura Kezekiya.
5. The Grant of letters of Administration of late Katukura Kezekiya B.B granted to Efuransi Kyomukundi vide Mbarara High Court AC 154 of 2012 is hereby revoked.
6. The Administrator General is appointed the Administrator of the Estate of the Late Katukura Kezekiya B.B.
7. The Administrator of the Estate of the Late Katukura Kezekiya B.B. shall execute all the required instruments to ensure that the 10 acres purchased out of the land comprised in Igara Block 4 Plot 10 is transferred to the purchasers (5th Defendant and another), who shall pay the consideration balance as was provided in the purchase agreement.
8. The Plaintiff shall pay the costs of the 2nd, 3rd, 4th and 5th Defendants.



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NSHIMYE ALLAN PAUL M.

JUDGE

05-04-2024