

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASINDI**  
**CIVIL SUIT NO. 003 OF 2020**

**WEKOMBA STEPHEN ::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

<b>1. THE HON.JUSTICE GEOFFREY KIRYABWIRE</b>	}	Administrators of the estate of the late Prof. J.M. Kiryabwire
<b>2. MRS. MARY KIRYABWIRE</b>		
<b>3. MRS. SARAH KIRYABWIRE NASWAALI</b>		
<b>4. MRS. ANGELA KIRYABWIRE KAYIMA</b>		

**5. KIRYANDONGO DISTRICT LOCAL GOV'T ::::::::::::::::::: DEFENDANTS**

**ORDER**

**BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA**

- [1] It is an undisputed fact this suit **No.3/2020** is based on the **consent decree vide C.S No.114/08** wherein the **Administrators of the estate of Prof. J.M. Kiryabwire** had sued the **Attorney General & 2 Others** who included **Mr. Steven Wekomba**, the plaintiff in the instant suit.
- [2] By way of a brief background, by virtue of **C.S No.114/2008**, the 1<sup>st</sup> defendant was compensated by Government and relinquished **962 ha** of land on **Ranch 13, LRV No.1129, Folio 18 at Kiryandongo** and a portion of the relinquished land was allocated to the plaintiff and other beneficiaries who had been squatters on the land. In this suit, it is the plaintiff's complaint that the 1<sup>st</sup> defendant's agents have encroached on his portion of land claiming it to belong to the 1<sup>st</sup> defendant yet by the decree in **C.S No.114/2008**, the 1<sup>st</sup> defendant was compensated for the said land as was accordingly paid.
- [3] In the suit **C.S No.114/2008**, the consent decree was for the relevant parts, inter alia to this effect;

1. *The plaintiff shall give up claim for 962 hectares of land (approximately 2,377.10 acres) on Ranch 13 LRV 1129, Folio 18 at Kiryandongo, Masindi, in exchange for Shs.1, 307,350,000/- payable to the plaintiffs by the 1<sup>st</sup> defendant.*
2. *Upon completion, the plaintiffs shall hand over the certificate of title for subdivision /re-survey by a joint team of 2 surveyors each appointed by both sides.*
3. *The plaintiffs shall execute a deed of surrender in respect of land measuring 962 hectares (2, 377.10) acres to the 2<sup>nd</sup> defendant.*

- [4] All the parties, i.e the **Administrators of the estate of Prof. J.M. Kiryabwire** (plaintiff) and the 3 defendants; **A.G, Masindi (now Kiryandongo) District Land Board** and **Mr. Wekomba Steven** signed the consent decree and they are therefore, all bound by its terms.
- [5] According to the Attorney General as per the submissions of today on record, in implementation of the consent decree in **C.S No.114/2008**, a re-survey was carried out by the Chief Government surveyor and the report is available. The counsel for the plaintiff **Mr. Nyote** and the **representative of the 5<sup>th</sup> defendant** have a contrary view. The re-survey and the re-opening of the boundaries in compliance with consent decree in **C.S No.114/2008** has never taken place. He is aggrieved by the 1<sup>st</sup> defendant's failure to comply with and or fulfill the terms of the consent decree duly endorsed by all the parties and therefore binding upon them.
- [6] Upon perusal of the record, I do find no evidence that the re-survey or re-opening of the boundaries in compliance with consent decree vide **C.S. No. 114/2008** ever took place. It is actually, the failure by the parties to commission a joint team of the required 2 surveyors appointed by both sides to resurvey the land and curve off the **962**

**hectares** of land of the suit land surrendered to the Government for allocation to and/or benefit of the 3<sup>rd</sup> defendant/plaintiff and others that prompted the present plaintiff to file the instant suit as he felt that the 1<sup>st</sup> defendant's agents were encroaching on his portion of land.

- [7] In the instant suit, the plaintiff claims for a declaration that the defendants and or their agents are encroaching on the plaintiff's land described as a Ranch measuring **340 acres** at Kiryandongo, described as situate on **Ranch 13 B**. The claim is based on the fact that the plaintiff was sued under **Suit No.114 of 2008** together with others by the 1<sup>st</sup> defendant and the suit ended up in consent decree. That people have entered the plaintiff's portion of land claiming it belongs to the estate of the late **Prof. J.M. Kiryabwire**, the 1<sup>st</sup> defendant, implying that by implementing the consent decree in **C.S No.114/2008**, the claims of the plaintiff would be settled since the opening of the boundaries/resurveying of the suit land under the consent decree in **C.S No.114/2008**, would identify the remaining interests of the 1<sup>st</sup> defendant and the plaintiff and others who were to benefit from or benefitted from the Government portion, the 1<sup>st</sup> defendant surrendered.
- [8] It is also not in dispute that the Attorney General fulfilled its part of the bargain under the consent decree in **C.S No.114/2008** and paid the 1<sup>st</sup> defendant the compensation for the **962 hectares** of land on the suit land. What is now at stake is the ascertainment of the **962 ha** of land that Government compensated the 1<sup>st</sup> defendant for the benefit of **Wekomba Stephen's** (the plaintiff) and others who were squatters on the suit land for their allocation. It appears to be the view of all the parties present that this could only be done by re-

surveying the suit land under the guidance of the consent decree in **C.S No. 114/08**.

- [9] For the Attorney General, the resurveying was done but for the rest of the parties, it has never been done. As I have already observed, I find no evidence that the re-survey by a joint team of 2 surveyors, each appointed by both sides was ever done. If at all it was done, it was unilateral and secondly, there should be a report on record.
- [10] In view of the totality of the above, I do order that **the consent decree** vide **C.S No.114/2008** be complied with and be implemented accordingly whereby the plaintiffs/1<sup>st</sup> defendant's family, of the late **Prof. J.M. Kiryabwire** shall hand over the certificate of title of **Ranch 13 LRV 1129, Folio 18 at Kiryandongo**, Masindi for sub-division/re-survey by a joint team of two surveyors, each appointed by both sides or by a Chief Government surveyor but witnessed by each party's representative surveyors.
- [11] It is my firm view that this order shall not prejudice any of the parties because in the 1<sup>st</sup> instance, the 1<sup>st</sup> defendant, having been compensated by Government for the **962 ha**, is interested in the outcome of the survey so as to be able to enjoy the residue of his title without any interruption, the **Attorney General** having paid compensation to the plaintiff for the **962 ha** for the benefit of the plaintiff and others, is interested in the final conclusion of the matter while the plaintiff is interested in enjoying his portion of land since he claims in this suit that part of his land forms part and parcel of the **962 ha** for which the plaintiff was compensated and lastly, the 5<sup>th</sup> defendant consented to the subdivision as per the record of 2<sup>nd</sup> December, 2020..

- [12] It is further ordered that the appointed surveyors and/or Government surveyor conclude the re-survey/opening of the boundaries within 60 days from to date.
- [13] There are various claims and correspondences on record about the chaos and violence reigning at the suit land, thus referring to the situation as volatile due to this conflict. This is therefore}}}}} to urge the parties concerned to refrain from any acts of violence and express patience as we await the surveyors' report. The surveyors have to be accorded the opportunity and conducive conditions/atmosphere to do the work.

Order accordingly.

**Dated at Masindi this 1<sup>st</sup> day of December, 2021**

**Byaruhanga Jesse Rugyema**

**JUDGE**