

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**

**CIVIL SUIT NO. 106 OF 2014**

**1. REV. CAN. JAMES KIBIRIGE**  
**2. MUZIMBO JUSTINE**  
**3. KALULE PATRICK**  
**4. SSEKITO STEVEN**  
**5. KAKANDE JACKSON .....PLAINTIFFS**

**VERSUS**

**1. MUSAZI CHARLES**  
**2. GEORGE KAIJA .....DEFENDANTS**

**BEFORE: HON. JUSTICE CORNELIA KAKOOZA SABIITI**

**JUGDMENT**

**Background**

The Plaintiffs who are joint administrators of the Estate of the late Christopher Massajjage Kibirige sued the Defendants seeking a declaration that the 2<sup>nd</sup> Defendant fraudulently and illegally registered himself as proprietor of the land comprised in Mailo Register Bululi Block 95 Plots 5 & 7 at Muwolwe (hereinafter referred to as the suit land); a declaration that the 1<sup>st</sup> defendant is a trespasser on the suit land; an order evicting the 1<sup>st</sup> defendant from the suit land; an order authorizing the plaintiffs to demolish/uproot the developments erected by the defendants on the suit land; general damages for fraud; a permanent injunction against the defendants from trespassing on the suit land and costs of the suit.

The plaintiffs made a complaint to the Commissioner Land Registration in respect of the registration of the 1<sup>st</sup> Defendant on suit land stating that the land belonged

to the estate of the late Christopher Massajjage Kibirige and that the 2<sup>nd</sup> Defendant had fraudulently transferred the suit land into his names and sold it off to the 1<sup>st</sup> Defendant. The Commissioner Land Registration on 13<sup>th</sup> November 2012 cancelled the 1<sup>st</sup> Defendants entry as the registered proprietor and the entered the names of the plaintiffs as the administrators of the estate of the late Christopher Massajjage Kibirige. The Plaintiffs have sued for declarations and orders of eviction of the 1<sup>st</sup> defendant from the suit land.

The defendants denied the claims of the plaintiffs and filed a defence and counter claim to the suit seeking orders that the 1<sup>st</sup> Counter defendant (Commissioner Land Registration) be ordered to cancel the names of the 2<sup>nd</sup> to 6<sup>th</sup> counter defendants (plaintiffs) from the certificate of title comprised in Bululi Block 95 Plots 5 and 7; that the name of the 1<sup>st</sup> counter claimant be reinstated on the said certificate of title as proprietor; general damages and costs of the suit.

The Plaintiffs were represented by M/s United Advocates while the Defendants/counter claimants were represented by M/s T. Odeke & Co Advocates. The hearing proceeded by way of witness statements. The plaintiffs led only one witness, Rev. Canon James Kibirige, the 1<sup>st</sup> Plaintiff as PW1 while the defendants led two witnesses Musaazi Charles as DW1 and Muyanja Salongo as DW2. The 1<sup>st</sup> Counter defendant (Commissioner Land Registration) did not file a defence however Court, at the application of the Plaintiffs' counsel, made orders for the production of documents in respect of the history of suit land from the Lands Registry that were submitted to court and admitted as exhibits.

*CKS*  
*7/7/21*  
Under the Joint Scheduling Memorandum, the agreed issues for resolution are:-

- i) Whether the Defendants are liable for fraud and trespass.
- ii) Whether the Plaintiffs are entitled to damages claimed in the plaint.
- iii) Whether the Defendants are entitled to the prayers in the counter claim.
- iv) What are the remedies available to the parties.



## **Resolution of the issues**

### **Issue No.1: Whether the Defendants are liable for fraud and trespass.**

The particulars of fraud pleaded by the plaintiffs under the plaint were that the 2<sup>nd</sup> defendant fraudulently obtained letters of administration; used the forged letters of administration to get himself registered on the suit land and used forged transfer forms to transfer the suit land from the 2<sup>nd</sup> defendant as administrator to the 1<sup>st</sup> defendant who had full knowledge that the 2<sup>nd</sup> defendant had no lawful title to the suit land and uttered false documents to effect the transfers of the suit land to the 2<sup>nd</sup> defendant and the 1<sup>st</sup> defendant.

Counsel for the Plaintiffs submitted that there was no evidence whatsoever adduced by the defendants to show that the suit land Bululi Block 95 Plots 5 and 7 at Muwolwe was ever registered in the names of the late Yona Baginge and that the suit land and the land comprised in Mailo Register Volume 688 Folio 11 have no proven connection whatsoever. That the 2<sup>nd</sup> defendant applied to be registered as Administrator of the estate of the late Yona Baginge as per PExh.7 and the application listed Bululi Block 95 plot 5 but did not mention Bululi Mailo Register Volume 688 Folio 11 at Muwolwe. Further that the application by the 2<sup>nd</sup> defendant only mentioned Bululi Block 95 plot 5 but the transfer to the 1<sup>st</sup> defendant was in respect of Block 161 Plots 5 and 7. That on the other hand the search report dated 8<sup>th</sup> October 2009 (PExh. 2) indicated that the late Christopher Massajjage Kibirige from whom the plaintiffs' claim title was registered as proprietor for Bululi Block 95 Plot 5A at Muwolwe under Instrument BUK 9711 on 12<sup>th</sup> October 1957.

*CVS*  
*7/7/21* Counsel for the Defendants submitted that the plaintiffs had failed to lead any evidence with regard to the particulars of fraud pleaded in respect of the 2<sup>nd</sup> defendant obtaining letters of administration to the estate of the late Christopher Massajjage Kibirige and relying on them to get registered as Administrator and

using forged transfer forms to transfer the land to the 1<sup>st</sup> defendant. It is noted that the registration on the 2<sup>nd</sup> defendant on the certificate of title for the suit land only indicated him as "Administrator" but did not state in respect of which particular deceased's estate. This ambiguity could have resulted in the plaintiffs assuming that the 2<sup>nd</sup> Defendant was fraudulently claiming to be the Administrator of the Estate of the late Christopher Massajjage Kibirige. From the particulars of fraud in the plaint, it is not clear whether the deceased referred to is the late Yona Baginge or the late Christopher Massajjage Kibirige. Be that as it may, the plaintiffs did not lead any evidence as required under Section 101 of the Evidence Act that the 2<sup>nd</sup> defendant fraudulently obtained any letters of administration to the estate of the deceased Yona Baginge from whom the 2<sup>nd</sup> defendant claims his title.

Counsel for the defendants further submitted that the search report dated 8<sup>th</sup> October 2009 (**PExh. 2**) indicated that the late Christopher Massajjage Kibirige was registered as proprietor for Bululi Block 95 Plot 5A at Muwolwe under Instrument BUK 9711 on 12<sup>th</sup> October 1957 in respect of 19 hectares (approximately 47 acres). That **PExh.2** contradicts the Certificate of Title (**PExh.3**) that is in respect of Block 95 Plots 5 and 7 measuring 195.9 hectares (approximately 484 acres). That the late Yona Baginge was registered on the suit land first in 1953 under Final Certificate No.35535 Mailo Register Volume 688 Folio 11 measuring 644 acres and he later gave the late Christopher Massajjage Kibirige 160 acres out of the 644 acres leaving 484 acres. That the plaintiffs in their evidence by PW1 admitted that the late Christopher Massajjage Kibirige subsequently sold off part of his 160 acres to one Charles Mpuuga.

*CKB*  
*7/7/21*  
The court has carefully scrutinized the documentation related to the history of the suit land as submitted by both parties as well as the Commissioner Land Registration. Whereas counsel for the plaintiffs has submitted that the suit land in Bululi Block 95 Plot 5 & 7 and the land comprised in Mailo Register Volume



688 Folio 11 have no proven connection whatsoever I find that there is a clear connection.

The certified copy from Commissioner Land Registration of the certificate of title for Mailo Register Volume 688 Folio 11 under Final Certificate No. 33535 (**DExh.8**) and the attached documents shows that the late Yona Baginge was registered in 1953 on the certificate of title for Mailo Register Volume 688 Folio 11 after purchasing it as a square mile in 1943 as per the certified copy of the Sale Agreement from one Yasoni Samusoni Kyobe who had been the prior registered proprietor after the first registered owner one Danieri Kiuta.

The same the certificate of title for Mailo Register Volume 688 Folio 11 under Final Certificate No. 33535 (**DExh.8**) also indicates that the late Christopher Massajjage Kibirige is the registered proprietor in respect of 160 acres. Further after this entry, the late Yona Baginge is registered as the proprietor of the remaining 484 acres.

The connection is further corroborated by the certified copy of the Area Schedule form that shows the breakdown of the 644 acres from Block 95 plot 1 to various plots including 45.7 hectares and 20 hectares to the late Christopher Massajjage. This same position is reflected in the letter in 2012 from the District Staff Surveyor of Luwero District Local Government to the Registrar of Titles Bukalasa stating that the original plot 1 was subdivided into plots 4 and 6. Plot 4 of 45.7 hectares being in favor of Christopher Massajjage Kibirige (BUK 37913) leaving a residue of plot 5 & 6, part of plot 6 which was to become plot 7 leaving a residue of plot 8 as 19 hectares belonging to Christopher Massajjage Kibirige.

*CKS*  
*7/7/21* It is noted that **PExh.2** reflects the above position that the late Christopher Massajjage Kibirige was the registered proprietor for the 19 hectares. Further, the Plaintiffs did not dispute the copy of the Sale Agreement dated 17<sup>th</sup> March 1998

between Christopher Massajjage Kibirige and one Charles Mpuuga that was in respect of the sale of Bululi Block 95 Plot 4 for 45.7 hectares.

From the forgoing, the findings with regards to the history of the suit land are as follows-

- (a) The late Yona Baginge in 1953 was the registered proprietor of 644 acres under the certificate of title for Mailo Register Volume 688 Folio 11 under Final Certificate No. 33535 (**DExh.8**) that was later renamed Buruli Block 95 Plot 1.
- (b) The late Christopher Massajjage Kibirige was registered as proprietor in 1957 for 160 acres out of the 644 acres.
- (c) The late Christopher Massajjage Kibirige in 1988 sold off 45.7 hectares (113 acres) from his 160 acres (64.7 hectares) to Charles Mpuuga and remained with 46.9 acres (19 hectares) as per **PExh.2**.
- (d) The suit land comprising 195.9 hectares (484 acres) is the remaining land of the late Yona Baginge.

As earlier discussed, there was no evidence of fraud adduced by the plaintiffs with regard to the claim that the 2<sup>nd</sup> defendant fraudulently obtained letters of administration to the estate of the deceased Yona Baginge. With regard to the claim that the 2<sup>nd</sup> defendant fraudulently registered himself on the suit land, counsel for the plaintiffs submitted that the 2<sup>nd</sup> Defendant under **PExh.7** (Application to be registered as Administrator) listed Bululi Block 95 Plot 5 at Muwolwe as among the properties of the late Yona Baginge and yet there was no evidence of the late Yona Baginge being the registered proprietor as at 17<sup>th</sup> August 1995 and that the late Massajjage was the registered proprietor on 12<sup>th</sup> August 1957.

On the other hand, counsel for the defendants submitted that the plaintiffs had not adduced any evidence that the suit land measuring 484 acres had ever belonged



to the late Christopher Massajjage Kibirige nor had they proved that the 2<sup>nd</sup> defendant fraudulently registered himself on the certificate of title.

I find there is merit in the submission by the defendants' counsel since it is evident that the late Christopher Massajjage Kibirige on 12/08/1957 was only registered as proprietor in respect of 160 hectares under BUK 9911 as indicated under PExh.8 and he later in 1988 sold off 45.7 hectares and remained with 19 hectares only as confirmed by the Search Report **PExh.2** for Bululi Block 95 **Plot 5A** at Muwolwe. This also tallies with the earlier entry of late Christopher Massajjage Kibirige on Mailo Register Volume 688 Folio 11 as proprietor of the 160 acres.

I find that there is no evidence whatsoever that the late Christopher Massajjage Kibirige was the registered proprietor of 195.9 hectares reflected in the certificate of title for Buruli Block 95 plot 5 & 7 (**PExh.3**). Given that the claim of fraud in the registration of title of the suit land attributed to the 2<sup>nd</sup> defendant as the Administrator of the late Yona Baginge has not been proven his registration stands unimpeached as provided under Section 59 of the Registration of Titles Act.

The next issue is whether there was fraud in the transfer of the suit land from the 2<sup>nd</sup> defendant as an Administrator to the 1<sup>st</sup> Defendant as an individual. Counsel for the plaintiff submitted that whereas the application by the 2<sup>nd</sup> defendant was for Buruli Block plot 5, the transfer form by the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant was in respect of Block 95 plot 5 & 7. He averred that this conduct by the 2<sup>nd</sup> defendant demonstrated deceit, dishonesty and falsehood that has been defined as fraud held in the case of *Fredrick J.K Zaabwe vs. Orient Bank & Others*, **SCCA No.4 of 2006**.

CVS  
7/7/21 It is noted that whereas the 2<sup>nd</sup> defendant applied to be registered for Block 95 plot 5, he was subsequently registered on the certificate of title on the suit land that indicates Block 95 plot 5 & 7. This was also observed by the Commissioner

Land Registration in her letter PExh.4 where she stated that the sub-divisions of plot 6 into plot 5 & 7 were done by 2<sup>nd</sup> defendant who then transferred to the 1<sup>st</sup> defendant and that the Transfer form indicated Block 161 Plot 5 & 7 and not Block 95 Plot 5 & 7 which are distinct pieces of land.

While these errors were admitted by the defendants, they still do not negate the fact that the late Christopher Massajjage Kibirige was never the registered proprietor of the suit land and are therefore of no consequence with regard to the claims of the plaintiff against the title of the 1<sup>st</sup> defendant. Further, in the case of **Kampala Bottlers Ltd vs. Damanico (U) Ltd, Civil Appeal No.2 of 2004**, the Supreme Court further clarified that the burden of proof in fraud cases is heavier than one on a balance of probabilities generally required in ordinary civil matters. The Supreme Court further elucidated that;

*"For a party to plead fraud in registration of land a party must first prove fraud was attributable to the transferee. It must be attributable either directly or by necessary implication, that is, the transferee must have known of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."*

The plaintiffs have failed to prove fraud against the defendants or their interest in the suit land. The 1<sup>st</sup> defendant has been registered and in possession of the suit land since 2004 and he derived his title from the 2<sup>nd</sup> defendant against whom fraud has not been proven. I therefore find no merit in the claims of fraud by the plaintiffs against both defendants.

7/7/21 On the issue of trespass, it is trite law that an action in trespass may be brought by anyone who is either in physical or legal possession of the land in issue. This position was held by Mulenga JSC in the case of **Justine EMN Lutaaya Vs Stirling Civil Engineering Co. Ltd**. In the present case, the plaintiffs have not proved their legal possession of the suit land and as such cannot maintain a cause of action in trespass as against the defendants.



Issue No.1 is resolved in the negative.

**Issue No.2, 3 & 4: Whether the parties are entitled to their prayers and the remedies available to the parties.**

Following the findings under Issue No.1, the prayers of the plaintiffs are denied.

The main prayers of the counter claimants were for orders that the 1<sup>st</sup> Counter defendant (Commissioner Land Registration) be ordered to cancel the names of the 2<sup>nd</sup> to 6<sup>th</sup> counter defendants (plaintiffs) from the certificate of title comprised in Bululi Block 95 Plots 5 and 7; that the name of the 1<sup>st</sup> counter claimant be reinstated on the said certificate of title as proprietor; general damages and costs of the suit.

The Commissioner Land Registration on 13<sup>th</sup> November 2012 cancelled the 1<sup>st</sup> Defendants entry as the registered proprietor and the entered the names of the plaintiffs as the administrators of the estate of the late Christopher Massajjage Kibirige. In the case of **Meera Investments Ltd vs Sadrdin Gulamhussein & Anor HCCS No. 360 of 2008**, it was held that the Commissioner Land Registration has only powers restricted under Section 91 of the Land Act which do not include instances where fraud has been alleged. In the instant case allegations of fraud against the counterclaimants transcended the realm of mere errors, misdescriptions or illegalities which the CLR is mandated under section 91(supra) to act upon. The issue could only be determined in a suit in a court law.

*CLR*  
*7/7/21* The Commissioner Land Registration did not file a defence to the counter claim and therefore does not dispute the allegsation against the office of the illegal action of cancellation of the 1<sup>st</sup> defendant as the registered proprietor of the suit land.

With regard to the prayer by the counter claimants for general damages, the position of the law in **James Fredrick Nsubuga vs. Attorney General, HCCS No.**

*13 of 1993*, is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. Further, the Supreme Court in *Robert Coussens vs. Attorney General, SCCA No. 08 of 1999*, held that; "*The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered....*"

In the instant case there does not seem to have been deliberate ill will or malice by the plaintiffs to make the complaint to the Commissioner Land Registration to challenge the title of the Defendants since they were Administrators acting under the mistaken belief that it belonged to the late Christopher Massajjage Kibirige. However, they did cause inconvenience and suffering to the defendants and should atone accordingly for their actions. In light of all the circumstances of this case, I would consider Ug. Shs.15,000,000/= to be fair and adequate and award the same as general damages.

With regard to costs, these follow the event under Section 27(2) of the Civil Procedure Act and the costs of the suit and counter claim are awarded to the Counter claimants/Defendants.

Accordingly, Judgment is entered for the Counter claimants/Defendants against the Plaintiffs and the following orders are made-

(a) A declaration that land comprised in Bululi Block 95 Plots 5 and 7 at Muwolwe measuring 195.9 hectares does not form part of the estate of the late Christopher Massajjage Kibirige but formerly formed part of the estate of the late Yona Baginge.

(b) A declaration that the 1<sup>st</sup> Counter defendant (Commissioner Land Registration) illegally cancelled the name of the 1<sup>st</sup> defendant from the certificate of title for the land comprised in Bululi Block 95 Plots 5 and 7 at Muwolwe and registered the plaintiffs as the registered proprietors.



- (c) The 1<sup>st</sup> Counter defendant (Commissioner Land Registration) is ordered to cancel the names of the 2<sup>nd</sup> to 6<sup>th</sup> counter defendants (plaintiffs) from the certificate of title for the land comprised in Bululi Block 95 Plots 5 and 7 at Muwolwe.
- (d) The 1<sup>st</sup> Counter defendant (Commissioner Land Registration) is ordered to reinstate the name of the 1<sup>st</sup> counter claimant on the said certificate of title for the land comprised in Bululi Block 95 Plots 5 and 7 at Muwolwe as the registered proprietor.
- (e) A permanent injunction is issued restraining the Plaintiffs, their agents or successors in title from laying claim to the suit land or otherwise interfering with the 1<sup>st</sup> defendant's quiet possession thereof.
- (f) General damages of Ug. Shs 15,000,000 (fifteen million shillings) are awarded to the counter claimants/defendants
- (g) Costs of the suit and counter claim to be paid by the Plaintiffs.

It is so ordered.



**CORNELIA K. SABIITI**  
**JUDGE**

**Date:** 7<sup>th</sup> July 2021