

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**CIVIL SUIT NO.433 OF 2015**

**EDITH NAKANDI:..... PLAINTIFF**

**VERSUS**

**1. ADMINISTRATOR GENERAL**

**2. LINDA LUCIA**

**3. ANNE BIRUNGI**

**4. UMAR KATONGOLE**

**5. COMMISSIONER LAND REGISTRATION :..... DEFENDANTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWEEESA**  
**JUDGMEN**

The facts as summarized in the submissions by counsel for the Plaintiff is that the Defendants illegally and fraudulently dealt in the suit **land comprised in Kyadondo Block 223 Plot 766 now subdivided in Plots 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980 and 4981** which is supposed to be a beneficial share to the Plaintiff as the sole beneficiary of her late father, Kanoni Ntambi who was the original owner and registered proprietor of the said property. The Plaintiff complains that the subsequent dealings by the Defendants on the suit land were tainted with fraud akin to

non-arm's length transactions. In his submissions counsel for the Plaintiff relied on documents exhibited as **PEX1 to PEX23** contained in the Plaintiff's trial bundle.

The 1<sup>st</sup> Defendant; (Administrator General) in his Written Statement of Defence, conceded to the Plaintiff's claims in terms that he was misled by into taking a wrong decision by the Defendants to distribute Late Kanoni Ntambi's Estate.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' defence (*as per the joint written statement of defence*) shows that the suit land was bequeathed to them as a *gift intervivos* by their late grandmother; Nassozi who was the rightful owner of the same.

On the other hand, the Written Statement of defense filed by Mr. Umar Katongole is that he is a bonafide purchaser of the suit land without a third party notice of such third party claims. The defense relied on documentary evidence which were received and noted as DEX1 to DEX14. This was in addition to an agreed to set of documents compiled from the Administrator General's records.

During the scheduling conference seven issues were listed as here below:

- 1) Whether the suit land forms part of the estate of the Late Kanoni Ntambi.**
- 2) Whether Plaintiff is the rightful and sole beneficiary of the Late Kanoni Ntambi Estate.**
- 3) Whether the Late Nassozi Seremensi was a rightful beneficiary of the Estate of Yosiya Sempa.**
- 4) Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant acquired the suit land fraudulently.**

- 5) Whether 1<sup>st</sup> Defendant fraudulently distributed the suit land to non-beneficiaries.
- 6) Whether the 4<sup>th</sup> Defendant is a bonafide purchaser for value of the suit land without notice of any fraud.
- 7) What are the remedies available to the parties.

### **Evidence**

The Plaintiff called three witnesses, who testified as follows:

PW1; Edith Nakandi testified that her late father Kanoni Ntambi at all material times, lived at Namugongo, where the suit land is situated. She said that the land is currently occupied by a one Kamada (PW2). He said that in that same area is where Kalundu has a Kibanja. PW1 also testified that he has thereon a garden for matooke and other crops which were destroyed by Umar Katongole (4<sup>th</sup> Defendant) she told court that Katongole wanted to give her Ugshs.10,000,000/=(*Ten million shillings only*) as compensation which she rejected. She said that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are grandchildren of Nassozi Seremensi who had never lived on the suit land. The witness testified that the suit land belongs to her late father Kanoni Ntambi.

PW2; Kamada Bukenya said that since birth, he has been staying on the suit land and his parents Abdallah Bukenya Kalundu also lived on the same land till his demise in 1987. His father had there a home and a garden and upon his demise, PW2 took up the responsibility of the home and garden since it was bequeathed to him in his father's will. He said he had shops and rental premises thereon which were destroyed. He

testified that he was using about 02 acres of this land while Nakandi used one acre thereon on which she had trees and matooke.

PW3; Nsubuga Alex, testified that the Administrator General dealt with the property but when he realized the error he took steps to rectify the error and even processed caveats which were to be placed on the title.

PW4; Nsubuga Nasur confirmed that the Plaintiff and Kamada Bukenya stay on the suit land and Kamada Bukenya's graveyards are on the suit land.

The Defence on the other hand called DW1; Sarah Nakayiza, DW2; Lukoda Richard and DW3; Peter Nkurunziza. Their evidence is briefly as follows:

DW1; Sarah Nakayiza, testified that she is a grandchild of Yosiya Sempa; a father to her mother. The Plaintiff is her maternal cousin sister, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are her nieces. She has used the land on behalf of Seremensi Nassozi for over 30 years. S. Nassozi is a grandmother to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. After Nassozi died, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants gave her authority to keep using the land until 2014 when they took over possession.

DW2 – Lukoda Richard, said that he is a biological son of Gwembuga Elly whose father was the Late Yosiya Sempa. Plaintiff is his cousin, her father is Late Kanoni Ntambi (*his paternal uncle*). Sempa died intestate and among his estate was Block 223 Plots 47 and 59. That in 1958 Yosiya Sempa's land was fraudulently transferred into Kanoni Ntambi. As a result, the Administrator General redistributed the estate in 1992. He got a share out of Norah Nanteza who gave it as a gift to him.

DW3 – Nkurunziza Peter stated that he had personal conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants case and later by order of Court, inspected the documents in the 1<sup>st</sup> Defendant's possession, upon which he obtained certified copies, and took oath to testify on them as a witness. The detailed contents of his testimony are contained in the 33 paragraphs of his written statement. However, the sum total of his evidence is that suit land though attributed to Kanoni Ntambi by the Administrator General it did not belong to him according to the records he had reviewed.

**Determination of issues.**

1. Whether the suit land forms part of the estate of late Kanoni Ntambi

The Plaintiff's evidence and submissions are to the effect that Plaintiff is the only surviving daughter and beneficiary of the Estate of Late Kanoni Ntambi. The Administrator General (1<sup>st</sup> Defendant) was given Letters of Administration on 24<sup>th</sup> January 2002 to administer the Estate of Late Kanoni Ntambi who died intestate. Kanoni Ntambi died on 29<sup>th</sup> August 1938 and had shared 30 acres as a son and beneficiary of Late Yosiya Sempa's estate leaving 06 acres to the rest of the beneficiaries. Evidence shows that the Late Ntambi received a certificate of succession for the 30 acres at Namugongo vide FC19653 Volume 772 Folio 23 Instrument No. KLA 13704. The Late Kanoni Ntambi sold five (05) acres of land on Block 223 Plot 58 land at Nabwojo to John Sentamu leaving 25 acres intact leaving 25 acres as unsurveyed according to the documents on record agreed on from the administrator general's official records.

The first Defendant; the Administrator General, issued Succession Certificates on the unsurveyed land in error yet this parcel ought to have been dealt with by the Kabaka of

Buganda, by vide of the Succession Certificate issued to the Late Kanoni Ntambi as per the annexed documents received as agreed on by the parties from the Administrator Generals official records). The argument fronted by The Plaintiff's Counsel is that the estate of the Late Yosiya Sempa was already administered under customary law before the 18<sup>th</sup> August 1967 and a succession certificate was issued to the Late Kanoni Ntambi and that it was *ultra vires* for Administrator General to administer and distribute the suit land, yet he had no such power, including the power to cancel the succession certificate issued to the Late Kanoni Ntambi.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants argues that though the Succession Certificate shows that the suit land purports that the subdivision was comprised in **Mailo Register Kyadondo Block 223 Plot 47 and 59 Namugongo**, the Succession Register dated 19<sup>th</sup> October 1938 shows that Yosiya Sempa left 40 acres at Naluwenjo Kyadondo comprising **Plots 47 & 59** and supported by the report of 29<sup>th</sup> August 1938 by head of lineage, on behalf of the relatives of late Yosiya Sempa.

He argues that Ntambi was given only 20 acres out of the 65 acres left by Sempa. The Defendant's Counsel turned witness goes into the details of the Succession Register to argue that there is an unexplained/unaccounted for 03 acres given to Nassozi by the relatives of Sempa to be carried out of Kanoni Ntambi's 35 acres reducing Ntambi's share to 20 acres. He then says this means that Nassozi is entitled to 03 acres out of Sempa's estate. He then alludes to absence of evidence to prove the location of Kanoni Ntambi's estate. He refers to the documents at the 1<sup>st</sup> Defendant's chambers (not before Court), showing that Ntambi took 25 acres of land in Plot 47 took 25 acres of land in Plot 47 and 59 Nabwojo instead of 20 acres.

In rejoinder to this line of argument, Counsel for Plaintiff reaffirmed that Kanoni Ntambi had 30 acres and the balance of 6 out of Yosiya Sempa estate was distributed

and nothing remained for Nassozi Seremensi to have obtained 03 acres from the said estate.

I am in agreement with Counsel for Plaintiffs in this suit on the argument raised on this issue. The evidence presented is clearly in favour of the fact that as testified by PW1, PW2, PW3. The Estate of Kanoni Ntambi was dealt with vide certificate of succession issued on 19<sup>th</sup> January 1948 to **survey off 30 acres of land at Namugongo comprised F.C 19653 Vol. 772 Folio 23 Inst. No. KLA 13704**. This is confirmed by the records at Administrator General showing that a final account was done vide ME/AIC/968/89 – recording the error made by Administrator General (DW1) to deal with an estate already dealt with by the Kabaka.

According to the case of *Daniel Sempa Mbabali versus Kidza and 4 Others (1985) HCB 46 Page 48* it was observed that:

*“Once the Kabaka had exercised his powers to make a decision on succession matters in a particular case his decision was final and could not be revoked”.*

Also in *Kaweesa versus The Administrator General and 2 Others HCCS No. 918/1993 at pg. 11 to 16*, it was held that;

*“The power that was previously vested in the Lukiiko under the Land Succession Law of Buganda Kingdom enacted in 1912 and was transferred to Administrator General”.*

I am swayed by the above legal position and arguments by counsel for the Plaintiff that since the Kabaka had already administered Kanoni Ntambi’s estate, it was not open to the Administrator General to open up the estate again for redistribution. It was *ultra vires* its power. This is why the Administrator General realized the mistake and chose to rectify it and they have remained consistent on this position throughout the trial. This is revealed in their Written Statement of Defense as filed on record and their concession

with the Plaintiff to amicably settle the matter by entering into a consent agreement with the Plaintiff. (Which they did though it was later set aside). The professional position above is not alterable even looking at DW3; Nkurunziza's evidence, he says he studied the documents, but in his assessment of them is his opinion on what he thinks about the documents.

Counsel for 3<sup>rd</sup> – 4<sup>th</sup> the Defendants submissions, he leaves this Court in doubt as to whether the findings are his opinion or the official legal position when he concluded in paragraph 1.17 that “In our humble submission, the 1<sup>st</sup> Defendant opted to remedy the wrong by issuing a certificate of succession in favour of each beneficiary including the beneficiaries of the Estate of the Late Yosiya Sempa; where the beneficiaries of the estate had wrongly been taken by the late Kanoni Ntambi, instead of revising the process through the cancellation of the title. Whereas in the strict sense, this may not have been the proper process it was assented to and recognised by all parties including the Plaintiff who was also a beneficiary of 0.67 acres in the distribution. Likewise, John Sewaya; the heir of the late Kanoni Ntambi, received 03 acres under this scheme...

I find that conclusion very misleading and speculative as it is not a correct assessment of the facts and evidence before court. I agree with Counsel for the Plaintiff that the right position is that the action by late Yosiya Sempa's family to re-distribute an estate already distributed by the Lukiiko of Buganda and the transaction sealed with the issuance of a Succession Certificate was illegal.

The evidence shows that the grant of 30 acres left a balance of 06 acres, which were later shared out. Therefore the claims by Nassozi Seremensi to 03 acres from the Kanoni Ntambi's estate is misplaced because she can only benefit from the estate of her late father Yosiya Sempa and not the estate of her late brother Kanoni Ntambi.



There was an issue traversed in rejoinder: Counsel for Plaintiff raised concern about Counsel Nkurunziza's crossover from Counsel to witness; and then smuggling into the case matters never pleaded. I have taken note of all this and I agree in principle that Counsel's position as witness was compromised, since having cross-examined the witnesses for the Plaintiff, he, standing as a witness puts him in an awkward situation and his evidence appeared to me as mere evidence of opinion.

All in all, I find that there is enough evidence for this Court to believe that the suit land belonged to the estate of the Late Kanoni Ntambi. The Administrator General and clan leaders and family of Late Sempa had no powers at all to administer or distribute the suit property. All done was contrary to the law. The 1<sup>st</sup> Defendant could not re-distribute what was already distributed. The 1<sup>st</sup> Defendant, therefore, issued certificates of succession to the wrong parties that were not entitled to the same having been misled to believe that the beneficiaries were part of Late Kanoni Ntambi's estate whereas not. I terminate this issue in the affirmative.

This issue leads me to the other issues, which I summarize and determine as follows:

**Issues 2 & 3.**

The evidence is agreed that the claim by Plaintiff originates from her being a beneficiary to the estate of her late father Sendi whose estate D1 is administering. It has been established that D2 & D3 are beneficiaries to the estate of late Sempa. The evidence shows that the estate of late Sempa was wholly administered by the Kabaka and there was no residue for re-distribution. As already found under issue 1 evidence from pleadings of D1 and PW1, PW2 & DW1 (Nkurunziza) proves that D2 and D3 are interested in the land which is part of the estate of Late Sendi to which Plaintiff is the sole surviving beneficiary.

Therefore the evidence on record supports the findings that the Plaintiff is sole surviving beneficiary to Late Ntambi's estate and Nassozi Seremensi is a daughter of Sempa and has no interest in Ntambi's estate

#### Issues 4 and 5

The evidence shows that an irregularity was committed and there was fraudulent conduct: This is supported by the findings above that:

- The claimants had benefited from Sempa's estate.
- The estate was wholly distributed
- It was wrong to attempt to re-open the distribution as per the minutes, since the Kabaka had already done so.
  
- Sendi's estate as heir of Sempa is distinct, and is not part of Sempa's estate. The Suit land is not part of Sempa's but Sendi's estate. This was the reason why D1; the Administrator General, realizing so; conceded that there was an error. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are claiming a benefit out of an erroneous process and hence should not have continued with the transaction the moment the Administrator General indicated so. All their subsequent dealings thereon from then on were therefore illegal and without force of law. In addition, there is no evidence that the land was ever gifted to them as pleaded.

#### Issue No.6

Whether 4<sup>th</sup> Defendant is a bonafide purchaser for value.

The evidence from Plaintiff and from the file shows that by the time of sale the parties were already litigating. The 4<sup>th</sup> Defendant did not have any evidence to show that he was unaware of the third party interests by the Plaintiff.

He did not testify or show any purchase agreements. The said transaction is therefore shrouded in mystery. This is because he never bothered to back up his claims in court by providing evidence of purchase. He did not provide evidence to prove that Did D2 and D3 had title to sale. There was no proof that he took steps to mount a search to establish if the land was free of third-party interests. Did he bother to establish the defendant's rights of D1 and D3 before he bought from them if at all. None of the above happened. Therefore, the test for bonafide purchaser, and protections there under are not available to 4<sup>th</sup> Defendant.

**Issue 7: Limitation.**

This was not pleaded. It's irrelevant and is not available as a remedy.

All in all I find for Plaintiff. I grant all remedies pleaded as here below:

- i. The 1<sup>st</sup> Defendant owned up to the error so the best remedy is rectification of the error by having the declaration sought granted so that the Administrator General illegality, is reversed by having the Plaintiff access the suit land. The declaration is granted as above.
- ii. The Plaintiff is allowed nominal damages of 8,000,000/= (*Eight million shillings only*), for pain and suffering, payable by the defendants.

iii. Costs of this suit awarded to the Plaintiff.

I so order.

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Henry I. Kawesa

**JUDGE**

9/04/2021

9/04/2021:

Mohamed Matovu for the Plaintiff.

Robert Bogere for the Administrator General.

Mukiibi Andrew; holding brief for K A Nasser for the 4<sup>th</sup> Defendant.

4<sup>th</sup> Defendant present.

Other parties absent.

Court:

Judgment delivered to the above parties.

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Henry I. Kawesa

**JUDGE**

9/04/2021

9/04/2021:

Right of Appeal explained.

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Henry I. Kawesa

**JUDGE**

9/04/2021