

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
CIVIL SUIT NO.0301 OF 2022

FORMERLY CIVIL SUIT NO.2395 OF 2016 AT LAND DIVISION

KIRABO JONAH MWANJE (Administrator of the
Estate of the late Mwanje Erunayo)::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. MWAMBALA JAMES (Administrator of the
Estate of the late Henry Walter Sebaddawa
a.k.a Mwambala Kababwe).

2. SEBUNYA SAM

3. SSENGENDO DAVID a.k.a Ssengendo O.O David) ::::::::::: DEFENDANTS

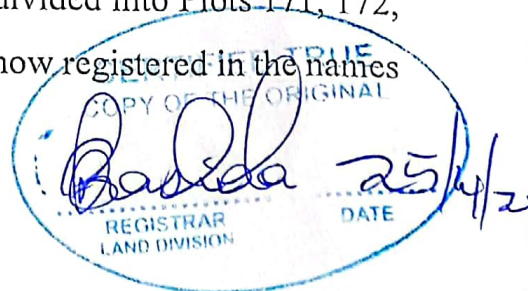
JUDGMENT

BEFORE: HON. DR. JUSTICE HENRY I. KAWESA

Plaintiff's Case

The plaintiff sued the defendants jointly and severally seeking for several orders in respect of land which was formerly comprised in Block 30 Plot 121 at Mpande estate, Kalule Bulemezi (hereinafter the suit land).

He pleaded that the suit land formed part of a chunk of land comprised in East Buganda Block 30 at Mpande estate Kalule Bulemezi, which was owned by Kkaya Darlington Kizito. That his father, the late Erunayo Mwanje, purchased several plots of land on the said chunk from Kkaya Darlington Kizito between the late 1960s and 1970s, including the suit land which has since been subdivided into Plots 171, 172, 930, 931, 935, 1053, 1054, 1302, 1312, 1313 which are now registered in the names of the defendants.



That the caretaker of Kkaya Darlington Kizito named Ezekiel Bunjo Mukabugo executed a transfer instrument upon which the suit land was registered on the blue page into his father's on the 14th of December, 1973. That his father took possession of the suit land and went ahead to complete the transfer process of the land by paying a search fee, survey fees and registration of transfer fees on the 28th of May, 28th of August, and 9th of September, 1974, but was not immediately issued with a duplicate certificate of title although the blue prints had been made.

That his father and the family ran away from the suit land because of the liberation war but returned to it in 1986, continued developing it in 1989 and built a church thereon without any interruptions. That however in 1990, the 1st defendant's father, Henry Walter Sebaddawo, gave a notice to his father to vacate the suit land claiming it as his own which prompted his father (the plaintiff) to lodge a caveat. That his father also took up the matter to the RC1 up to the RCIII and an investigation revealed that Henry Walter Sebaddawo had illegally registered himself on the suit land. That despite the subsistence of a caveat on the suit land, Henry Walter Sebaddawo fraudulently subdivided the suit land into the various plots which he transferred to the defendants. He pleaded the particulars of fraud against the 1st defendant.

Further, that the 2nd defendant instigated and participated in the creation of the certificate of title for the suit land, its subdivision into several plots, and transfers into several other persons and later to himself in order to conceal fraud. He also pleaded particulars of fraud against the 1st defendant.

Furthermore, that in 2008, the 1st defendant in his capacity as administrator connived with the 2nd defendant and caused the removal of a caveat lodged by his father without notice to him; and that the 3rd defendant also connived with the 1st defendant and fraudulently transferred Plot 172 between themselves to purportedly create a

situation of bona fide purchaser for value. He accordingly pleaded particulars of fraud against the 1st defendant as well.

All the defendants filed written statements of defence and denied the plaintiff's allegations thereby putting them in issue.

1st Defendant's Case

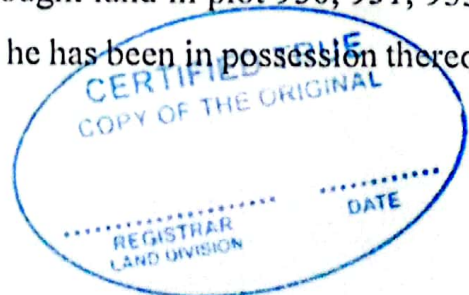
He pleaded that the aforesaid chunk of land belonged to late Ezekieri Makubuga Bunjo, including the suit land. That upon his demise, his administrators, Erusa Bunko and Yolamu Muwanga Sematimba, sold the suit land to his father, Henry Walter Sebadawo and signed transfer forms in his favour on the 23rd day of July, 1984 upon which he became registered in the same year.

That he was registered on the suit land in the capacity of administrator of the estate of his father; that he sold part of the suit land in 2009 to the 2nd defendant, which included now plot 930, 931, 933, 935, 171, and 1053; and that the 2nd defendant has been in possession thereof as a rightful proprietor. That his father also subdivided the suit land into other plots, including plot 173 which he subdivided into other smaller plots. Further, that he has no knowledge of Erunayo Mwanje and Kkaya Darlington Kizito and that they have never owned the suit land.

He counterclaimed against the plaintiff in respect of land comprised in Block 30 Plot 1054 at Mpande estate Kalule Bulemezi, which originated from the suit land and alleged trespass to land by the plaintiff.

2nd Defendant's Case

The 2nd defendant pleaded facts similar to those in the 1st defendant's written statement of defence. He added that in 2009, he bought land in plot 930, 931, 933, 935, 171, and 1053 from the 1st defendant, and that he has been in possession thereof



as a rightful proprietor since purchase until 2014 when the plaintiff began to interfering with his possession. That neither the plaintiff nor his late father have any interest in the suit land.

3rd Defendant's Case

He pleaded that he has never been in the know of, or participated in, the alleged fraudulent intent by the 1st and 2nd defendants to defraud the plaintiff of land comprised in Block 30 Plot 172, Bulemeezi. That he bought the said plot of land in 2008 after making a physical inspection which revealed that it was free of any third party claims and any occupation by the plaintiff or any other person hence rendering him a bonafide purchaser for value without notice of fraud.

A scheduling conference was held and the following issues were agreed upon for resolution:

1. *Whether the late Erunayo Mwanje held any interest in the suit land?*
2. *Whether the 1st defendant's interest in the suit land was acquired fraudulently?*
3. *Whether the 2nd and 3rd defendants are bonafide purchasers for value without notice as regards the subdivided plots?*
4. *Whether the removal of the caveat lodged by the late Erunayo Mwanje vide Instrument No.BUK 49215 of 1991 was lawful?*
5. *What remedies are available to the parties?*

At trial, the plaintiff called three (3) witnesses, and the defendants called four (4) witnesses in total. The plaintiff's witnesses were Kirabo Jonah Mwanje (PW1), Rev. Waswa Elly Mwanje (PW2) and Kefa Lubega Muwanguzi (PW3); the 1st defendant's witness was Mwambala James (DW1); the 2nd defendants' witnesses

were Sebunya Sam (DW2) and Seguya Mohammed (DW3); and the 3rd defendant's witness was Sengendo David (DW4).

Representation

The plaintiff is represented by M/s Nabukenya, Mulalira & Co. Advocates; and the defendants are jointly represented by M/s K. Christopher Advocates & Solicitors. Counsel for the parties filed written submissions, which the court has appreciated. They will be considered in resolving the issues.

Resolution of the Issues

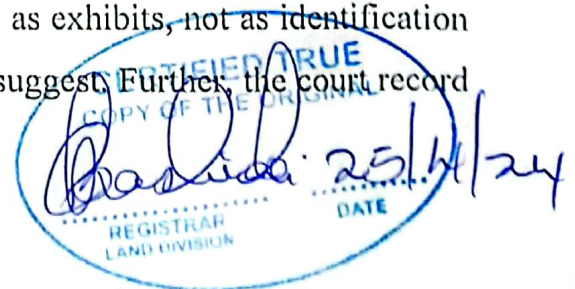
Issue No.1: Whether the late Erunayo Mwanje held any interest in the suit land?

The court begins with Counsel for the defendant's submission that the plaintiff did not lead documentary evidence to demonstrate how his father acquired the suit land since the documents he relied on were not formally proved and admitted in evidence as exhibits. Counsel relied on the observations in the decision of **Des Rej Sharma v. R (1953) 20 EACA 310**, which were approved in **Twine Amos vs. Tamusuza James Civil Revision No.11 of 2009**, to the effect that:

*There is a distinction between exhibits and articles marked for identification.
That the term exhibit should be confined to articles which have been formally proved and admitted in evidence.*

The record however shows that after admission of the PW1's witness statement, Counsel for the plaintiff stated that he had presented the plaintiff's trial bundle with documents already marked; and court noted that they were to be taken as per the trial bundle without any objection from the defendants' Counsel.

The documents in the said trial bundle are marked as exhibits, not as identification documents as the defendants' Counsel appears to suggest. Further, the court record



continues to show that the court continued to consider the said documents as exhibits.

In the circumstances, I respectfully disagree with Counsel for the defendant's submission that the plaintiff's documents were not formally proved and admitted as exhibits.

The court shall now resolve the issue basing on the evidence on record.

On record, PW1 testified that his father acquired the suit land from the late Darlington Kaya Kusingiri (vendor) between the 1960s and early 1970s; that upon instruction by the said vendor, his caretaker a one Ezekiel Bunjo Makabugo executed transfer forms of the suit land in his father's favor; and that his father paid all the necessary fees to facilitate his acquisition of a certificate of title, but did not acquire it immediately though he was registered on the blue page of the suit land.

To support his testimony, the plaintiff adduced a sale agreement between his late father and the vendor, which was admitted as PEXH3; a transfer form executed by Ezekiel Bunjo in favor of his father, which was admitted as PEXH5; receipts of payment of search fees, registration, and survey fees, which were admitted as PEXH6; a certificate of title related to the suit land in the name of his father, which was admitted as PEXH4; and photographs of occupation of the suit land by his father's family, which were admitted as PEXH8.

There is a discrepancy between PEXH3 and PEXH5 as regards the parties thereto. As the defendants' Counsel rightly noted, the vendor (Darlington Kaya Kizito) on the alleged sale agreement is different from the person who executed the transfer form (Ezekieri Bunjo Makabugo). This is an inconsistency in the plaintiff's evidence.

However, the inconsistency was explained by the PW1 who stated that the executor of PEXH5 was a caretaker of the vendor in PEXH3; and that he executed PEXH5 in that capacity. No contrary evidence was adduced by the defendants on this, except their assertion that the suit land initially belonged to Ezekiel Bunjo Makabugo.

Thus, it is a fact that PEXH5 was executed by Ezekiel Bunjo Makabugo in favor of the plaintiff's father. PEXH4, a certificate of title of the suit land indicates that it was first registered in the name of the plaintiff's father, and it was probably done under PEXH5. This then implies that the suit land was probably registered in Ezekiel Bunjo Makabugo, as the defendants do assert.

However, there is evidence in the form of photographs in PEXH8 showing that the plaintiff's father and the family occupied the suit land, and this was probably soon after the execution of the alleged sale agreement and PEXH5. On the other hand, there is no evidence that Ezekiel Bunjo Makabugo ever challenged the said occupation of the suit land implying that he was probably a caretaker as the plaintiff asserted.

It is now settled law that grave inconsistencies or contradictions unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected (**See Twinomugisha Alex and 2 Others vs. Uganda, S. C. Criminal Appeal No. 35 of 2002 and Uganda vs. Abdallah Nassur [1982] HCB**).

In these circumstances, I am satisfied by PW1's explanation that the aforesaid inconsistency came about because Ezekiel Bunjo Makabugo was merely a caretaker of the suit land and that he acted in that capacity in executing PEXH5 on behalf of the vendor in PEXH3.

The defendants' Counsel argued that PEXH3 is unsigned by the purchaser, which is true. That notwithstanding, the evidence of a transfer form (PEXH5), the certificate

of title (PEXH4), and occupation (PEXH8) of the suit land by the plaintiff's father and the family is sufficient for the court to infer an interest in the suit land, on the balance of probability.

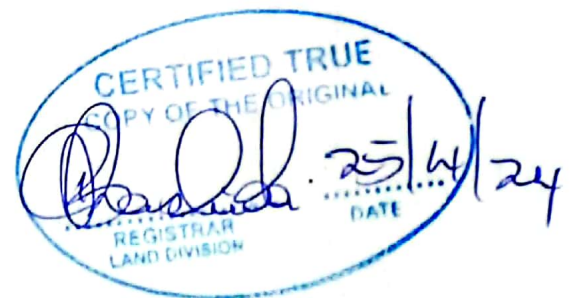
The defendants' Counsel argued, at page 15 of the submissions, that the suit land has never belonged to the estate of the plaintiff's late father and thus did not have any interest in it. That it belongs to the estate of the late Henry Walter Sebadawo which is now administered by the 1st defendant which evidence was not challenged by the plaintiff despite having an opportunity to cross examine the defendants; that that can only lead to an inference that the evidence was accepted and that court ought to act on it as per the case of **U.R.A vs. Stephen Mabosi S.C.C.A. No.26 of 1995** where it was observed that:

Where evidence in chief by a party to proceedings is not challenged by the opposite party on a material or essential point either through cross-examination, or put in issue by the opposite party who had opportunity to do so, it leads to the inference that the evidence is accepted and it is always open to the court seized with the matter to act upon such evidence before it.

Whereas this court agrees with the above observations, it does not agree that the defendants' evidence as to the ownership of the suit land was never challenged either through cross-examination, or put in issue by the plaintiff. The record shows that the 1st defendant was either cross-examined on the said ownership, and that his assertion was in issue throughout the trial.

In conclusion, the court agrees with Counsel for the plaintiff, and finds that the plaintiff's father had an interest in the suit land.

The first issue is answered in the affirmative.



Issue No.2: Whether the 1st defendant's interest in the suit land was acquired fraudulently?

Counsel for the parties submitted on the relevant law and principles applicable to allegations involving fraudulent acquisition of certificates of title. In particular, they cited **Fredrick J.K. Zaabwe vs Orient Bank Ltd and 5 Others SCCA No. 4 of 2005**, where the Supreme Court defined fraud as an intentional perversion of truth to induce another in reliance upon it to part with some valuable thing belonging to him or her, or to surrender a legal right; or a false representation of a matter of fact, whether by words or by conduct intended to deceive another so that he or she acts upon it to his or her legal injury. They also cited **Kampala Bottlers Ltd vs Domanico Brothers SCCA 22 of 1992**, where it was established that fraud must be attributed to the transferee, by showing that he or she is guilty of some fraudulent act (actual notice), or must have known of such act by somebody else and taken advantage of such (imputed notice), or ought to have known the existence of competing interest in the suit land but chose to avoid discovering it (constructive notice); and that the standard of proof of facts involving fraud is heavier than one of balance of probabilities generally applied in civil cases though not so heavy as to require proof beyond reasonable doubt.

In this case, the evidence shows that the 1st defendant's father was a transferee of the suit land having allegedly acquired it from the administrators of the estate of the late Ezekiel Bunjo. Since fraud must be imputed on a transferee, the evidence of the plaintiff must demonstrate fraud on the part of the 1st defendant's father who is now represented by the 1st defendant.

The plaintiff's evidence shows that he and his father's family occupied the suit land since the early 1970s until 1990 when the 1st defendant's father issued them a notice to vacate. That their occupation of the suit land involved carrying out agriculture,

establishment of an orphanage, and an institute called Genesis Institute of Rural Development which operated thereon until 1999. PEXH8 are photographs that substantiate the said occupation.

It suffices to note that the plaintiff's evidence was not discredited by the defendants, hence rendering it worthy to believe.

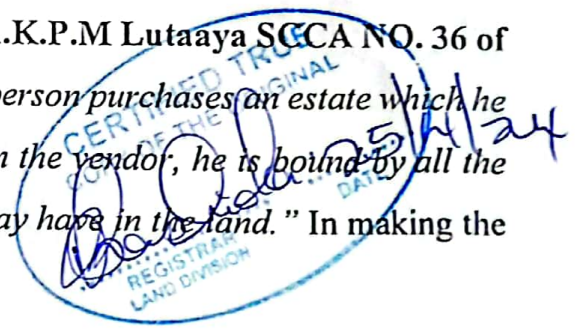
On the other hand, the evidence also shows that the 1st defendant's father became registered as proprietor of the suit land on the 24th of July, 1984, according to DW1.

Given the above observations, the court finds that the plaintiff and his father's family were in occupation of the suit land when the 1st defendant's father became its registered proprietor. For this cause, the court agrees with the plaintiff's Counsel.

It is a settled proposition of law that *"lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations; not only of the land but of the sellers before purchase."* (Sir John Bageire vs. Ausi Matovu CACA No.07 of 1996). Accordingly, purchasers of land are expected to take reasonable care to ascertain not only that there is land available for sale but also that the alleged seller has the requisite power to transfer ownership in the said land to them.

In light of the above finding, it is plain that the 1st defendant's father never conducted a physical search of the suit land before purportedly purchasing it. Had he done so, it would have ascertained that the land was encumbered by the plaintiff father's interest.

In Uganda Posts & Telecommunications vs. A.K.P.M Lutaaya SCCA NO. 36 of 1995, the Supreme Court observed that *"if a person purchases an estate which he knows to be in occupation of another other than the vendor, he is bound by all the equities which the parties in such occupation may have in the land."* In making the



said observations, the Supreme Court approved the statement by *Lough* borough, L.C. in the case of **Taylor vs. Stibbert [1803–13] All ER 432** to the effect that “*if a vendor is not in possession of the land he is selling, the purchaser must make inquiries of the person in possession or otherwise the property purchased will be subject to that person’s right*”.

In this case, it is highly probable that the alleged vendors of the suit land were not in physical occupation of the said land, a fact which was sufficient to require the 1st defendant’s father to make inquiries from the persons in possession.

In the decision of **Williamson vs. Brown 15 N.Y.1857**, the court rightly stated that:

...where a purchaser has knowledge of any fact, sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry, and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim, to be considered as a bona fide purchaser.

In addition to that, the High Court in the decision of **Jimmy Tumwine vs. Frank Nkurunziza & Anor HCCS No. 479 of 2002**, held that having knowledge of any such fact, and not making any inquiry from the person in occupation of the land constitutes constructive notice of the interest of that person.

In this case, it is believable that the 1st defendant’s father had constructive notice of the plaintiff father’s interest in the suit land.

Furthermore, in the case of **Omar Salim Mukasa vs. Hajji Mohammed & Anor CACA No.114 of 2003**, the Court of Appeal held that having constructive notice “*is deemed to constitute fraud.*”

In conclusion, the court agrees with Counsel for the plaintiff, and finds that the 1st defendant's interest in the suit land was acquired fraudulently.

The first issue is found in the affirmative therefore.

Issue No.3: Whether the 2nd and 3rd defendants are bonafide purchasers for value without notice as regards the subdivided plots?

It is a fact that the suit land was subdivided into several plots, say; Plot 171, 172, 930, 931, 933, 934, 935, 1053, 1054, 1302, 1312, 1313.

The record shows that plot 1054 is registered in the 1st defendant's name; plots 171, 930, 931, 934, 1053 are registered in the 2nd defendant's name; plot 933 is registered in the name of Kalinga Maria having acquired from the 2nd defendant in 2019; and plot 172 is registered in the 3rd defendant's name.

Further, a copy of the area land schedule adduced by the 3rd defendant and admitted as DEX10 shows that plots 1302 and 1312 were registered in the 2nd defendant's name in 2014 but the current status of registration is unknown. The exhibit also shows that plots 935, 1054, and 1313 were residues.

The court shall proceed on this issue only with respect of plots of land registered in the 2nd and 3rd defendants' names. Thus, since Kalinga Maria is clearly not a party to the suit, the court shall not adjudicate over the ownership of plot 933.

It shall now proceed.

Both Counsel cited the case of **Hannington Njuki vs. George William Musisi [1999] KALR** where it was properly observed that for a defence of a bonafide purchaser for value to succeed, it must be proved:

- a) That the defendant holds a duplicate certificate of title;*
- b) That the purchaser purchased the property valuable consideration;*

In conclusion, the court agrees with Counsel for the plaintiff, and finds that the 1st defendant's interest in the suit land was acquired fraudulently.

The first issue is found in the affirmative therefore.

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- a) *That the defendant holds a duplicate certificate of title;*
- b) *That the purchaser purchased the property valuable consideration;*

- c) That the defendant bought in good faith without notice of any such defect in title; and*
- d) That the vendor was the former registered owner of the property.*

The burden of proving all the above conditions falls on the 2nd and 3rd defendants respectively, as the plaintiff's Counsel rightly submitted while relying on *Konda Zimula vs Byarugaba & Anor HCCS No.66 of 2007*.

There appears to be an agreement between the parties with regard to the 2nd and 3rd defendants' qualification under (a), (b), and (d) above and the evidence supports that agreement. Accordingly, the court finds that the said conditions have been proved.

The disagreement is with respect to (c); and the court shall first address the 2nd defendant and then the 3rd defendant.

2nd Defendant

The 2nd defendant acquired and became registered on the respective plots of the disputed land between 28th January, 2009 and 2013. During cross-examination, DW2 revealed that he dealt only with the vendor; that the agreements were made at Kawempe where the vendor (1st defendant) resides; and that he never got a search report. During re-examination, he stated that he was buying titles and not a kibanja; that he relied on the vendor and his documents, and thus did not need neighbours.

DW3 in many instances corroborated DW2's testimony during cross examination. He testified that DW2 asked him to escort him while going to buy the disputed land; that sale agreements were executed from wherever they meant the vendor say, Kawempe, Bwaise, Kawanda; that they did not go to lands (registry); that on land there were people quarrying stones; that the chairman of the area was informed later after the transactions; that those who were working on the land by then were

unknown to him; that they went ahead to buy even when they knew there is a conflict (on the disputed land).

Above evidence constitutes the 2nd defendant's admissions of lack of due diligence when purchasing the disputed land. It suggests that he was aware of facts, sufficient to put him on inquiry as to the existence of some right in conflict with that he was about to purchase but was nonetheless indifferent.

The plaintiff's evidence is that the 2nd defendant is a born of the area where the suit land is located, and that he was fully aware that it belonged to his father. It is not unreasonable to believe that evidence in light of the 2nd defendant's conduct as revealed by his own evidence.

Counsel for the plaintiff submitted about a good practice in land acquisitions by relying on a persuasive authority of **Nyakaha Magret & Others vs. Tumwine Joy HCCA No.002 of 2010**, where my brother Justice Masalu Musene (R.I.P) emphasises that the presence of neighbors in land transactions is a crucial practice which purchasers of land ought to observe.

The 2nd defendant obviously ignored that good practice, having testified that he did not neighbours notwithstanding their existence.

Basing on the observations **Williamson vs. Brown (supra)** as quoted above, this court respectfully disagrees with the 2nd defendants that his client acquired the disputed land in good faith and without notice of any defect in title.

There is further evidence that the 2nd defendant transferred plot 933 of the disputed land into Kalinga Maria during the subsistence of the suit despite existence of a temporary injunction, as Counsel for the plaintiff noted. This further demonstrates the 2nd defendant's lack of good faith.



In conclusion, the court agrees with the plaintiff's Counsel that the 2nd defendant is not a bonafide purchaser for value without notice.

3rd Defendant

In his evidence-in-chief, the 3rd defendant (DW4) made statements implying due diligence. He testified that he bought the disputed land in 2005 from one Enmeri Nakiyimba who inherited it from her brother Henry Walter Sebaddawo whose estate was administered by the 1st defendant. Before purchase, he made a site visit to the disputed land with the said vendor and his surveyor. On the site, the vendor showed him mark stones of the land and the surveyor opened the boundaries and confirmed them. Later on the 16th of April, 2005, he and the surveyor returned to the disputed plot and made inquiries in the absence of the vendor. That they inquired from neighbors who confirmed that the land belonged to the 1st defendant's father. At that time, the land was entirely free of occupation or any other activity. They thereafter proceeded to the 1st defendant's workplace and confirmed that he was the administrator of the concerned estate and that Enmeri Nakiyimba had an interest in the disputed plot. Further while there, he also looked at the certificate of title and confirmed that its particulars matched with a search certificate he had earlier obtained from Bukalasa Land Registry after which he agreed to buy the said land hence execution of a sale agreement.

However, during cross-examination, DW4 was inconsistent and contradictory. He stated that "*I did not know them, I don't know about boundaries and neighbors,*" a departure from his earlier testimony that he made a physical inspection of the disputed land; that he was shown its boundaries; and that he confirmed from the neighbors that it belonged to the 1st defendant's father.

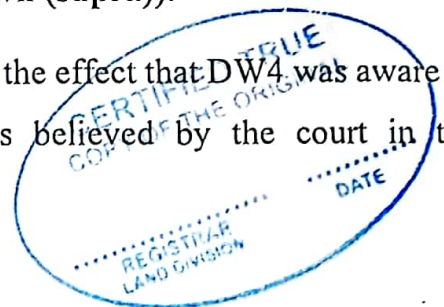
At some point, DW4 referred to the disputed land as found in plot 132 but his exhibits show he bought plot 172. He also stated that he made the sale agreement with the 1st defendant at his home, a departure from his earlier statement that he bought the land from Enmeri Nakiyimba.

Further, DW4 also appeared to admit to not conducting due diligence before purchasing the disputed land by stating that *"for me just got a title—I don't know anything else done in the process"*. The other crucial fact is that his documentary and oral evidence show that he bought the disputed land in 2005, a departure from his pleading which shows that he bought the said land in 2008.

The inconsistency and contradiction in DW4's evidence go to the root of his case. This is because they are about the question of whether he had good faith in purchasing the disputed land, which good faith involves conducting proper due diligence. They are, therefore, grave; and unfortunately devoid of explanation. For that cause, the court rejects DW4's evidence as untruthful (*Sec. Twinomugisha Alex and 2 Others vs. Uganda, supra, and Uganda vs. Abdallah Nassur, supra, on inconsistencies and contradictions*).

On the other hand, the court already noted that the plaintiff and his father's family were in occupation of the suit land. Thus, the vendor of the disputed plot was not in occupation thereof, and DW4 admitted to the truth of this fact during cross examination. For that cause, had he carried out the requisite due diligence from the persons in occupation or neighbors of the disputed land, he would have discovered that the disputed land was encumbered (*Uganda Posts & Telecommunications vs. A.K.P.M Lutaaya (supra); Williamson vs. Brown (supra)*).

It is needless to refer to the plaintiff's evidence to the effect that DW4 was aware of the status of the suit land, which evidence is believed by the court in the



circumstances, notwithstanding DW4's denial of knowledge of the plaintiff until 2017 or 2018 upon being sued.

It is therefore the court's findings that the 3rd defendant had knowledge of a fact sufficient to put him on inquiry as to the existence of the plaintiff's interest but was indifferent to it. For that cause, it respectfully further disagrees with the defendant's Counsel that he acquired the disputed land in good faith and without notice of any defect in title.

In conclusion, the court agrees with the plaintiff's Counsel and finds that the 3rd defendant is not a bonafide purchaser for value without notice as well. Accordingly, the third issue is found in the negative.

Issue No.4: Whether the removal of the caveat lodged by the late Erunayo Mwanje vide Instrument No.BUK 49215 of 1991 was lawful?

I note that the plaintiff filed an original trial bundle and supplementary thereto to which he attached a copy of a certificate showing a caveat allegedly lodged by his father on the suit land. However, he subsequently filed an amended trial bundle, and it is the documents on the amended trial bundle which were admitted by court.

In the said amended trial bundle, the documents in the said supplementary trial bundle were omitted, implying that his alleged evidence of a caveat was not admitted.

Consequently, the court finds that no evidence was led by the plaintiff that his late father ever lodged a caveat on the suit land. The court agrees with Counsel for the defendants concerning this issue, and accordingly finds it in the negative.

Issue No.5: What remedies are available to the parties?

Considering the findings in the above issues, the court hereby dismisses the 1st defendant's counterclaim against the plaintiff without costs; and enters judgment for the plaintiff in the terms similar to those prayed for in the amended plaint to wit:

1. A declaratory order that the plaintiff is the lawful owner of the suit land formerly known as East Buganda Block 30 Plot 21 land at Mpande Estate, Kalule Bulemezi. This order does not affect the ownership of land formerly constituting the suit land and now described as Block 30 Plot 933 land at Mpande Estate, Kalule Bulemezi in the name of Kalinga Maria a non-party to the suit/judgment.
2. A declaratory order that the 1st, 2nd, and 3rd defendants acquired land, constituting land formerly known as East Buganda Block 30 Plot 21 land at Mpande Estate Kalule Bulemezi, fraudulently.
3. An order for cancellation and setting aside any entries changing ownership and subdivision made on land formerly known as East Buganda Block 30 Plot 21 land at Mpande Estate, Kalule Bulemezi in favour of the defendants. This order does not affect the ownership of land now described as Block 30 Plot 933 land at Mpande Estate, Kalule Bulemezi in the name of Kalinga Maria.
4. An order for recovery of land formerly known as East Buganda Block 30 Plot 21 land at Mpande Estate, Kalule Bulemezi, and registration of the same in the name of the plaintiff. This order does not affect the ownership of land now described as Block 30 Plot 933 land at Mpande Estate, Kalule Bulemezi in the name of Kalinga Maria.
5. An order of eviction against the 1st, 2nd, and 3rd defendants from the land in (4) above.

6. A permanent injunction restraining the defendants by themselves or through their agents or employees from further dealing with the aforesaid land by sale, subdivision, transferring or otherwise.
7. An order that the 1st, 2nd, and 3rd defendants, jointly and severally, pay Ugx. 30,000,000 only (Thirty Million Shillings Only) as general damages to the plaintiff.
8. An order that the 1st, 2nd, and 3rd defendants, jointly and severally, pay the costs of the suit.

It is so order

Delivered at Kampala this 25th Day of April 2024


HON. JUDGE 
The stamp is circular with the text "CERTIFIED TRUE COPY OF THE ORIGINAL" around the top and "REGISTRAR LAND DIVISION" around the bottom. The date "25/4/24" is handwritten inside the stamp.

In the presence of:

1. Kyeyune Brian for plaintiff
2. Kicumbo Christopher for defense
3. Kirabo Joram Mwanje
4. Cebunya Sam