

THE REPUBLIC OF UGANDA

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

CONSOLIDATED HIGH COURT CIVIL SUITS NO. 54 OF 2011 & NO.212
OF 2009

1.SENKUBUGE DENIS
2.NAKAGIRI CHRISTINE
3.MUSOKE BLASIO KIRYOWA
4.SHELL (VIVO ENERGIES (U) LTD :::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1.HAJJATI MADINA NASSALI
2.COMMISSIONER LAND REGISTRATION
3.JOSEPH KIYIMBA
4.GEOFREY NANGUMYA
5.WASSWA LUBULWA YOFESI :::::::::::::::::::::::::::::: DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] In the consolidated suits, the 1st to 3rd **Plaintiffs** as administrators and beneficiaries of the estate of the late **Lauben Mukasa** vide **H.C Family Division A.C No.1452 of 2008** (the name of the 1st plaintiff was wrongly spelt as "Senkubuge Devis" but was later corrected by court to read as **Senkubuge Denis**) brought this suit inter alia, for cancellation of titles of land (formerly) comprised in **Kibuga Block 10,Plot 88 situate at Nakulabye-Bukesa**, a declaration that the 1st & 3rd defendants' purchase of the suit land was illegal, delivery up to the 1st - 3rd Plaintiffs of the certificate of title to the remaining suit land, a declaration that the original suit land belongs to the estate of the late **Lauben Mukasa** and a declaration that all subsequent transfers and dealings in the suit land were illegal.
- [2] As regards the 4th Plaintiff, **Shell** (Vivo Energies (U) Ltd), it brought this suit for inter alia, a declaration that its lease interest comprised in **LRV 2616, Folio 7** which it

derives from Mailo land comprised in **Kibuga Block 10, Plot 1068** or formerly from the said land, is genuine and lawful and should be recognised and noted in any reversionary title on which its fuel station described as **Shell Bukesa Road** located on **LRV 2616 Folio 7, Plot 1068** stands, or that if the said Mailo has been changed by way of Mutation and or in any other way, then the Plaintiff's (Shell (U) Ltd) lease interest and its title reference **LRV 2616 Folio 7** should be noted on any new title or titles created in place of the Mailo title hitherto known as **Kibuga Block 10, plot 1068**. Lastly, the 4th plaintiff sought an order directing the 2nd defendant, Commissioner Land Registration, to note the Plaintiff's (Shell (U) Ltd) lease interest on the 1st Defendant's title and all titles that may have emanated from **Kibuga Block 10, Plot 1068**.

[3] On the other hand, the 1st Defendant denied the Plaintiffs' claims and counter claimed against the 4th Plaintiff/Counter defendant as follows:

- a) That the 4th Plaintiff/Counter defendant's purported lease was given to a one **Iqbal Esmail** who had been illegally registered onto the title and property, for **Iqbal Esmail** had never purchased land comprised in **Kibuga Block 10, Plot 1068** as claimed.
- b) The 1st Defendant as counter claimant sought inter alia, the following orders:
 - (i) A declaration that the 4th Plaintiff's, (**Shell (U) Ltd**) alleged leasehold interest in the suit property was procured through fraud on her part.
 - (ii) A declaration that the 1st Defendant/Counter claimant is the rightful owner of the suit property comprised in **Plot 1396 Kibuga, Block 10**.
 - (iii) An eviction order against the 4th Plaintiff, **Shell (U) Ltd/Counter defendant** and an order for permanent injunction restraining it from interfering in any way with the 1st Defendant's occupation of the suit property.

[4] As against the 1st - 3rd Plaintiffs, the 1st Defendant averred and contended that at the time of the death of the late **Lauben Mukasa** and when the 1st - 3rd Plaintiffs procured letters of Administration to his estate in 2008, **Kibuga Block 10, Plot 88** was **not part of the estate of the late Lauben Mukasa** as the same had already been by **certificate of succession dated 29th of November 1990**, given to **Keresipo Kiryowa**, son and heir to the late **Lauben Mukasa**.

[5] That before his demise, the late **Keresipo Kiryowa** subdivided **Kibuga Block 10, Plot 88** into **Plots 1067 and 1068** and registered **Plot 1068** into his names as the registered proprietor on the 29th day of 1991 and when **Robina Nakkungu** (daughter) and **Denis Senkubuge** (Grandson/heir became administrators of the late **Keresipo Kiryowa's** estate by virtue of letters of administration vide **H.C.A.C 1695 of 2006**, got themselves registered on **Block 10, Plot 1068** which they later, with the consent

of all the beneficiaries sold to the 1st Defendant and duly executed transfer forms in her favour at a consideration of **Ugx 644,900,000/=**. The 1st Defendant was then accordingly registered onto **Plot 1068** as the registered proprietor who then went ahead and caused survey and subdivision of **Plot 1068 into plots 1395,1396,1397** and the residue **plot 1398**. The 1st Defendant later sold **plot 1395 alienated from plot 1068** to the 3rd Defendant.

- [6] As regards the claims that the 1st Plaintiff, **Senkubuge Denis** and his co. Administrator, **Robina Nakkungu**, sold **Block 10, Plot 88** to a one **Faustin Ntambara**, the 1st Defendant contended that the said **Block 10, Plot 88** was no longer in existence as the same had already been subdivided by **Keresipo Kiryowa** in 1991 to create **Plots 1067 and 1068**.
- [7] The 1st Defendant concluded her pleadings by averring and contending that she acquired the suit property by way of purchase for consideration from the 1st Plaintiff (**Senkubuge Denis**) and **Nakkungu Robina** as administrators of the estate of the late **Keresipo Kiryowa** with consent of the beneficiaries. That she lawfully and bonafidely acquired the suit land and was not privy to any alleged fraud.
- [8] The 3rd Defendant on his part also denied the Plaintiffs' claims and contended that in the **first** instance, the 1st - 3rd Plaintiffs' suit is time barred and should be struck out with costs. That the pleadings too do not disclose a cause of action against him. **Secondly**, that he purchased the suit land comprised and Known as **Kibuga Block 10, Plot 1395 at Nakulabye** from the 1st Defendant at a total consideration of **Ugx 682,000,000/=** without any knowledge of fraud by anyone. That he conducted a search at the land registry prior to the purchase of the said land and confirmed that the land was indeed registered in the names of the 1st Defendant and had no other 3rd party interest save for the Mortgage in favour of Stanbic Bank by the 1st Defendant which the 3rd Defendant partly settled by paying part of the purchase price monies. **Lastly**, that upon purchase of the said **Plot 1395**, the 3rd Defendant has developed it without any challenge from the Plaintiffs and now possesses a multi-million entertainment centre thereon.
- [9] The 4th Defendant on his part denied the Plaintiffs' claims and averred and contended that on 1/6/2008, he received instructions from **Nakkungu Robina** who was a joint administrator with the 1st Plaintiff on the estate of the late **Keresipo Kiryowa** vide letters of Administration, **H.C.A.C No.1695/2006** (Family Division) and together with all the beneficiaries of the estate of the late **Keresipo Kiryowa** of which the Grant related, that he represents them and offer them other legal services in a transaction of conveyancing of land comprised in **Block 10, Plot 1068 land at Nakulabye** registered in the names of the 1st Plaintiff (**Senkubuge Denis**), and

Nakkungu Robina as administrators of the estate of the late **Keresipo Kiryowa**. That in pursuant to the instructions, the 4th Defendant represented the 1st Plaintiff and **Nakkungu Robina** in the various memoranda of understanding and agreements of sale with the 1st Defendant for the suit land comprised in **Block 10, Plot 1067 and 1068** (subdivided from Block 10, Plot 88).

- [10] The 4th Defendant finally contended that he had full instructions to act on behalf of the estate of the late **Keresipo Kiryowa** in as far as sale of the suit land was concerned but deny to have transferred the land title on the suit land to the 1st Defendant. That the 1st Plaintiff ratified the sale executed by **Nakkungu Robina** and other beneficiaries to the 1st Defendant upon the execution of the final agreement dated 6/11/2009.
- [11] Lastly, the 5th Defendant on his part averred and contended **first**, that the Plaintiffs have no valid, legitimate and or lawful claim against him in respect of land formerly comprised in **Kibuga Block 10, Plot 88** for it is barred by limitation and discloses no cause of action on ground that the land is non-existent. That on or about 26/11/1990, the late **Keresipo Kiryowa** formally appointed the 5th Defendant to process for him the registration of land then comprised in **Kibuga Block 10, plot 88 situate at Nakulabye** into his names which was part of his inheritance from his father, the late **Lauben Mukasa**. That he formally agreed to pay for the services of the 5th Defendant with 40 decimals of land.
- [12] That the late **Keresipo Kiryowa** together with the 5th Defendant obtained a succession certificate from the office of the Administrator General for **Kibuga Block 10, Plot 88** in favour of **Keresipo Kiryowa** as his inheritance of the land from his late father, **Lauben Mukasa**. The land was eventually registered in the names of **Keresipo Kiryowa**. Subsequently, **Keresipo Kiryowa** subdivided **Kiboga Block 10, Plot 88** into plots 1067 & 1068 and transferred plot 1067 measuring approximately 0.35 acres to the 5th Defendant for his services.
- [13] That on or about 20th July 1996, **Keresipo Kiryowa** granted powers of Attorney to the 5th Defendant to negotiate and conclude a sale of his land (plot 1068). The late **Keresipo Kiryowa** through the 5th Defendant eventually sold the land to a one **Iqbal Esmail**. Further, that upon acquisition of **Kiboga Block 10, Plot 1067** in 1991, the 5th Defendant disposed of the same in 2013 (after a period of over 20 years) when nobody had ever challenged his title. That therefore, the suit filed after over 20 years later against him is frivolous, vexatious, bad in law and barred by limitation.



Counsel legal representation

- [14] The 1st -3rd Plaintiffs were presented by a team of advocates; **Luzige Joseph, Alaari Muheirwe, Teddy Nangobya, Daniel Byaruhanga, Tumuhaise Ferdinand and Jet Tumwebaze** while the 4th Plaintiff was represented by **James Zeere**. On the other hand, the 1st Defendant was represented by Advocates; **Joseph Kyazze, Jackline Natukunda, Joanita Akello and Musa Kabega**. The 2nd Defendant was represented by **Sekabira Moses** of the office of the Commissioner Land Registration. The 3rd Defendant was represented by **Isaac Walukagga**. The 4th Defendant was represented by **Ewalu Ronald** and the 5th Defendant by **Ambrose Tebyasa**. All the counsel involved filed written submissions for the consideration of this court in the determination of this suit.
- [15] In the Joint Schedule Memorandum filed on 22/2/2021, the parties and their respective counsel had agreed upon facts and formulated issues for determination as follows:

Agreed upon facts included the following:

1. The suit land formerly comprised in **Kibuga Block 10, Plot 88** was subdivided to form **Block 10, Plots 1067 & 1068** and subsequently, **Block 10, Plot 1068** was subdivided to create **Plots 1395, 1396, 1397 and 1398**.
2. The 1st - 3rd **Plaintiffs** applied and were granted letters of administration in respect of the estate of **Lauben Mukasa** on the 15th/9/2008.
3. The 3rd Defendant is the registered proprietor and occupant of **Block 10, plot 1395** where he has developed an entertainment centre.

Issues for determination

1. Whether the suit land was part of the estate of the late **Lauben Mukasa** at the time the 1st - 3rd plaintiffs obtained letters of Administration for the estate of the late **Lauben Mukasa**.
2. Whether there was a valid sale and transfer of the suit land (formerly comprised in **Block 10, plot 1068** to the 1st Defendant.
3. Whether the sale and transfer of plot 1395 to the 3rd Defendant by the 1st Defendant was unlawful.
4. Whether the 3rd Defendant is a bonafide purchaser for value without notice.
5. Whether the 4th Plaintiff lawfully acquired a sub-lease from UPET as a bonafide purchaser for value without notice.
6. Whether the rectification of the register by the 2nd defendant was justified.

7. Whether the 4th Defendant was duly instructed by the 1st Plaintiff and Robina Nakkungu (being the Administrators of the estate of the late Keresipo Kiryowa) to deal with the suit portion of land and if so, whether he diligently and professionally executed the instructions lawfully.
8. Whether the 1st to 3rd Plaintiffs' action against the Defendants in respect of land formerly comprised in Kibuga Block 10, plot 88 is bad in law and barred by limitation.
9. Whether the 1st to 3rd Plaintiffs have a cause of action against the 5th Defendant.
10. What remedies are available to the parties.

The burden and standard of proof

- [16] Under **Ss. 101-103 of the Evidence Act**, the provisions are generally to the effect that whoever asserts a fact must prove it. Whoever wants court to believe in the existence of a given set of facts, must have the burden to prove their existence. The onus is on a party to prove a positive assertion and not a negative assertion. He who affirms the affirmative of an issue in dispute has the burden to prove it and the standard of proof in civil cases is on the balance of probabilities, See **John Bwiza Vs Patrick Yowasi Kadema, CACA (U) No. 35 of 2011 and Jovelyn Barugahare Vs A.G, SCCA No.28/1993.**
- [17] In the instant case, the burden of proof is on the Plaintiffs and the 1st Defendant/Counter claimant to prove their case on the balance of probabilities. For the 1st - 3rd Plaintiffs and the 1st Defendant/Counter claimant to succeed in their claims, the burden lies on them to adduce such evidence as would satisfy court that they were unlawfully deprived of the estate suit land by the illegal and fraudulent actions of the Defendants. For the 4th Plaintiff, it has to prove that it acquired a lawful interest worth noting on **Kibuga Block 10, Plot 88** or any title derived from it.

Background of the suit

- [18] A one **Lauben Mukasa** was the registered proprietor of the suit land originally described as **M.R Vol.199 Folio 7** upon which in 1955, a one **Merakizadeki Katwe** acquired a lease comprised in **LRV 349 Folio 10, Plot 88** land at Namirembe (see the details of Merakizadeki's sub-lease -P.Exh.33).
- [19] In 1962, **Merakizadeki** granted a sublease to **Hajji Musa Kasule** for a period of 41 years starting on 1/8/1962 (P.Exh.33) who also in 1963 subleased it to **Mobil Oil E. Africa** (P.Exh.34) that later changed its name to **Uganda Petroleum Company Ltd**

(UPET). However, upon the death of **Lauben Mukasa** in 1976, the deceased's heir and son, a one **Keresipo Kiryowa**, as per the deceased's WILL (D.Exh.31(a) & (b), its English translation) inherited the suit land and on 26/11/1990 the said **Keresipo Kiryowa** appointed **Wasswa Lubulwa**, the 5th Defendant to on his behalf process and transfer the suit land into his names and for his services, the 5th Defendant to be given 40 decimals (0.40 acres) out of the suit land, **Kibuga Block 10, Plot 88** as per the undertaking (D.Exh.32(a) & (b)).

- [20] In 1990, the said **Keresipo Kiryowa** was issued a *Certificate of succession* from the office of the Administrator General for the suit land **Kibuga Block 10, Plot 88** (D.Exhs. 12(a) & (b)) registered in the names of his late father, **Lauben Mukasa** and consequently, on 29/1/1991, the suit land was registered in the names of **Keresipo Kiryowa** (D.Exh.5) on the basis of the said certificate of succession.
- [21] Pursuant to the undertaking between **Keresipo Kiryowa** and the 5th Defendant (D.Exh.32), **Keresipo Kiryowa**, subdivided the suit land, **Kibuga Block 10, Plot 88** into **plots 1067** and **1068**. **Plot 1067** measuring approximately 0.35 acres was transferred to the 5th Defendant for his services of processing the transfer of the suit land into **Keresipo Kiryowa's** names (P.Exh.2) and **Plot 1068** measuring approximately 1.05 acres remained in the names of **Keresipo Kiryowa**.
- [22] On 20/7/1996, **Keresipo Kiryowa** granted the 5th Defendant powers of Attorney (D.Exh.36) to enable him deal in his land, the suit portion of land, **Plot 1068 Block 10 measuring 1.05 acres** and on 14th/2/1997, **Keresipo Kiryowa** through the 5th Defendant as his Attorney sold the land to **Iqbal Esmail** at a consideration of **Ugx 30,000,000/=** (D.Exh.37). Upon the sale, **Block 10, Plot 1068** was transferred into the names of the buyer, **Iqbal Esmail** who accordingly was registered thereon as the registered proprietor on 11th April, 1997, (P.Exh.36).
- [23] On 23/3/1998, **UPET** negotiated a lease agreement with **Iqbal Esmail**, the registered proprietor of **Block 10, Plot 1068** and was granted a lease for 99 years commencing from 23/3/1998 and **UPET** got registered thereon via the original **Kibuga Block 10, Plot 88, LRV 2616 Folio 9** (P.Exh.28). The 4th plaintiff succeeded **UPET** on the suit land on the 3/4/1998, (P.Exh.27).
- [24] On 17/1/2007, the 1st Plaintiff and his Auntie, **Robina Nakkungu**, daughter of the late **Keresipo Kiryowa** allegedly vide **H.C. A.C No.1695 of 2006** obtained letters of administration of the estate of the late **Keresipo Kiryowa** (D.Exh.1). By virtue of the grant, the Administrators, on the 12th March 2009, purportedly got registered on the same title for **Block 10, Plot 1068** that was initially issued to **Keresipo Kiryowa** and transferred to **Iqbal Esmail**. Subsequently, **Robina Nakkungu**, one of the purported

administrators of the estate of the late **Keresipo Kiryowa** sold and transferred the land (**Plot 1068**) to the 1st Defendant. Upon purchase, the 1st Defendant got registered on the title on 17/6/2009 (P.Exh.3).

- [25] Upon being registered on the portion of the suit land, **Block 10, Plot 1068**, the 1st Defendant further subdivided the land into **Plots 1395, 1396, 1397 and 1398**. Later, the 1st Defendant sold and transferred **Plot 1395** to the 3rd Defendant, its current registered proprietor (P.Exh.7).
- [26] As can be noted from the above, the certificate of title for **Block 10, Plot 1068 measuring 1.05 acres** transferred and issued by the 2nd Defendant to the 1st Plaintiff, **Senkubuge Denis and Robina Nakkungu** as administrators of the estate of the late **Kiryowa Keresipo** on 12/3/2007, its issuance was during the existence and subsisting title of another certificate of title for the same land issued on 11/4/1997 to **Iqbal Esmail**. It follows therefore, by 12/3/2007 when the 1st Plaintiff and **Robina Nakkungu** were registered on **Block 10, Plot 1068**, there were 2 titles referring to the same land but in different names of the registered proprietors.
- [27] In the meantime, on 22/4/2008, though the 1st Plaintiff, **Senkubuge Denis and Robina Nakkungu** [purported] as administrators of the estate of the late **Keresipo Kiryowa** had on 12/3/2007 been registered on the suit portion of the suit land, **Block 10, Plot 1068** (alienated from Block 10, Plot 88) as per **P.Exh.3**, they entered into negotiations with and sold the hitherto none existing original **Block 10, Plot 88** to a one **Faustine K.Ntambara** at a consideration of **Ugx 550,000,000/=** and acknowledged receipt of **Ugx 81,000,000/=** upon execution of the agreement (P.Exh.4).
- [28] In a turn of events, on 20/5/2008, **Robina Nakkungu** negotiated and entered into a memorandum of understanding with the 1st Defendant in regard to the same **Block 10, Plot 1068** (P.Exh.6) on which she is co-registered with the 1st Plaintiff as administrators of the estate of **Keresipo Kiryowa** and eventually, on 16/11/2009, she sold it to the 1st Defendant (P.Exh.5). The 1st Plaintiff though indicated as a party to the sale, he did not endorse the sale agreement.
- [29] It is against the foregoing background as discerned from the pleadings of the parties and joint schedule notes that the 1st-3rd Plaintiffs as administrators and beneficiaries of the estate of the late **Lauben Mukasa** filed the instant suit, that they have been lawfully deprived of the land and therefore seek inter alia, for cancellation of the titles of land arising from and formerly comprised in **Kibuga Block 10, Plot 88 land at Nakulabye** and the 4th Plaintiff sued the 1st Defendant for recognition and noting of its the lease interest thereon.

- [30] The 3rd Defendant contended that the 1st - 3rd Plaintiffs' claim is time barred. The 3rd Defendant's contention is in a form of a preliminary objection. It however forms the 8th formulated issue for determination by this court. The parties again raised other preliminary issues to wit; the late filing of submissions, the claim that the suit is *res judicata* and that the 4th Defendant's Written Statement of Defence is defective. This court shall first deal with the preliminary objections.

✓Late filing of submissions

- [31] Counsel for the 1st - 3rd Plaintiffs' complaint is to the effect that whereas the Plaintiffs complied with the court directions and filed their respective submissions on 28/3/2023 as per the court's directions, the defendants filed their respective submissions after the 25/4/2023 when the filing of submissions had closed. Counsel prayed that the submissions filed out of time without leave of court be accordingly struck out.

- [32] I note from the record that indeed, save for the 4th Defendant, the rest of the Defendants filed their respective submissions out of time directed by court. However, under O.51 r.6 CPR, it is provided that;

"Where a limited time has been fixed for doing any act or taking any proceedings under these rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made....."

The above is clear that court can extend the time of doing any act or taking any proceedings.

- [33] In the instant case, the 1st to 3rd Plaintiffs were though served late with submissions by the defendants, they were able to file submissions in rejoinder touching the 1st - 4th defendants' contentions. Submissions being mere guidance to court in the determination of the matter before it, the justice of the case require that the late filed submissions already on record be maintained for supplementary guidance of court in the determination of this suit. As was held in **Dhilon & Anor Vs Dhilon [2006] 1 EA at p.66,**

"The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules...."

- [34] Though it is trite that court timelines must be complied with, in the circumstances of this case which is involving a total of 8 parties in 2 consolidated suits, it is just,

fair, right, equitable and reasonable that time is deemed extended for all the parties' submissions already on record which are therefore accordingly maintained and considered in the determination of this suit. This objection by the 1st - 3rd Plaintiffs regarding late filing of the final submissions by the 1st - 3rd Defendants is accordingly overruled. This court has power to extend the time of filing of the submissions and in this case, do so by adopting the late filed submissions already on record.

Res judicata

- [35] Counsel for the 1st - 3rd Defendants submitted that the Plaintiffs' claim for recovery of **Plot 1395** is *res judicata*. Relying on **S.7 CPA** and the authority of **Kizza Stella & Anor Vs Kalala Namayanja & Ors, HCCS No.151 of 2004**, counsel argued that **Plot 1395** was subdivided from **Block 10, Plot 1068** and that the High court in **Administrative Cause No.1695 of 2006** adjudicated the question of whether **Plot 1068 of Block 10** had been lawfully acquired by the 1st Defendant in the affirmative.
- [36] Counsel for the 1st - 3rd Plaintiffs submitted inter alia on the other hand **first**, that the order under **Administrative Cause No.1695/2006** was issued by a Deputy Registrar of the High Court Family Division who does not have concurrent jurisdiction as a judge of the High court and that judges are therefore not bound by the decisions of registrars in subsequent proceedings. **2ndly**, that the Registrar's decisions cannot be relied on as conclusive or final. Lastly, the purported order does not state who the parties were and what dispute the said order was made under.
- [37] To succeed in alleging *res judicata*, a party must show that **(a)** the matter is identical in both suits, **(b)** that the parties in the suit are substantially the same, **(c)** there is concurrence of jurisdiction of the court, **(d)** that the subject matter is the same, and finally, **(e)** that there is a final determination as far as the previous decision is concerned, **DSV Silo Vs The Owners of Sennar [1985] 2 All ER 104**. The editors of Encyclopedia Britannica: *Res judicata* law, define the doctrine as follows;
"Res judicata (latin: "a thing adjudged"), a thing or matter that has been finally juridically decided on its merits and cannot be litigated again between the same parties".
The above is the essence of **Section 7 CPA**.
- [38] In **Bukondo Yereziya Vs E. Rwananenyere [1979] HCB 96**, it was held that for the doctrine of *res judicata* to apply, there must have been a decision on the merits of the case. Therefore, where the decision was not made on the merits of the suit, the matter cannot be *res judicata*. The burden of proving *res judicata* is on the Defendants.

- [39] In the instant case, the 3rd Defendant who has raised the plea neither pleaded the doctrine nor adduced in evidence, the pleadings in the **Administration Cause No.1695 of 2006** so as to enable this court make a finding that the matter was heard and finally decided on the merits between the parties who at the same time are parties in the present suit. In **Krishna Chandra Vs Nilakantha Mohanty**, AIR 1996 Ori 1, it was held that *Res judicata* is not a pure question of law, but a mixed question of fact and law. It has to be specifically pleaded and the party relying on it should place before court all material particulars which would be sufficient to give a finding whether the particular case is barred by *Res judicata*. The doctrine of *res judicata* therefore cannot be determined without ascertaining what the matters in issue in the previous suit were and what was heard and decided. In the premises, I find that the "Order" of the court alone as presented in this case is not enough.
- [40] 2ndly, the "Order" in **Administrative Cause No.1695 of 2006** (P.Exh.12) was made by the Registrar under his powers provided under **O.50 r.2 CPR** for uncontested matters, and in this case, the matter was between the Administrators of the estate of the late **Keresipo Kiryowa** to wit; **Robina Nakkungu** and **Denis Senkubuge** (1st Plaintiff) on one hand and **Hajjati Madina Nassali** (1st Defendant) on the other hand. It is therefore, the 1st Plaintiff and the 1st Defendant in this case who were parties to the "Order". The present suit has additional 7 parties. I find that the "Order" is neither in "*rem*" nor "*personam*" for it does not arise from any judgment heard and finally decided on merit to either bind the whole world including non-parties or the parties to the administrative cause. The **Order** is dated 5th/11/2010 and therefore appear to had been an administrative order arising out of the concluded **Administration Cause No.1695 of 2006** that was issued on 17/1/2007 (**D.Exh.1**). It was intended to guide the parties to it on the Defendants' interests in the subject matter of the Administration Cause in question and cannot therefore be taken to have determined the rights of the parties in the present suit over the contested **Plot 1395**.
- [41] In conclusion, I find that in addition to the fact that *Res judicata* was not pleaded, the issues for determination in **Administrative Cause No. 1695 of 2006** are found not to have been substantially in issue in the present suit. The 2nd - 4th Plaintiffs and the 2nd - 5th Defendants in the present suits were not parties in the **Administrative Cause No.1695 of 2006** and the Registrar's court findings were therefore inconclusive due to the absence of the non-parties indicated. The present suit **No.54 of 2011** is therefore not *res judicata* because the elements provided under **S.7 CPA** to make a finding thereof were not met. The **Administration Cause No.1695/2006** "Order" does not therefore bar any subsequent suit. This objection is therefore accordingly overruled.

Issue No.8: Whether the 1st to 3rd Plaintiffs' action against the defendants in respect of land formerly comprised in Kibuga Block 10, plot 88 is bad in law and barred by limitation.

- [42] Counsel for the 3rd Defendant submitted that **S.5 of the Limitation Act** limits actions claiming personal estates of the deceased persons to 12 years from the date on which the cause of action arose. That according to the amended plaint, the Plaintiffs contend that the suit property comprised in **Block 10, Plot 88** belonged to the estate of the late **Lauben Mukasa** (P.Exh.2) and was transferred in the names of **Keresipo Kiryowa** on 29/1/1991 who subdivided it into **Plots 1067 and 1068**. Counsel concluded that the cause of action arose on the 29/1/1991 when **Keresipo Kiryowa** transferred the suit property into his names and the instant suit was filed on 2011, after a period of 20 years. Counsel for the 1st - 3rd Plaintiffs does not agree. According to him, in cases of fraud as the instant one, the period of limitation starts to run from when fraud is discovered as per **S.25 of the Limitation Act**. 2ndly, that the period of limitation does not apply in an action brought by beneficiaries under the estate of the deceased where there is fraud as per **S.19 of the Limitation Act**.
- [43] In **F.X.Miramigo Vs A.G [1979] HCB 24**, it was held that the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the plaintiff.
- [44] In the instant case, the Plaintiffs in this suit (**C.S No.54 of 2011**) instituted the suit as both administrators and beneficiaries of the estate of the late **Lauben Mukasa**. They applied and acquired letters of administration for the estate under **H.C.A.C No.1452 of 2008 (Family Division)** on 15/9/2008. Letters of administration empower and give the holders capacity to sue and or defend on their own behalf and on behalf of the beneficiaries in all actions regarding the estate property, **S.191 of the Succession Act**. Under **S.192 of the Act**, the moment letters of administration are granted, the rights of the holder of the grant relate back to the moment after death of the deceased, that is, the plaintiff is entitled to sue for acts committed against the deceased's estate which preceded the grant of letters of Administration; See **Israel Kabwa Vs Martin Banoba, SCCA No.52 of 1995 [1996] 11 KALR 109**.
- [45] It was therefore upon the 1st - 3rd Plaintiffs' acquisition of the letters of Administration, though prior they could sue as beneficiaries on the authority of **Israel Kabwa Vs Banoba (Supra)**, that they obtained capacity to investigate and trace the deceased's properties and or indeed, discover the fraud. Under **S.25 of the Limitation Act**, in fraud cases, the period of limitation cannot start to be computed

until fraud is discovered, see also **David Mukasa Sendawula & Anor Vs Nakalanzi & Anor, HCCS No.423/1991.**

[46] The period of limitation therefore in this case started running as against the 1st - 3rd Plaintiffs on **15/9/2008** when they obtained letters of Administration for the estate of the deceased **Lauben Mukasa** and since the 1st - 3rd Plaintiffs' suit was filed in 2011, I find that it was filed well within time.

[47] However, as regards the argument by counsel for the 1st - 3rd Plaintiffs that under **S.19 of the Limitation Act**, the period of Limitation does not apply to an action brought by beneficiaries under an estate of a deceased person where there is fraud committed by the trustees, I find it as a correct proposition of the law. The Section applies to where a trustee was a party or privy to the fraud or where it is an action to recover trust property or proceeds from the trustees or those claiming under them, see **Saul Kisiribombo Vs Emmy Tumwine & Ors, SCCA No.19 of 2018.** However, in this case, it is the Administrators/trustees who instead instituted the claim for recovery of the suit estate yet none of the defendants has been shown to be either a trustee in breach of trust or claiming under the trustee of the estate of the late **Lauben Mukasa**. The section applies to where the claimants are suing only in the capacity as beneficiaries of a trust and not where they are trustees themselves as in the instant case.

[48] In the premises, I find that the 1st - 3rd Plaintiffs in this case do not fall under the ambit of **S.19 of the Limitation Act** to benefit from unlimited time suit action but as administrators of the estate of the late **Lauben Mukasa**, their cause of action accrued on **15/9/2008** when they obtained the grant. This issue is in the premises found in the negative. The 1st - 3rd Plaintiffs' suit is neither bad in law nor barred by limitation.

Whether the 4th Defendant's Written Statement of Defence is defective

[49] Counsel for the 1st - 3rd Plaintiffs submitted that the 4th Defendant has no valid Written Statement of Defence (WSD) on court record in so far as the defence filed by the 4th Defendant and served on the Plaintiffs was not signed by the Registrar and sealed by court. He relied inter alia, on **O.9 r. 1 CPR** which provides for the mode of filing a defence and on the following authorities; **Kinyara Sugar Ltd Vs Kyomuhendo Pamela, HCMA No.61 of 2020, Grace Nasoolo Vs Francis A. W. Bwengye, HCCS No.427 of 2002.**

[50] The 4th Defendant responded to this preliminary objection arguing that as per **O.9 r.1 CPR**, it is the officials of court who are responsible for putting the court's stamp, signature and date of filing a WSD. That therefore, the act of the Registrar signing and fixing a court seal is a matter of form and not substance. He relied on inter alia, the case of **Nassanga Vs Nanyonga [1977] HCB 318** for the proposition that;

".... the administration of justice should normally require that the substance of all disputes be investigated and decided on their merits, and the errors and lapses should not necessarily debar a litigant from the pursuit of his rights."

[51] However, in **Banco Arabe Espanol Vs B.O.U, SCCA No.8 of 1998** it was held that;

"....this of course does not mean that rules of procedure should be ignored with impunity. Far from that, each case must of course be decided on the basis of its own circumstances."

[52] In the instant case, as rightly submitted by counsel for the 1st - 3rd Plaintiffs, the 4th Defendant's WSD offends the provisions of **O.9 r.1 CPR** which provides for a defendant who files his/her defence to deliver copies of the **WSD** to a proper officer of court who shall then sign and affix an official seal on the documents and after the seal is fixed, to serve a copy of the **WSD** onto the opposite party. In **Grace Nasoolo Vs F.A.W.Bwengye (supra)** Arach Amoko,J (As she then was) held:

"The WSD is not proper before this court. It was not sealed by the Registrar. Order 9 rule 1 as amended is mandatory. The defence must be sealed and signed by the Registrar. It is accordingly struck out and the matter is to be set down for formal proof."

Whereas a plaint must have a summons to file a defence duly signed by an officer of court and sealed accordingly, the same apply to a **WSD** or any other court official document or process issued by court in the proceedings. See also **Protection Security Vs Eastern Builders & Engineers, HCCS No.566 of 2011 (Commercial Division)**, where Madrama J. (as he then was) held that **it is sufficient proof of filing if you produce in evidence the sealed defence specifying the date of filing.**

[53] The 4th Defendant's **WSD** filed on 20/2/2017 does not bear the signature of the registrar nor the seal of this court. I find that it is not proper before this court. It is fatally defective for offending the provisions of **O.9 r.1 CPR**. It is accordingly struck out. The 4th Defendant is taken not to have participated in these proceedings.



Issue No.1: Whether the suit land was part of the estate of the late Lauben Mukasa at the time the 1st - 3rd Plaintiffs obtained letters of administration for the estate of the late Lauben Mukasa

- [54] The above issue relate to how the suit land was transferred from the late **Lauben Mukasa** to **Keresipo Kiryowa**, then to the administrators of the estate of the late **Keresipo Kiryowa** (1st - 3rd plaintiffs) and later, to the estate of the late **Lauben Mukasa** (the 1st to 3rd Plaintiffs) and the role played by the 5th Defendant in dealing with the estate suit land.
- [55] The 1st and 5th Defendants claim that **Kibuga Block 10, Plot 88** ceased to form part of the estate of the late **Lauben Mukasa** on 29/11/1990 because when **Keresipo Kiryowa** obtained a succession certificate from the Administrator General, and used the same to transfer **Block 10, Plot 88** into his names as the beneficiary of **Lauben Mukasa**. The succession certificate was adduced in evidence as **D.Exh.12(b)**. That therefore, at the time the 1st - 3rd Plaintiffs obtained a grant of letters of Administration in respect of the estate of the late **Lauben Mukasa** in 2008 (**P.Exh.1**), the land comprised in **Kibuga Block 10, Plot 88** had since ceased from being part of the estate of the late **Lauben Mukasa**.
- [56] Counsel for the 1st - 3rd Plaintiffs submitted that the transfer of **Plot 88 Block 10** from the late **Lauben Mukasa** to **Keresipo Kiryowa** using the said certificate of succession was illegal on the grounds that the estate of the late **Lauben Mukasa** did not fall or was not an estate to be managed under the **land succession law of 1912** of the kingdom of Buganda. Relying on the authority of **Paulo Kawesa Vs Administrator General & 2 Ors, HCCS No.918 of 1993 [2012] UGHC 109 (19/June/2012)**, counsel argued that the Administrator General was granted powers to issue succession certificates that were originally being issued by the Lukiiko and that under the **Local Administrations (performance of functions) instrument, S.I No.150 of 1967** enacted under the **Local Administrations Act, 18/1967**, the Administrator General could only administer the estate of a person who died before **18th August, 1967** and his estate had not yet been administered by the Lukiiko. That therefore, the Administrator General could not issue a certificate of succession to a person who died after **18th August 1967** as is the case in the instant suit.
- [57] **Paragraph 2 of the Local Administration (performance of functions) Instrument, S.I No.150 of 1967** which grants powers to the Administrator General to issue certificates of succession states as follows;
- "The power vested in the Lukiiko by Section 2 of the Land Succession Law to issue certificates of Succession in respect of the estates administered according to customs of succession in*

the kingdom of Buganda prior to the 18th August, 1967, shall be exercised by the Administrator General."

Then, **S.2 of the Land Succession Law, 1912** stated that no person shall deal with a deceased person's land except upon being issued with a document (succession certificate) from the Lukiiko confirming that he is the proper person to receive the land.

[58] In **Paulo Kawesa Vs Administrator General & 2 Ors, (supra)**, V.F Musoke-Kibuuka J, (RIP) explained the provisions of **S.I No.150 of 1967** as follows;

"....the local Administration (performance of functions) Instrument, 1967, S.I No.150 of 1967....does nothing more than vest power previously exercised by the Buganda Lukiiko under the Buganda Land Succession of 1921 (sic) to issue certificates of succession in respect of estates already administered under customary law.....All estates to which the power to issue certificates of succession under S.I No.150 of 1967 relates to estates which were already administered under customary law before 18th August, 1967."

At page 13 of the judgment, he concluded thus;

"The first defendant [Administrator General], therefore, who was merely exercising powers originally vested in the Lukiiko, could not himself, on his own, widen the scope of that power by cancelling the certificate of succession once he issued it. He also could not issue the various certificates of succession to the second and third defendants and other persons to whom he distributed the 590 acres, which had not been distributed to them before 18th August, 1967. In doing so, he took on power which was never vested in him. He acted ultra vires."

[59] Upon the above authority and the law as provided under **Para.2 of the Local Administrations (performance of functions) Instrument, S.I No.150 of 1967** which granted powers to the Administrator General, I agree with the submissions of counsel for the 1st - 3rd Plaintiffs that the Administrator General's powers only related to issuing *Certificates of succession* to estates already distributed in accordance to the customs of succession in Buganda to the intended beneficiaries before 18th August 1967 (**S.3 of the Land Succession Law 1912**). The Administrator General had no power to issue any certificate of succession with regard to the estate of the deceased who died after **18th August 1967**. The issuance of any such certificate would be null and void and so any subsequent transfer emanating from it.

- [60] In the instant case, the certificate of succession in question issued by the Administrator General was in regard to the estate of **Lauben Mukasa** who died in 1970, the Administrator General therefore had no power to issue such certificate. The *Certificate of succession* issued to **Keresipo Kiryowa (D.Exh.12(b))** in respect of the estate of the late **Lauben Mukasa** and the certificate of title issued on the basis of that certificate of succession are null and void.
- [61] For the above reasons, it follows therefore, that at the time the 1st – 3rd Plaintiffs obtained a grant of letters of Administration in respect of the estate of the late **Lauben Mukasa** i.e on 15th September 2008 (P.Exh.1), the suit land comprised in **Kibuga Block 10, Plot 88** lawfully formed part of the estate of the late **Lauben Mukasa** because the *Certificate of succession* obtained by **Keresipo Kiryowa** in 1990 from the Administrator General could not lawfully be used to transfer or alienate **Block 10, Plot 88** to himself for it was invalid and or illegal. The suit land therefore remained part of the estate of the late **Lauben Mukasa**.
- [62] The 1st issue is in the premises found in the affirmative. The suit land was part of the estate of the late **Lauben Mukasa** at the time the 1st to 3rd Plaintiffs obtained letters of Administration for the estate of the late **Lauben Mukasa**.

Issue No. 9: Whether the 1st – 3rd Plaintiffs have a cause of action against the 5th Defendant.

- [63] As regards the 1st – 3rd Plaintiffs' cause of action as against the 5th Defendant, the Plaintiffs brought this suit as administrators and beneficiaries of the estate of the late **Lauben Mukasa** seeking a declaration that the 5th Defendant fraudulently acquired **Plot 1067** which was subdivided out of **Block 10, Plot 88** of the estate of the late **Lauben Mukasa** and that he fraudulently dealt in acquisition of the impugned *Certificate of succession* at the Administrator General's Office that became the basis of his acquisition of **Plot 1067**.
- [64] In the case of **A.G Vs Oluoch (1972) EA 392**, it was held that the question of whether a plaint discloses a cause of action is determined upon perusal of the plaint and attachments thereto with an assumption that the facts pleaded or implied therein are true. In **Ismail Serugo Vs KCC & Anor Constitutional Appeal No.2 of 1998**, Wambuzi CJ (As he then was) held at p.3 of his judgment that in determining whether a plaint discloses a cause of action under **O.7 r.11** or a reasonable cause of action under **O.6 r. 30 CPR** only the plaint can be perused.
- [65] In the instant case, the 1st – 3rd Plaintiffs are administrators and beneficiaries of the estate of the late **Lauben Mukasa**. Counsel for the 1st Defendant submitted that the

1st Plaintiff has no locus to sue as one of the administrators of the estate of the late **Lauben Mukasa** because the grant of letters of Administration (P.Exh.1) does not bear his name **Senkubuge Denis** but bear "**Senkubuge Devis**". However, during cross examination, **Senkubuge Denis** (PW5) explained that that name "**Denis**" was wrongly written as "**Devis**" and the grant was sent back to court for correction of the name, and it was accordingly corrected

- [66] In this case, the letters of administration (**P.Exh.1**) were admitted in evidence without any objection from the defendants and or their respective counsel. A corrected copy was later placed on record indicating 1st & 2nd Plaintiffs as administrators and **Ssenkubuge Denis**' name accordingly corrected. In the absence of any other evidence pointing to the contrary, I believe the 1st Plaintiff's version that his name was merely misspelt and therefore I find that by virtue of the Grant, he has locus to sue as one of the administrators of the estate of the late **Lauben Mukasa**. As administrators and beneficiaries of the estate of the late **Lauben Mukasa**, the 1st - 3rd Plaintiffs have shown that they have "sufficient interest" in respect of the subject matter of the suit (Block 10, Plot 88). This interest extends to **Plots 1068 & 1067 of Block 10** which were subdivided from the original land **Block 10, Plot 88** of the estate of **Lauben Mukasa**. They allege of having been deprived of the estate suit land comprised in **Block 10, Plot 88** as a result of the various fraudulent transactions conducted on the suit land by the defendants. They hold each of the defendants' liable.
- [67] In the premises, I find that the 1st - 3rd Plaintiffs enjoyed a right over the suit land as beneficiaries, which they allege has been violated by the Defendants' dealings on the suit land. They hold the Defendants liable; **Auto Garage & Ors Vs Motokov (No.3) (1971) E.A at 519**. During trial, the 1st - 3rd Plaintiffs adduced evidence on how the 5th Defendant designed the initial fraud that led to further, and multiple subdivisions of the suit land that involved the Defendants.

- [68] This issue is in the premises, therefore, also accordingly found in the affirmative. The 1st - 3rd Plaintiffs are found to have a cause of action against the 5th Defendant.

Issue No.2: Whether there was a valid sale and transfer of the suit land (formerly comprised in Block 10, Plot 1068) to the 1st Defendant.

- [69] Counsel for the 1st - 3rd Plaintiffs submitted that there was no valid sale and transfer of land to the 1st Defendant due to illegalities and fraud during the process of sale and transfer.



A) Illegalities:

(i) Offending illiterates Protection Act

- [70] It is the contention of counsel for the 1st - 3rd Plaintiffs that the sale and transfer of land to the 1st Defendant was illegal as it offended **Ss.2 & 3 of the illiterates Protection Act Cap 78** and therefore, the document of sale is incurably defective and inadmissible. He relied on the authorities among others; **Kasaala Growers Coop. Society Vs Kakooza & Anor, SCCA No.19/2010**. He argued that in the instant case, the 1st Plaintiff, **Nakkungu Robina (PW4)** and the 1st Defendant are all illiterates in the English language but the 1st Defendant seeks to rely on several agreements and other documents i.e, MOUs dated 20/5/2008 (D.Exhs.2(a) &(b)) to bind the 1st Plaintiff as evidence that she purchased the suit land yet those documents do not have a certificate of translation. Counsel contended relying on the case of **Nakiwala & 2 Ors Vs Rwekibira & Anor, HCCS No.280/2006** that the effect of the failure to include a certificate of translation is that it invalidates a document. Further, that where an agreement is not translated for an illiterate, the contract is unenforceable, see **Stanbic Bank (U) Ltd Vs Ssenyonjo & Anor, CACA No.147 of 2015**.
- [71] On the other hand, counsel for the 1st Defendant submitted that **Robina Nakkungu (PW4)** and the 1st Plaintiff are not illiterate and that besides, they cannot invoke the provisions of the Illiterates Protection Act where their transactions were guided by their lawyer. That their literacy is evidenced by the other documents they executed with **Faustin Ntambara (P.Exh.4)**, Addendum dated 13/13/2010 (**D.Exh13(b)**) and a copy of the Inventory for the estate of the late **Keresipo** filed and signed by **Robina Nakkungu (D.Exh.17)** etc. That all the above documents do not bear any certificate of translation as required by the illiterate Protections Act. That both the 1st Plaintiff and **Robina Nakkungu (PW4)** at trial admitted having executed the aforementioned documents and neither did they testify that the contents therein were read to them nor that they are illiterates. He concluded that the 1st Plaintiff and **Robina Nakkungu (PW4)** who are administrators of the estate of the late **Keresipo Kiryowa** properly executed the sale transactional document with the 1st Defendant after understanding the contents therein and therefore their notion, that of seeking refuge in the illiterates Protection Act is an afterthought intended to defraud the 1st Defendant after receiving her money.
- [72] The law under **S.3 of the Illiterates Protection Act** require documents executed on behalf of illiterates to have a certificate of translation. It states as follows;
*"Any person who shall write any **document** for or at the request, on behalf or in the name of any **illiterate** shall also write on the **document** his or her own true and full name as the writer of*

*the **document** and his or her true and full address, and his or her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her."*

- [73] In **Kasaala Growers Co-op. Society Vs Kakooza & Anor (supra)**, it was held that;
"S.3 of the illiterate protection Act enjoins any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his or her true and full address."

The court further added:

"That the Act is intended to protect the illiterate persons and the provision is couched in mandatory terms and failure to comply with the requirement renders the document inadmissible."

- [74] In the instant case, in her witness statement which bear a certificate of translation implying that she is illiterate, **Robina Nakkungu** (PW4) categorically denied ever signing a sales Agreement and transfer forms in favour of the 1st Defendant and added that most of the documents she dealt in were in the English language which she does not understand. The same apply to 1st Plaintiff's (PW5) evidence.
- [75] The 1st Defendant (**DW2**) is a self-confessed illiterate. Her witness statement bear a certificate of translation. Therefore, her claim that all the parties involved including herself in the transactions concerning the suit land voluntarily signed the impugned agreement of sale of the suit land (**P.Exh.5**) after understanding the contents therein having been explained by their counsel, would be of no merit in the absence of a certificate of translation to support such a claim. If it were true that the **1st Plaintiff** and **Robina Nakkungu** (PW4) had guidance of counsel during the execution of the impugned agreement as the 1st Defendant and her counsel claim and want court to believe, since this is first of all, an admission that the vendors were illiterate, a certificate of translation would have been included on the document in question. There is no explanation why the counsel did not include a certificate of translation on the document as proof of compliance with **S.3 of the illiterate's protection Act**. The impugned agreement of sale of the suit land to the 1st Defendant (P.Exh.5) does not have such a certificate of translation
- [76] The 1st - 3rd Plaintiffs having adduced evidence proving that on the balance of probabilities the **1st Plaintiff** and **Robina Nakkungu**, are illiterate, the burden of proof shifted to the 1st Defendant to show that the **1st Plaintiff** and the said

Nakkungu Robina were not illiterates. The 1st Defendant failed to discharge this onus upon her by way of rebuttal.

- [77] In the premises, by way of conclusion on this issue, I find that the import of **S.3 of the Illiterates Protection Act** is to ensure that documents which are purportedly written for and on instructions of illiterate persons are understood by such persons if they are to be bound by their content. The impugned agreement (P.Exh.5) and other documents executed prior by the **1st Plaintiff** and **Robina Nakkungu** including the sale agreement to **F. Ntambara** (P.Exh.4) cannot be relied upon in any litigation by any party seeking to enforce a right. It would therefore follow that in the circumstances of this case, the subsequent registration of the 1st Defendant as the owner of **Block 10, Plot 1068** based on the impugned agreement of sale of the suit land that lacked a certificate of translation is legally untenable thus unlawful and hence null and void. Besides, there is overwhelming evidence that the 1st Plaintiff was not a party to the purported sale and transfer of the suit land (formerly comprised in Kibuga Block 10, Plot 1068) to the 1st Defendant.

ii) Contravention of S.134 RTA

- [78] Counsel for the 1st - 3rd Plaintiffs submitted that the requirements of **S.134 RTA** and on the authority of **Beruga Mustapha Vs Alice Norah Nassozi, HCCS No.446 of 2011**, are to the effect that where there are 2 administrators to an estate as in the instant case where the **1st Plaintiff** and **Robina Nakkungu** were [allegedly] joint administrators of the estate of the late **Keresipo Kiryowa**, the 1st Defendant could not deal with only one of the administrators, **Robina Nakkungu** (PW4) as she did without the consent of the other administrator, the 1st Plaintiff. Counsel submitted that in this case, the 1st Plaintiff is [allegedly] one of the administrators of the estate of the late **Keresipo Kiryowa** but he has never signed any document for the 1st Defendant and has never received any single payment from the 1st Defendant who decided to only deal with **Robina Nakkungu** (PW4). The 1st Plaintiff as a co-administrator did not take part in any transaction with the 1st Defendant. Counsel prayed that the purported sale and transfer of the suit property to the 1st Defendant be found to had been illegal, invalid, null and void.
- [79] On the other hand, counsel for the 1st Defendant submitted relying on **S.272 of the Succession Act** that the **1st Plaintiff's** failure to sign the sale agreement in her favour for **Plot 1068** and the memorandum of understanding notwithstanding, as a co-administrator of the estate of the late **Keresipo Kiryowa**, his powers could be exercised by one of the administrators, **Nakkungu Robina**. He submitted further that nevertheless, both administrators signed the transfer forms in favour of the 1st Defendant.

[80] In the 1st instance, I find that there is no evidence to support the 1st Defendant's claim that at any one time the 1st Plaintiff (PW5) signed and or endorsed the impugned agreement (P.Exh.5). During cross examination by **Mr. Jet Tumwebaze**, one of the counsel for the 1st - 3rd Plaintiffs, the 1st Defendant (DW2) stated thus;

*"I took the last agreement to **Senkubuge** (1st plaintiff/DW5) for endorsement. He eventually endorsed the agreement (P.Exh.5). This is also the time he was receiving his money."*

[81] The 1st Plaintiff (PW5) denied endorsing the agreement. Indeed P.Exh.5 does not bear his signature and the 1st defendant's version does not have his signature on every page as a vendor. Even if he did, as already found by this court, there is no evidence that he understood the contents of the document he signed for he was an illiterate. The document he allegedly endorsed being in English, the language he complains he never understood, it does not bear any certificate of translation.

[82] **Secondly**, there is no evidence that as one of the alleged administrators of the estate of the late **Keresipo Kiryowa**, the 1st Plaintiff/PW5 signed the consent to transfer and transfer forms in favour of the 1st Defendant (P.Exh.9). He denied ever signing any of the documents transferring the suit land to the 1st Defendant. His denial was confirmed by the handwriting expert when the relevant documents were subjected to forensic examination (P.Exh.10).

[83] **Nakkungu Robina** (PW4) while being cross examined by counsel for the 1st Defendant firmly stated that though **Senkubuge Denis** (1st plaintiff/ PW5) was included as one of the vendors, he was not part of it. What is cogent is that as regards the 1st Plaintiff (PW5), it is evident that he did not endorse the transfers to the 1st Defendant. Besides, he could not even understand the transfers scripted in English as he has been found to had been an illiterate.

[84] As regards the applicable law, **S.134 of the Registration of Titles Act** (RTA) provides as follows;

"134. Succession on death

1.

2.

3. If in any case probate or administration is granted to more persons than one, all of the them for the time being shall join and concur in every instrument, surrender or discharge relating to the land, lease or mortgage."

[85] As per the above provision of the law, the administrator by virtue of a grant of court is deemed to be the proprietor of the registered land. For purposes of S.134(3) RTA, there must be consensus between the administrators if they are more than one on the decision to be taken regarding the administration of the estate, see also **Baruga Mustapha Vs Alice Norah Nassozi, HCCA No.466 of 2011.**

[86] The 1st Defendant's counsel relied on **S.272 of the Succession Act** to justify the endorsement of the sale agreement and transfer of the suit land in favour of the 1st Defendant by one co-administrator of an estate of the deceased. It provides thus;

"272. Powers of several executors, etc exercisable by one

When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration."

[87] The above Section has been interpreted by our top courts in **Silver Byaruhanga Vs Fr. E. Ruvugwaho & Anor, SCCA No.9 of 2014** as per Arach Amoko, JSC as follows;

*".....where several executors are appointed by a deceased person in his will, anyone of them who has proved the will and obtained a grant of probate, may exercise the power of all of them, provided there is direction in the will to the contrary or objection from his or her co-executors. In case of a person who has died intestate, where several people have applied for letters of Administration, **anyone of them who has taken out letters of Administration**, may exercise the power of all, provided there is no direction to the contrary as well. However, **in the case of executors or administrators who have jointly applied for probate or letters of Administration and obtained the grant simultaneously or all together, they must act jointly at all times** because **Section 272 of the Succession Act** does not allow them to act singly. Otherwise, it would defeat the purpose for appointing joint executors or administrators.*

*In the case of transactions involving conveyancing of land of the deceased by executors or administrators, the law on the application of **Section 272 of the Succession Act** is settled. The section must be read together with **section 134 of the Registration of Titles Act Cap 230**. Under section 134(3) thereof, in cases where probate is granted to several executors as in the instant case, all of them must concur in every instrument, Surrender or discharge relating to the land."*

[88] In the instant case, the fact that **Nakkungu Robina** (PW4) proceeded to singly execute the sale agreement with the 1st Defendant for the sale of the suit land and sign the documents of transfer without involving the co-administrator contravened **S.134 (3) RTA**. Therefore, the registration of the 1st Defendant on **Block 10, Plot 1068** (subdivided from Block 10 Plot 88) was illegal as the sale to her was invalid. Besides, it must be noted that in any case, the 1st Plaintiff and **Nakkungu Robina** themselves deny ever applying to administer the estate of the late **Keresipo Kiryowa**, the grant that is the basis of the sale and transfer of the suit **Plot 1068** to the 1st Defendant.

iii) Inadmissibility of the sale Agreement dated 6/4/2009 for lack of stamp duty

- [89] Counsel for the 1st - 3rd Plaintiffs submitted that the 1st Defendant is precluded from relying on the sale agreement dated 6th November, 2009 as the same is inadmissible in evidence because the 1st Defendant did not pay stamp duty on it as is required by **S.32 of the Stamp duty Act**. Relying on the authorities among others, of **Wasukira & 2 Ors Vs Harmony Group Ltd, HCCS No.40 of 2009** and **Rosemary Nalubega & Anor Vs Jackson Kakayire, CACA No.210 of 2004**, counsel submitted that where an unstamped agreement is exhibited in evidence, a judge should not rely on such an agreement.
- [90] On the other hand, counsel for the 1st Defendant submitted that the payment of stamp duty for the sale agreement was not pleaded in the amended plaint. That it is a mere afterthought and offends **O.6 r.7 CPR** on the principle that parties are bound by their pleadings and cannot lead evidence inconsistent with their pleadings.
- [91] I find that indeed, the 1st - 3rd Plaintiffs did neither plead the non-payment of stamp duty nor raise it as a preliminary objection by way of objection to the admission of the document in question. However, whether or not a sale agreement is liable to stamp duty is a matter of law as per **S.4 of the Stamp duty Act 2014** and therefore, upon its contravention, a party is entitled to raise this illegality at any stage of the proceedings without necessarily having pleaded it.
- [92] It is however, now settled that court cannot dismiss a suit merely because the stamp duty has not been paid on the documents relied upon to bring the claim, See **Pesa Finance Ltd Vs Lovis Ntale, HCCS No.470/2009**.
- [93] In **Dieter pabst Vs Abdu Ssozi & Anor, CACA No.116/2000**, court held;
"The decision of whether the instruments attracted duty or not

ought to be made before the instrument is admitted. The party concerned ought to be given an opportunity to pay the duty so that the instrument can be used in evidence. I therefore agree with the submission of Mr. Adriko and the authorities he cited to the effect that the trial court should determine whether a document is dutiable or not before it is admitted in evidence. The rationale being to enable the party affected to pay the stamp duty as penalty....."

[94] Surprisingly and strangely in this case, it is the Plaintiffs who exhibited the impugned sale agreement (**P.Exh.5**) yet the law under **S.32 of the Stamp duty Act** renders it inadmissible in evidence once it is found to have not attracted stamp duty. Under **Section 10 of the Act**; "Duty by whom payable" the **1st Plaintiff and Robina Nakkungu** are among those liable to pay stamp duty if the Plaintiffs are to exhibit the document for evidential purposes, see **Schedule 3 of the Act**, The above definitely apply to the sale agreement by the **1st Plaintiff and Nakkungu** on one hand and **Ntambara** on the other hand (**P.Exh.4**) admitted and is being relied upon by the **1st Plaintiff**.

[95] The above notwithstanding, in **Rose Mary Nalubega & Anor Vs Jackson Kakayire, CACA No.40/2004**, the trial Judge had admitted the sale Agreement in evidence and not requiring stamp duty. The Court of Appeal held that,

"That error however, is not fatal to the case because of Section 43 of the Stamp Act (1915). This section prohibits challenging at any subsequent stage of the proceedings, on ground of non- payment of stamp duty, the order admitting in evidence of an instrument...."

[96] The totality of the above settles the issue. In this case, the counsel for the **1st - 3rd Plaintiffs** having not raised the objection before the impugned agreement was admitted to give the party concerned an opportunity to pay the duty so that the agreement is used in evidence, in the premises that the agreement is already admitted as an exhibit in evidence as per **S.33 of the Stamp Act**, it cannot be called in question. The evidence is accordingly preserved. This objection is in the premises found untenable.

B) Allegations of fraud against the 1st Defendant

[97] Counsel for the **1st - 3rd Plaintiffs** submitted that the sale and transfer of land formerly comprised in **Block 10, Plot 1068** to the **1st Defendant** was tainted with fraud to which the **1st Defendant** was privy;

i) Forgery of signatures

- [98] It is the contention of counsel for the 1st -3rd Plaintiffs that the 1st Defendant forged the signatures of the 1st Plaintiff and **Robina Nakkungu** (PW4) which amounts to fraud as the two did not sign the transfer instruments thereby vitiating the transfer. It is the submission of counsel for the 1st - 3rd Plaintiffs that in the instant case, the 1st Plaintiff denied ever signing any document for the 1st Defendant including the consent to transfer **Plot 1068, Block 10** dated 11/6/2009. That when the 2 documents were subjected to a handwriting expert, the report confirmed that the signatures on the document did not belong to the 1st Plaintiff and **PW4, Robina Nakkungu** (P.Exh.10).
- [99] In **Kampala Bottlers Ltd Vs Damanico (U) Ltd**, SCCA No.22 of 1992, Wambuzi, CJ (As he then was) defined "fraud" as follows,
"It is well established law that fraud means actual fraud or some act of dishonesty."
In **Yakobo Senkungu Vs Cresensio Mukasa**, SCCA No.17 of 2014, the Supreme Court was of the view that the argument that fraud as appears in the RTA meant actual fraud is a narrow argument and the court expanded it following **Husky International Electronics, Inc Vs Ritz No.15-145 of 2016 [578 US 356 (2016)]** where it was held:
"The term "actual" fraud encompasses fraudulent conveyance schemes, even when those schemes do not involve false representation."
- [100] According to **S.59 RTA**, the production of the certificate of title in the names of a party is sufficient proof of ownership of the land in question unless the case falls within the provisions of **S.176 RTA**. The section provides as follows;
"No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under the provisions of this Act, except in any of the following cases-
(a)....
(b)...
(c) *the case of a person deprived of any land by fraud as against the person registered as proprietor"*
- [101] In the instant case, the 1st Defendant asserted that she is the registered proprietor of **Block 10, Plot 1068** having lawfully purchased it from the 1st Plaintiff and **Nakkungu Robina** (PW4) who were the registered proprietors of the estate of the late **Keresipo Kiryowa**.

- [102] In their respective witness statements, the **1st Plaintiff** and **Nakkungu Robina** (PW4) denied ever signing the consent of transfer and the transfer forms in favour of the **1st Defendant**. The documents were subjected to a handwriting expert, **Mr. Appollo Mutashwera** (PW3) and **PW3's** report confirmed that the signatures on the 2 documents were not of the **1st Plaintiff** and **PW4** (P.Exh.10). In her effort to rebut the **1st Plaintiff** and **PW4's** denial, the **1st Defendant** (DW2) testified that the transfer was processed by a one **counsel Isabirye** (DW3). **DW3**, an advocate of the High court of Uganda, testified that he witnessed the suit land transfer documents at the behest of the **1st Defendant** when the documents were already filled and purportedly endorsed by the transferors.
- [103] From the foregoing, I find sufficient evidence that the 2 transfer instruments (**D.Exh.3 & P.Exh.9**) were never endorsed by the purported transferors (**1st Plaintiff** and **Nakkungu Robina**). The transferors' purported signatures thereon were forged. In **Zebiya Ndagire Vs Leo Kasujja [1974] HCB 153**, it was held that **where land transfer forms or certificate of title contained a forgery of the signatures of the plaintiff as vendor and the transfer of the land to the defendant was obtained by fraud; consequently, the purported transfer and any relevant entry in the Register book were void against the defendant.**
- [104] In the premises, for the reasons above, I find that the transfer instruments of **Block 10, plot 1068** were forged. The next issue is in regard as to who was behind the forgery. According to **S.106 of the Evidence Act**, the burden of proof in civil proceedings rests upon the person with any fact within his or her knowledge and who desires to give judgment as to any legal right or liability.
- [105] In the instant case, the authenticity of the transfers to the **1st Defendant** was a fact within her knowledge as the beneficiary of the transferred suit land. Upon the **1st - 3rd Plaintiffs** presenting evidence of the forgery of the 2 transfer documents, the burden of proof shifted to the **1st Defendant** to rebut such evidence. She failed to discharge the onus. According to **Kampala Bottlers Ltd Vs Damanico (supra)**
".....fraud must attributable to the transferee... either directly or by necessary implication....the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."
- [106] In the instant case, I find that the **1st Defendant** was the beneficiary of the transfer of the land and it was a fact especially within her knowledge as regards the forgery of the transferors on the transfer form. On a preponderance of probabilities, I find that she was behind the forgeries or she knew who did the forgeries. I find that it

has been proved to the satisfaction of court that the 1st Defendant fraudulently transferred the suit portion of land **Block 10, Plot 1068** in her names. Such a transfer based on forged transfer forms is null and void and therefore conferred her no interest at all of the suit land. In such circumstances, the certificate of title in the names of the 1st Defendant is impeachable on account of fraud.

ii) Procuring transfer of title before completing purchase of land

- [107] Counsel for the 1st - 3rd Plaintiffs submitted that the 1st Defendant transferred the land into her names before entering into a sale agreement with the vendors and before payment of purchase price and that she has never completed payment of the purchase price to this date. He relied on the authority of **Namugera John Kinalwa, HCCS No.271/2019** for the proposition that **transfer of land before completing the purchase price is illegal and amounts to fraud.**
- [108] As regards the procuring of the transfer of title before completing purchase of land, transfer before executing sale agreement and transfer before completing purchase price, none of these is a ground for impeaching the title of a registered proprietor under **Ss.59 & 176 RTA**. It is all about what parties agree upon.
- [109] However, in this case, there is no evidence that the parties agreed that upon the purchaser of the suit land, the 1st Defendant procures transfer of title or transfers the suit land before completing the purchase price. None payment of the purchase price is evidenced by the fact that the 1st Plaintiff had to drag the 1st Defendant to court for payment of the balance of the sale price of the suit land. Besides, this court has also already found that the transfers of the land in question were a forgery and therefore fraudulently procured. The claim therefore by the 1st Defendant that the transfer was based on the prior memoranda of understanding between her and the vendors is not sustainable in view of also the earlier finding that such memoranda were in violation of **S.3 of the Illiterates Protection Act** and that they were secured from one of the alleged co-administrator of the estate of the late **Keresipo Kiryowa** i.e, **Nakkungu Robina** which is contrary to **S.134 of the RTA** thus were null and void,
- [110] It follows therefore that the 1st Defendant's act of procuring transfer of title before executing the sale agreement and transfer before completing the purchase price, all based on the null and void memoranda of understanding and forged or falsified transfer forms amounted to actual fraud.

iii) Defeating registered and unregistered interests in the suit land.

a) Procuring another title while aware of special certificate of title

[111] Counsel for the 1st – 3rd Plaintiffs submitted that the **1st Plaintiff** and **Nakkungu Robina** (PW4) were registered on **Plot 88, Block 10** as administrators to the estate of the late **Keresipo Kirowa** by virtue of the special certificate of title as the old title had been deemed lost. That without entering into any agreement with the 1st Plaintiff, the 1st Defendant transferred **Plot 1068** to herself purportedly as a subdivision from **Plot 88**. That therefore, the 1st Defendant subdivided **Plot 1068** into several plots with the aim of defeating the 1st Plaintiff's interest. He concluded by contending that the special certificate of title to the Administrators of the estate of the late **Keresipo Kiryowa** for **plot 88, Block 10** had never been recalled nor cancelled by the Commissioner Land Registration. That therefore, in the absence of any cancellation of the special certificate of title, the 1st Defendant was fraudulent in procuring another title while aware of the special certificate title in the possession of the 1st Plaintiff.

[112] In the **first** instance, by the 12/3/2007 when the **1st Plaintiff** and **Nakkungu Robina** purportedly got registered on the "special certificate of title, the said **Block 10 plot 88** had long ceased to exist. In 1991, **Block 10, plot 88** was in the names of **Keresipo Kiryowa** as the registered proprietor by virtue of the *Certificate of succession* (D.Exh.12) obtained from the Administrator General in his favour as the son of the late **Lauben Mukasa**, the original owner. The late **Keresipo Kiryowa** subdivided **Block 10 plot 88** into **Plot 1067** in favour of **Wasswa Lubulwa Yofesi** (5th Defendant) and **Plot 1068** was retained by him. So, as a fact, **Block 10 plot 88** had never got lost as those who were behind the acquisition of its special certificate of title claim. It never existed at the time the **1st Plaintiff** and **Nakkungu Robina** purportedly acquired the so called special certificate of title. Besides, the **1st Plaintiff** (PW5) himself contends in his Witness statement paragraphs 16-19 that he and **Nakkungu Robina** never applied for or to be registered on the special certificate of title (D.Exh.5). They never gave lawyer **Mutyaba** any instructions to process for them Letters of Administration for the estate of the later **Keresipo Kiryowa** or acquire for them the special certificate of title in their names. The 1st Plaintiff could not therefore rely on such letters of administration he contends he never applied for to achieve any interest in the non-existent **Plot 88** at the time. The above is consistent with the findings of the **Commissioner Land Registration** as per P.Exh.19(a) thus;

"KIBUGA BLOCK 10 PLOT 1068 AT NAKULABYE AMENDMENT OF REGISTER
Perusal of the Register has revealed the following.

1. The above land as at 29th January 1991 was registered in the names of **Keresipo Kiryowa** vide instrument KLA 145040.

2

3

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7. Subsequently, the **Administrators of the estate of the late Keresipo Kiryowa**, a one Ssenkubuge Denis and Nakkungu Robina tried to reclaim the late Keresipo Kiryowa's land.

8. In the above process, plot 1068 was erroneously numbered plot 88 and subsequently subdivided into plots 1361, 1362 and 1363.

9. All the subdivisions were done in error since the correct plot to be subdivided should have been plot 1068 and not plot 88.

Plot 88 has been earlier subdivided to created (sic) plots 1067 and 1068...."

[113] The above findings of the Commissioner Land Registration confirm that indeed, the original **Block 10, plot 88** was subdivided into **plots 1067 and 1068** and this appear to be recognised by the Plaintiffs hence **P.Exh.10(a)**. It cannot therefore in the premises be said that the "special certificate of title for **Plot 88 Block 10**" had a place in the land Register and or that the 1st Defendant was aware of its existence. It has to be taken that this was within the knowledge of the 1st Plaintiff and **Nakkungu Robina** who were registered thereon as proprietors. According to the 1st Defendant, the alleged special certificate of title was not brought to her attention by either of the Administrators. The Administrators themselves clearly state that they had handed it over to **Ntambara Faustine** (PW2) to whom they were in the process of selling the suit land.

[114] It follows therefore the 1st Plaintiff and **Nakkungu Robinas'** "special certificate of title" for **Block 10 Plot 88** (which the Commissioner Land Registration found to had been issued in error) was null and void because besides, the grant of letters of administration vide **HCAC No.1695 of 2006 (FD)** for the estate of the late **Keresipo Kiryowa**, the basis for their registration on the "special certificate of title" were admittedly fake and so are void all the subsequent transactions including the sale to **Ntambara** and later to the 1st Defendant, **Madina Nassali**. Again, besides, **Block 10, Plot 88** had ceased to exist when in 1997 **Keresipo Kiryowa** illegally subdivided it into **Plots 1067 & 1068**. What the 1st Plaintiff and **Robina Nakkungu** were therefore trying to do was to fraudulently resurrect the non-existent **plot 88**. As a consequence of the above, **Ntambara Faustin** (PW2) who was pledged with the "special certificate of title" of the land (Plot 88) as assurance of his part of consideration of **Ugx 81,000,000/=** (P.Exh.4) as a purchaser of the suit land was left in cold air. It is apparent that the 1st Plaintiff and **Nakkungu Robina** never also informed him of their change in mind and strategy in selling the suit land under the special certificate of title to the now preferred purchaser, the 1st Defendant. The

integrity and honesty of the **1st Plaintiff** and **Nakkungu Robina** was now definitely in question. It was a test of their integrity and honesty.

- [115] The **1st Plaintiff** and **Robina Nakkungu's** registration on **Block 10 plot 88** and subsequently on **Block 10, plot 1068** as administrators of the estate of the late **Keresipo Kiryowa** in 2007 (P.Exh.3) was during the existences of another title in the names of **Iqbal Esmail** (D.Exh.15) acquired in 1997 from the 5th Defendant on the basis of powers of Attorney donated to him by the late **Keresipo Kiryowa** (D.Exh.36). The 2 certificates of title, **P.Exh.3** and **D.Exh.15/P.Exh.36** for the same land but with different proprietors could not exist together. I find that the later title purchased by the 1st Defendant was again on this basis null and void.

iv) Knowledge of previous sale to Ntambara

- [116] It is evident on record that **Ntambara Faustine** (PW2), by the time the 1st Defendant dealt in the suit land, had not paid full consideration of the suit land. Ordinarily, the vendors would be at liberty to sell the land to any other person including the 1st Defendant. To protect his interest based on his part payment of his consideration, **Ntambara** should have caveated the suit land. He did not. Besides, even if he had caveated it, the overwhelming evidence on record is that he had been sold a non-existing land, **Plot 88 Block 10**. The land he purported to purchase, had ceased to exist.
- [117] In conclusion, I find that the Plaintiffs' claim that the 1st Defendant got registered on the title for **Plot 1068** out of **Plot 88** to defeat the registered interests of the **1st Plaintiff** and **Nakkungu Robina** and unregistered interest of **Ntambara Faustine** (PW2) are unfounded and baseless. This claim is a mere afterthought. Both **plot 1068** and **Plot 88** were null and void because **Plot 1068** was issued during the existence of another subsisting title for the same land in the names of **Iqbal Esmail** in 1997. At the time **Plot 88** had ceased to exist. Therefore, both the 1st Defendant as a beneficiary of **Plot 1068** and **Ntambara** as a beneficiary of **Plot 88** obtained air as it were.

v) Payment of less stamp duty

- [118] I think, it is now settled that concealment of the true consideration paid for purchase of land for purposes of defrauding the government of its revenue by way of paying less stamp duty amounts to fraud; see **Betty Kizito Vs David Kizito & Ors, SCCA No.8/2018** where the Supreme Court cited **Samuel Mubiru & Anor Vs Byensibe & Anor [1985] HCB 106** with approval by the holding of **Tibatemwa-Ekirikubinza JSC**, that:



31

*"In a recent decision of this court, **Senkungu Vs Yakobo** (Supra), the court cited with approval **Kerr's Statement** that fraud is infinite in variety with the ever dynamic operations of mankind. It includes **all acts, omissions and concealment which include a breach of legal or equitable duty**, trust or confidence.... Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived by illegal or inequitable means, of what he is entitled to*

The law requires that the true consideration in land transfers must be declared.

Section 92(1) of the Registration of Titles Act provides in part:where the consideration for a transfer does not consist of money, the words "the sum of" in the form of transfer in that schedule, shall not be used to describe the consideration, but the true consideration shall be concisely stated.

Further, that

*"In **Samuel Kizito Mubiru & Anor Vs G.W Byensiba & Anor** (HCCS No.513 of 1982), Karokora J.held that a buyer is not a bonafide purchaser where he inserts a lesser figure on the transfer form as consideration when he actually paid more in order to defraud government of revenue. The mode of acquisition becomes tainted with fraud and illegality.... that by public policy, any transaction designed to defraud government of its revenue is illegal and therefore a title deed acquired in such circumstances would be void because of fraud."*

The principle enunciated in the above authority has been followed in numerous High court decisions and I find it good law."

[119] I am bound by the above decision. In the instant case, the 1st Defendant stated that the total consideration for the land was Ugx 644,900,000/= but the consideration indicated on the transfer form is Ugx 150,000/= (P.Exh.9). She attributed the "error" to **Mr. Isabirye** (DW4), the lawyer who handled the transfer as the one that inserted the figure. DW4 however denied in court ever filling the transfer form.

[120] In the premises, I find that the 1st Defendant knew of the actual consideration but concealed it in the transfer form, a concealment of the true consideration by the 1st Defendant amounts to fraud thus rendered the transaction regarding the purchase of the suit land by the 1st Defendant again null and void.



[121] All in all, I find that there was no valid sale and transfer of the suit land (formerly comprised in **Block 10, Plot 1068**) from the **1st Plaintiff** and **Robina Nakkungu** as alleged administrators of the estate of the late **Keresipo Kiryowa** to the **1st Defendant** and neither was the **1st Defendant** therefore, a bonafide purchaser.

Issue No.4: Whether the 3rd Defendant is a bonafide purchaser for value without notice.

Issue No.3: Whether the sale of plot 1395 to the 3rd Defendant by the 1st Defendant was fraudulent and unlawful.

[122] Counsel for the **1st - 3rd Plaintiffs** submitted that the **3rd Defendant**, **Joseph Kiyimba** is not a bonafide purchaser for value without notice of the dispute over part of the suit property that the **1st Defendant** was claiming to be the owner. In the first instance, while relying on the case of **Paulo Kawesa Vs Administrator General & 2 Ors (supra)**, he argued that the invalidation of the certificate of succession as has been found and done in this case regarding the *Certificate of succession (D.Exh.12)* the late **Keresipo Kiryowa** used to get himself registered on the suit land as proprietor invalidated any subsequent transfer that was made using the same certificate and that most importantly, that so was the registration and certificates of title that were subsequently based upon those certificates, signifying that the defect extended to the **3rd Defendant**.

[123] I do not think this is the proper and correct interpretation of Justice Kibuuka's decision in the above case. The correct interpretation is that since the *Certificate of succession* was invalid, the subsequent transfers based on the said certificate of succession were void *ab-nitio* but does not extend to further transfers to transferees whom the defect in the *Certification of succession* was not brought to their notice.

[124] 2ndly, counsel for the **1st - 3rd Plaintiffs** submitted that the **3rd Defendant** does not have title to **Plot 1395** he purchased from the **1st Defendant** "purchased" from the alleged administrators of the estate of the late **Keresipo Kiryowa** i.e, the **1st Plaintiff** and **Nakkungu Robina**.

[125] Again, I find that this is not correct. There is ample evidence on record that **Plot 1395** is registered in the names of the **3rd Defendant**, see his evidence and **P.Exh.7 & D.Exh.8** (vendor's title) and above all, it is the **1st admitted** fact that the **3rd Defendant** is the registered proprietor and occupant of **Block 10, plot 1395** which is developed with an entertainment centre. Agreed upon facts in J.S.M bind the parties. Basically, in their pleadings in the particulars of fraud "XIV" and prayers

 33

"(b)", the Plaintiffs concede that the 3rd Defendant is the registered proprietor of **Block 10, plot 1395**.

- [126] In the premises, I find the submission and argument of counsel for the 1st - 3rd Plaintiffs that the 3rd Defendant does not have a title to **Block 10, plot 1395** he purchased from the 1st Defendant as a mere afterthought.
- [127] Counsel for the 1st - 3rd Plaintiffs complained that the **Agreement dated 25/1/2010** between the 1st Defendant and the 3rd Defendant was in the English language but without a certificate of translation yet both the vendor (1st Defendant) and the purchaser (3rd Defendant) were illiterate. Lastly, that the Agreement is inadmissible since it did not bear proof of payment of stamp duty.
- [128] As regards the lack of a certificate of translation, as I have already observed, illiterate's protection Act is intended to protect the illiterate persons; **Kasaala Growers Co-op. Society Vs Kakooza (supra)** and therefore, the Act is not to be used against them. In the instant case, unlike the 1st Plaintiff and **Nakkungu Robina** who complained that because they were illiterates, they could not comprehend the purported transactions with the 1st Defendant executed in English, here, neither the 1st Defendant nor the 3rd Defendant has complained or claimed that they did not understand/or comprehend the transaction between themselves or each other. The issue of protection of the illiterates does not therefore arise in this transaction nor can it be used by a 3rd party to defeat their intentions in the transactions. The requirement of a certificate of translation is not a mere fashion-form for documents endorsed by illiterates. It is for a purpose i.e to protect illiterates who may be taken advantage of as a result of which they may be defrauded, which is not the case in this case as regards the sale and purchase of **Plot 1395** of land by the 1st Defendant and of the 3rd Defendant.
- [129] As regards lack of proof of payment of stamp duty, I have already held that it is now settled that the decision of whether the instrument attracted duty or not ought to be made before the instrument is admitted; **Dieter Pabst Vs Abdu Ssozi & Anor (supra)**. Once the instrument has been admitted as in this case, it is protected and preserved by **S.33 of the Stamp Act**. So, the issue of non-payment of stamp duty on the Agreement dated 25/1/2020 (**P.Exh.7**) does not arise at this stage.

The 3rd Defendant as a bonafide purchaser of Block 10, plot 1395

- [130] A bonafide purchaser for value as defined in **Armratlal purshottam & Anor Vs Gian Singh Bhandra, HCCS No.289/2010** was held thus;

"A bonafide purchaser is one who buys property for value



without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claim. A bonafide purchaser does all that is reasonably possible and necessary in his or her power to find out about all material facts pertaining to property before he or she could commit himself or herself to purchase the same. To be a bonafide purchaser one must have done due diligence and exercised caution before entering a transaction of the nature, that would ultimately be binding upon him or her."

- [131] The burden of proving that a purchaser is bonafide is on the person seeking to rely on it, **David Sejjaka Nalima Vs Rebecca Musoke, CACA No.12 of 1985.**
- [132] Counsel for the 1st - 3rd Plaintiff submitted that a purchaser of land has a duty to make sufficient inquiries before getting registered on the land to understand all claims on the land registered and un registered and that failure to do amounts to fraud. That in the instant case, the 3rd Defendant demolished the Plaintiffs' structures on the land and they had to lodge a complaint at police.
- [133] This is however not correct, the overwhelming evidence on record by the 1st Plaintiff (PW5) and **Nakkungu Robina** (PW4) is that a one **Nalutaaya** and **Namugambe Ritah** were squatters on the land as per **Nakkungu** (PW4) though the 1st Plaintiff describes them as caretakers on the land of **Lauben Mukasa** but without adducing evidence to support this claim. The squatters were in occupation of the structure on land. They were paid off by way of compensation by the 1st Defendant on the instructions of **Nakkungu** (PW4) and other beneficiaries and squatters left the land. The 3rd Defendant (DW4) testified during cross examination by **Mr. Tumwebaze** that the 1st Defendant cleared the squatters who were on the land and by the time he visited the land and purchased it, it was clear. He is not the one who therefore demolished any property that was on land. There is no evidence that either the late **Lauben Mukasa** or his estate occupied or had any interest in **Block 10, plot 1395.**
- [134] It is trite law that where there are a series of subsequent transfer, for the title of the incumbent registered proprietor to be impeachable, the fraud of the previous proprietors must be brought home to him; **David Sejjaka Nalima Vs Rebecca Musoke (supra).**
- [135] In the instant case, though upon discovery of irregularities in the subdivision of **Kibuga Block 10, plot 1068** under the mistake that it was **Plot 88** as claimed by the

Commissioner Land Registration (**P.Exh.19 (a)**) i.e, the Special certificate of title that was in the hands of the **1st Plaintiff and Nakkungu Robina, Plot 1395** which was subdivided from **Plot 1068** was not among the affected plots that were cancelled by the Ag. Commissioner for Land Registration (**P.Exh.19 (a) & (b)**) so as for one to say that a search on the land Register would bring its defect home to the **3rd Defendant**.

- [136] In conclusion, I find that there is no evidence that was adduced by the Plaintiffs to prove fraud on the part of the **3rd Defendant** on the balance of probabilities generally applied to fraud which is heavier than that in civil matters; **Kampala Bottlers Ltd Vs Damanico (U) Ltd (supra)**, that the sale and transfer of **Plot 1395** to the **3rd Defendant** was unlawful and or fraudulent. The **3rd defendant** is a bonafide purchaser of land for value without Notice. He is therefore protected from ejectment under **Ss.176 and 181 RTA**. In the premises, the **3rd issue** is found in the affirmative and the **4th issue** in the negative.

Issue No.5: Whether the 4th Plaintiff lawfully acquired a sublease from UPET as a bonafide purchaser for value without notice.

Issue No.6: Whether the rectification of the register by the 2nd Defendant was justified.

- [137] By way of Background, on 28th/3/1998, the **4th Plaintiff, Shell (Now Vivo Energies) (U) Ltd** acquired a leasehold interest over property comprised in **Kibuga Block 10, plot 1068** (suit property) from **Uganda Petroleum Ltd (UPET)** as per **P.Exh.29**. UPET had in turn acquired the lease from its Managing Director a one **Iqbal Esmail**, the registered proprietor of the suit property (**P.Exh.28**).
- [138] The said **Iqbal Esmail** had gotten the suit property by way of purchase from the lawful Attorney of **Keresipo Kiryowa**, the **5th Defendant Wasswa Lubulwa** on 14/2/1997 (**D.Exh.36 & 37**) and got registered thereon as registered proprietor on 11/4/1997 (**P.Exh.36**).
- [139] On **21/5/2008**, the **4th Plaintiff** received a notice from the **2nd Defendant Commissioner Land Registration** to effect changes on the Register book over the suit land. On **3/2/2009**, the **2nd Defendant** issued a Notice cancelling the **4th Plaintiff's** leasehold interest on the suit property together with the certificate of the title of **Iqbal Esmail** in the suit property on the grounds that the lease and the certificate of the title were executed with a wrong person, not the registered proprietor.
- [140] It is however the contention of counsel for the **4th Plaintiff** that despite the notice of cancellation of the lease from the **2nd Defendant**, the lease **LRV 2616 Folio 7** as of



31/7/2009, when this suit was filed, it had not been removed from the register as confirmed by a certificate of search issued at the time (**P.Exh.32**).

- [141] The implication of the above is that although the 2nd Defendant issued out a notice for cancellation of the 4th Plaintiff's leasehold, **LRV 2616 Folio 7**, the office did not effect the actual cancellation. Besides, the purported rectification of the register by the 2nd Defendant took place when the 4th Plaintiff had already long acquired the lease on the suit land and had got itself registered thereon bonafidely.
- [142] In conclusion, I would find that there is no evidence that all the irregularities, fraudulent or illegal designed by either **Keresipo Kiryowa** or his donee of power of Attorney, **Wasswa Lubulwa Joseph** the 5th Defendant, were not at all brought to the 4th Plaintiff at the time of acquisition of the lease on **Plot 1068**. The 4th Plaintiff's inquiry was only limited to the register. As per the register, the registered proprietor of **Plot 1068** was **Iqbal Esmail**. The 4th Plaintiff acquired good title from the previous fraudulent registered proprietors. I find the 4th Plaintiff bonafide purchaser for value of **Plot 1068** and therefore protected under **Ss.176 & 181 RTA** from ejection.
- [143] As regards the 5th Defendant's dealing in **Plot 1068**, counsel for the 5th Defendant submitted that he was authorised to sell **Kibuga Block 10, Plot 1068** by virtue of the power of Attorney donated to him by the registered proprietor **Keresipo Kiryowa**. Counsel relied on the definition of "A sale" as per **Black's Law Dictionary, 8th Edition at page 1364** as "*The transfer of property or title for a price*". I don't agree. This definition is limited to an ordinary "sale" but not a sale governed by a power of Attorney.
- [144] It is a cardinal rule of interpretation that a power of Attorney is to be construed strictly; see the case of **Sidpra & Sidpra Vs Uganda Rehabilitation Development Foundation, HCCS No.199 of 1993** where Tsekooko J (As he then was) cited Lord Macnaghten in **Bryant powis & Bryant Ltd Vs Banque du peuple [1893] AC 170 at 177** observed that;
- ".....powers of Attorney are to be construed strictly, that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found in the four corners of the instrument either in express terms or by necessary implication."*
- [145] In the instant case, the specific authority, and mandate conferred on the 5th Defendant, **Wasswa Lubulwa Yofesi** as a donee of **Keresipo Kiryowa's** power of

Attorney was only to **SELL** plot 1068 by an agreement. It is apparent that by the power of Attorney (**D.Exh.36**) omitting to include the power of 'transfer', the donor of the power of Attorney as the registered proprietor reserved the power to '**TRANSFER**' to himself. Therefore, to contend that the authority extended to 'transfer' the land was clearly a deviation beyond the strict four corners that the donor **Keresipo Kiryowa**, the registered proprietor had so clearly and plainly demarcated by omission in his power of Attorney. Besides, the power of Attorney restricted the sale to **UPET** as earlier on agreed between the donor and the donee of the power of Attorney and not **Iqbal Esmail** to whom the 5th Defendant eventually sold the suit land.

[146] In the case of **Fredrick Zaabwe Vs Orient Bank Ltd & 5 Ors, SCCA No.04 of 2006**, "a donee of a power of Attorney acts as an agent of the donor". The donee not having been the registered proprietor of the suit land, he, the 5th Defendant lacked authority to transfer the suit land to the purchaser, **Iqbal Esmail** unless expressly or by implication authorised to do so. Doing so by the 5th Defendant in the instant case without authority was a misrepresentation.

[147] Lastly, as per the sale agreement of the suit land **Plot 1068** to **Iqbal Esmail** by the 5th Defendant, the purchase price was **Ugx 30,000,000/=** which was fully paid to the 5th Defendant by the **20th June 1997 (D.Exh.37)**. As per the **M.O. U dated 7th March 1996 (D.Exh.33)** executed before the sale of the suit land which was executed on **14th/2/1997 (D.Exh.37)**, the 5th Defendant had cornered the donor of the power of Attorney, **Keresipo Kiryowa** to execute the M.O.U agreeing to receive a mere **Ugx 8,000,000/=** from the sale of the suit land. When the sale was concluded, out of the **Ugx 30,000,000/=** of the consideration of the suit land paid by and got from **Iqbal Esmail**, the donor was given a mere **Ugx 8,000,000/= (D.Exhs. 34 (a) & (b))**. This is evidence that the 5th defendant as a donee of the power of Attorney used the power of Attorney for his own benefit. I find such action by the 5th defendant to had been surely outside the scope of the power of Attorney. No wonder, later, the Donor **Keresipo Kiryowa** on **8/10/1998** wrote a letter disowning the 5th Defendant (see **P.Exh.26 - letter attached to chamber summons M.A No.109/2015**).

[148] As a result of the above, I find that the power of Attorney could not bind the donor **Keresipo Kiryowa** and therefore, also the alleged administrators of his estate. The sale was void ab-nitio and therefore invalid. The 5th Defendant having held himself as the registered proprietor of the suit land (Plot 1068) whereas not, is therefore found liable for indemnifying/compensation the Plaintiffs for the loss occasioned since as already found by this court, the land reverted to the initial registered proprietor, **Lauben Mukasa** (by virtue of the illegal Succession certificate **Keresipo Kiryowa** used to obtain registration on the suit land) whose estate is now being

administered by the 1st & 2nd Plaintiffs together with the 3rd Plaintiff who is one of the beneficiaries of the same.

- [149] The fraudulent actions of the 5th Defendant while dealing with the suit land are presumed to had been brought home to the purchaser **Iqbal Esmail** since the title had **Keresipo Kiryowa** as the registered proprietor and not the 5th Defendant.
- [150] As regards the 4th Plaintiff however, there is no evidence that the 5th Defendant's fraudulent actions were brought to its notice. Its inquiry was limited to the register where **Iqbal Esmail** was the registered proprietor. In the premises, I find the 4th Plaintiff as a bonafide purchaser for value of the suit land lease, **LRV 2616 Folio 7** on plot **1068**. It had no notice and was not party to the fraud, **Moses Aman & 3 Ors Vs Zepher Besimbire, HCCS No.130 of 2011 [2015] UGHCLD) 92**.
- [151] As regards the effect of the rectification of the register by the 2nd Defendant, as I have already observed, as per the land office registry search certificate dated 31/7/2009 (**P.Exh.32**), though the 2nd Defendant purported to had cancelled the 4th Plaintiff's lease on 31/2/2009, no cancellation actually occurred. The purported rectification of the register affecting the 4th Plaintiff took place long after the 4th Plaintiff had obtained the lease on the suit land as a bonafide purchaser for value. I find that the 2nd Defendant was not justified to purport to rectify the register to the extent of cancelling the 4th Plaintiff's lease that had been acquired lawfully.
- [152] As a result, as already found by this court, there was no valid sale and transfer of the suit land (formerly comprised in **Block 10, plot 1068** to the 1st Defendant because at the time the purported vendor (**Senkubuge Denis and Nakkungu Robina**, the alleged administrators of the estate of the late **Keresipo Kiryowa**) sold and transferred the land to the 1st Defendant in 2009, the land was already in possession of **Iqbal Esmail** as the registered proprietor having acquired the same from **Keresipo Kiryowa** in 1997 through the 5th Defendant albeit fraudulently. There could not exist 2 certificates of title both comprised in **Block 10, plot 1068 measuring 1.05 acres land at Nakulabye** (**P.Exh.3 & P.Exh.36/D.Exh.15**) in the names of the 1st Defendant, **Madina Nassali** and **Iqbal Esmail**. It is therefore surprising that the 2nd Defendant issued the void certificate of title, **P.Exh.3** in the names of **Robina Nakkungu** and **Denis Senkubuge** well knowing that the same land, its title was in 1997 issued to **Iqbal Esmail**. At the time of issuance of the title **P.Exh.3** to **Robina Nakkungu** and **Denis Senkubuge** and at the time the subsequent transfer to the 1st Defendant, there existed a subsisting similar title issued to **Iqbal Esmail**. The title transferred to the 1st Defendant was therefore void and invalid.



- [153] In the premises, the 5th and 6th issues are found in the affirmative and in the negative respectively.

Issue No.7: Whether the 4th Defendant was duly instructed by the 1st Plaintiff and Robina Nakkungu (being the administrators of the estate of the late Keresipo Kiryowa) to deal with the suit portion of land and if so, whether he diligently and professionally executed the instructions lawfully.

- [154] In the instant case, it appears not in dispute that the 4th Defendant, **Geoffrey Nangumya** and or his firm was involved in the preparation and witnessing all the agreements and or M.O.U of sale of the suit portions of land to the 1st Defendant (D.Exh.2, 8 P.Exhs.5, 6 & 8), and during cross examination by Counsel Tebyasa, **Nakkungu Robina** (PW4) as the vendor admitted that the 4th Defendant **Mr. Nangumya Geoffrey** was her lawyer.

- [155] There is however no evidence that the said **Nangumya Geoffrey** (4th Defendant) got involved in the transfer of the suit property to the 1st Defendant or in the application of the fake letters of administration by the 1st Plaintiff and **Nakkungu Robina** for the estate of the late **Keresipo Kiryowa**, the basis of which **Nakkungu Robina** came to dispose off the estate suit portions of land. There is also no evidence that was adduced by the 1st - 3rd Plaintiffs that the 4th Defendant did anywhere purport to have instructions in the dealings with or act for the estate of the late **Keresipo Kiryowa** or for the 1st Plaintiff, save for the statement that;

"RE: PLOT NO.1068 KIBUGA BLOCK 10 NAKULABYE

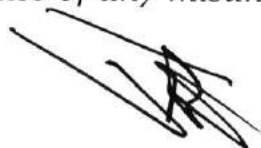
We act for and on behalf of our clients one of the administrators of, and the beneficiaries of the estate of the late Keresipo Kiryowa the lawful owner of the above property...."

See **P.Exh.21**.

Definitely, the above statement does not refer to the 1st Plaintiff as one of the administrators this firm of the 4th Defendant acted for. It was **Robina Nakkungu** as revealed by **Nakkungu** herself and as per **P.Exh.21(b)**.

- [156] There is however evidence that the 4th Defendant also acted for the 1st Defendant as found in the admission of the 1st Defendant during cross examination by **Mr. Kyazze**. It is also reflected in the M.O.U dated 20/5/2008 which the 4th Defendant prepared and witnessed (**P.Exh.6 & 8**) that he acted for the 1st Defendant in the transaction regarding the suit Plot 1068. I however note that at the same time, there was a very interesting clause in the M.O.U, an **arbitration clause**:

".....In case of any misunderstanding arising out of breach of any



of the terms, M/s Nangunya & Co. Advocates shall act as arbitrator."

The above clearly show that the 4th Defendant acted for both the vendor, **Nakkungu Robina** (PW4) and the purchaser of the suit plot 1068, **Madina Nassali** (1st Defendant). The presumption is that he got instructions from both of them. I do not see anything wrong with this kind of agreement especially where both parties agreed to appoint him as the arbitrator in case of any misunderstanding arising out of breach of any of the terms of the M.O.U at hand.

- [157] It is trite that it is the duty of the plaintiff to prove his case and not to rely on the weakness of the defendant's case; **Agbanomovo & Ors Igbuku & Anor (2018) LP ELR -46143, Benin Court of Appeal.**
- [158] In the instant case, though the 4th Defendant's WSD was struck out for being fatally defective and incompetent before court for offending **O.9 r.1 CPR**, this did not relieve the plaintiffs of their duty to prove their case against him. I find that the 1st - 3rd Plaintiffs have not adduced such evidence as on the balance of probabilities that the 4th Defendant as an advocate was negligent and intentionally caused loss to the Plaintiffs. He owed the 1st - 3rd Plaintiffs no duty for he never had any instructions to represent any of them nor did he purport to represent either of them, including the assumed estate of the late **Keresipo Kiryowa** itself.
- [159] The 4th Defendant was only duty bound to act in the best interests of his clients, **Nakkungu Robina** and the **1st Defendant** who were parties to the M.O.U.s. The fact that a lawyer while acting for parties in a contract may have overlooked certain facts or by mistake or by error of judgment failed to guide them on certain principles of law does not render the advocate either reckless or negligent.
- [160] In conclusion, I find that the 1st - 3rd Plaintiffs' claims against the 4th Defendant are devoid of any merit. I accordingly dismiss them.

Issue No.10: What remedies are available to the parties.

1st - 3rd Plaintiffs

- [161] Judgment is entered in favour of the 1st - 3rd Plaintiffs as against the 1st & 5th Defendants for the following declarations and orders:
- a) **A declaration** that the original suit land comprised in **Kibuga Block 10, Plot 88 land at Nakulabye** belongs to the estate of the late **Lauben Mukasa**.
 - b) **A declaration** that the 1st Defendant and the 5th Defendant fraudulently acquired **Plots 1068 and 1067 Kibuga Block 10** (subdivided from Block 10, Plot 88) respectively.



- c) **A declaration** that all the sale agreements made between the parties disposing off **Kibuga Block 10, Plots 1068 and 1067** were fraudulent and illegal save for the subsequent transfers to the 3rd Defendant, **Joseph Kiyimba** for **Plot 1395** subdivided from **Plot 1068**, the 4th Plaintiff, **Shell (Vivo Energies) (U) Ltd** for the lease, **LRV 2616 Folio 7** on **Plot 1068** and **Ssalongo Kasawuli Mukasa Michael** (who is not a party to this suit) but is the purchaser of **Plot 1067** and the subsequent transferees of **Plot 1067** who are all found to be bonafide purchasers for value and therefore are protected from ejection under **Ss. 176 & 181 RTA**.
- d) The net effect of the above declaration and order is that **Plot 1068** subdivided from **Kibuga Block 10 Plot 88** with the lease noted thereon, **LRV 2616 Folio 7** revert to the estate of the late **Lauben Mukasa**, the original proprietor of **Plot 88**. The following certificates of **plots; 1396, 1397 & 1398** in the names of the 1st Defendant fraudulently subdivided from **Plot 1068** (that emanated from the original **Kibuga Block 10, Plot 88**) are accordingly cancelled and the plots to be delivered to the estate of the late **Lauben Mukasa**/the 1st - 3rd Plaintiffs.
- e) **General and compensatory damages:** The award of general damages is in the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission; **Kibimba Rice Ltd Vs Umar Salim, SCCA No.17 of 1992**. According to **Oketha Vs A.G, HCCS No.69 of 2004 [2017] UG CCD 135**,

".....in the assessment of the quantum of damages, it [court] should be mainly guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered"

See also **UCB Vs Kigozi [2002] 1 EA 305**.

Plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong, **Hadley Vs Baxendale (1894) 9 ExCh 341** and **Charles Acire Vs Engola, HCCS No.143 of 1993**. Damages are therefore compensatory in nature.

i) Damages against the 5th Defendant:

The 5th Defendant, **Wasswa Lubulwa Yofesi** unlawfully and fraudulently appropriated **Kibuga Block 10, Plot 1067** (subdivided from the original **Kibuga Block 10, Plot 88**) using an illegal *Certificate of succession* obtained in the names of **Keresipo Kiryowa** and he eventually disposed the plot off to **Ssalongo Kasawuli** at a consideration of **Ugx 950,000,000/= (D.Exh.38)**. The 1st - 3rd **Kiryowa**. In the premises, I award the 1st-3rd plaintiffs compensatory damages of **Ugx 950,000,000/=** for the economic loss of **Plot 1067**. In addition, the 1st - 3rd

Plaintiffs are awarded Ugx 40,000,000/= for the pain, suffering, inconvenience and mental anguish occasioned as a result of the fraudulent dealings in the original **Kibuga Block 10, Plot 88** out of which **Plots 1067 & 1068** were subdivided from and consequently subdivided into other multiple plots by transferees.

ii) Damages against the 1st Defendant:

The 1st Defendant, **Madina Nassali** having subsequently unlawfully and fraudulently acquired and transferred **Plot 1068** (purportedly subdivided from the original **Kibuga Block 10, Plot 88**, and caused multiple subdivisions for her benefit thereafter in a manner that involved inter alia, forgery of the 1st Plaintiff's signature on the sale agreement and basing on a fake grant of the estate of the late **Keresipo Kiryowa**, the 1st - 3rd Plaintiffs as victims are awarded **Ugx 120,000,000/=** for the pain, suffering, inconvenience and mental anguish occasioned to them.

[162] The 1st - 3rd Plaintiffs' claims against the 3rd & 4th Defendants fail and they are accordingly dismissed because the 3rd Defendant is a bonafide purchaser of the suit **Plot 1395** while the 4th Defendant owed no duty to any of the plaintiffs for he had no instructions to represent either of them.

4th Plaintiff

[163] Judgment is entered in favour of the 4th Plaintiff, **Shell (Vivo Energies (U) Ltd)** for the following declarations and orders:

- a) **A declaration** that it is a bonafide purchaser of the sublease, **LRV 2616, Folio 7** noted on **Kibuga Block 10, Plot 1068**.
- b) The **Kibuga Block 10, Plot 1068** reverts to the estate of the late **Lauben Mukasa**, the 2nd Defendant to accordingly note the 4th Plaintiff's lease on **Plot 1068** and the 4th Plaintiff to accordingly regularise its lease with the estate of the late **Lauben Mukasa**.
- c) The Counter claim by the 1st Defendant/Counter claimant against the 4th Plaintiff/Counter defendant fails and it is also accordingly dismissed with costs because the 1st Plaintiff/Counter defendant acquired its lease, **LRV 2616 Folio 7** on **Plot 1068** in good faith without any notice of fraud.
- d) **General damages:** No evidence was adduced by the 4th Plaintiff to invoke the discretion of court to award or justify the award of any damages in its favour.



Interest

- [164] Under S.26 CPA, the awarded general damages are to carry interest at the rate of 24% p.a from the date of judgment till full payment.

Costs

- [165] Under Section 27(1) CPA, costs of every proceeding in the court are at the discretion of the court as regards by whom they are to be paid. A successful party is entitled to costs unless there are good reasons to deny such party. Costs therefore follow the event unless court orders otherwise, **Jennifer Behange Vs School Outfits (U)**, CACA No.53 of 1999 and **Mungecha Vs A.G**, [1987] HCB 55.
- [166] In the instant case, the 1st – 3rd Plaintiffs as successful parties are awarded costs as against the 1st and 5th Defendants while the 4th Plaintiff is awarded costs as against the 1st Defendant.

Dated this 4th day of July, 2024.



.....
Byaruhanga Jesse Rugyema
JUDGE.