

UGANDA / JUDGMENT

Abdul Bar Abdalla v Abdalla Kadet and 3 Others (Civil Appeal No. 054 of 2020) [2025] UGHC 535 (23 January 2025) [2025] UGHC 535

COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Civil Appeal No. 054 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT GULU CIVIL APPEAL NO. 054 OF 2020

(Arising from Gulu Chief Magistrates Court Civil Suit No.12 of 2019) ABDUL BAR ABDALLA
(Legal representative of ABDALLA IBRAHIM) =====APPELLANT

VERSUS

1. ABDALLA KADET

- 2. KADIJA ALIAS
- 3. MARIAM HASSAN ===== RESPONDENTS
- 4. AJAM KASIM

BEFORE HON. JUSTICE PHILLIP ODOKI. JUDGEMENT

Introduction:

- [1] This appeal arises from the judgment of the Chief Magistrate of Gulu (His Worship Matenga Dawa Francis) dated 16th October 2020 in Civil Suit No. 12 of 2019. In the judgment, the trial Magistrate held that unregistered land described as Plot No. 24 Cemetery Road, Pece Division, Gulu Municipality, Gulu District (hereinafter referred to as the suit land) belonged to the estate of the late Hajjati Zamzam Ibrahim. He further held that the Respondents own the suit land exclusively as beneficiaries of the estate of the late Hajjati Zamzam Ibrahim. Being dissatisfied with the judgment, Abdalla Ibrahim appealed to this Court. His prayers are that, the appeal should be allowed; the judgment and orders of the lower Court be set

aside; the suit land should be declared to belong to the estate of his late father Ibrahim Addalla Lakwor; and he should be awarded the costs of this appeal and those of the lower Court.

Background:

- [2] The Respondents instituted Civil Suit No. 12 of 2019 in the Chief Magistrates Court of Gulu against their uncle Ibrahim Addalla. In the suit, they pleaded that at all material times, the suit land belonged to their aunt Hajjati Zamzam Ibrahim (sister of Ibrahim Addalla) who occupied the suit land peacefully and undisturbed. By a document dated 12th June 1999, Hajjati Zamzam Ibrahim gave the suit land to them (Respondents) and Zainab Addallah (daughter of Ibrahim Addalla) as a gift inter vivos. In the 2002 Hajjati Zamzam. The Respondents took possession of the suit land, rented it out to tenants and shared the proceeds of the rent among themselves. The 1st Respondent was appointed to manage the suit land.
- [3] The management of the suit land was entrusted to the 1st Respondent. In a family meeting which took place on the 25th May 2002, attended by Ibrahim Addalla, it was resolved that Zainab Addallah should take over the management of the suit land from the 1st Respondent. Zainab Addallah took advantage of her role as manager of the suit land and applied for a certificate of title for the suit land on the 15th October 2010. She was given a lease offer for the suit land in her personal name from Gulu District Land Board. The first lease offer was dated 28th August 2012 for an initial period of 5 years starting from the 1st August 2012 and another lease offer dated 17th October 2017 for an initial period of 5 years starting from the 17th October 2017.
- [4] The Respondents did not agree with the actions of Zainab Addallah. In a family meeting, held on the 15th January 2017, it was agreed that the suit land should be sold and the proceeds should be shared among the beneficiaries of the gift inter vivos. On the 27th January 2017 Zainab Addallah wrote a letter agreeing that the suit land should be sold. She handed over the documents of the suit land which was in her custody to the chairman of the family Haji Musa Mohamed.
- [5] However, without any authority, Ibrahim Addalla collected all the documents from Haji Musa Mohamed and kept them in his custody. On the 18th July 2018 Ibrahim Addalla, together with his son Rasheed Ibrahim Abdalla and his daughter Zainab Abdalla, through their lawyer, wrote to Musisi Godfrey who was a tenant on the suit land, notifying him to vacate the house on the suit land because the house had been earmarked for demolition.
- [6] The Respondents were shocked to learn that on the 12th June 2018 Ibrahim Addalla paid ground rent for the suit land in his personal name and had started the process to secure a certificate of title for the suit land in his personal name. Ibrahim Addalla had been given a lease offer for the suit land by Gulu District Land Board vide GDLB (28) Min:5/2017 (a) (13) of 27th – 28th September 2017. On the 22nd October 2018, the Respondents, through their

lawyers, wrote to the Secretary Gulu District Land Board to stop the process of registration in the name of Ibrahim Addalla. On the 25th October 2018 the Secretary Gulu District Land Board wrote to the Registrar of Titles, Gulu Regional Office to stop the process of registration.

- [7] The Respondents contended that the acts of Ibrahim Addalla were fraudulent. As a result, they suffered mental anguish and inconvenience. They sought for, a declaratory that they are the rightful owners of the suit land; an order that the process of securing a certificate of title for the suit land should proceed in their names; a permanent injunction to restrain Ibrahim Addalla or his agents from threatening the Respondents and their tenants on the suit land; punitive and general damages; mesne profits; interest; and costs of the suit.
- [8] In his Written Statement of Defence, Ibrahim Addalla denied all the allegations of the Respondents. He contended that the suit land was formerly Plot 16 Cemetery Road. According to him, the suit land belonged to his late father Ibrahim Abdulla Lakwor who died intestate. Ibrahim Abdulla Lakwor owned Plots 14, 16 and 18. He contended that the Respondents are not the direct beneficiaries of the estate of the late Ibrahim Abdulla Lakwor. According to him, the beneficiaries to the suit land are the surviving children of Ibrahim Abdulla Lakwor who are, Alima Ibrahim, Kubura Ibrahim, Kasim Ibrahim and himself. He contended that it is the said beneficiaries who gave powers to Zainab Ibrahim to obtain a certificate of title for the suit land in their trust. He further contended that his late sister Hajjati Zamzam did not know how to read or write and she died intestate. In his view, the purported document dated 12th June 1999 giving the suit land to the Respondents is a forged document. He further contended that Hajjati Zamzam did not own or have sole possession of the suit land. Her access and possession of the suit land was on account of her being a daughter of Ibrahim Abdulla Lakwor. He denied that the Respondents have at any one point taken possession of the suit land. He pleaded that he only entrusted the 1st Respondent to manage the suit land since he is resident in Gulu where the suit land is situated.
- [9] Ibrahim Addalla further pleaded that the resolution in the family meetings authorizing Zainab Mohamed to manage the suit land and to sell the suit land was premised on a forged will presented by the Respondents. The alleged will was found not to be authentic as per the judgment of the County Kadhi of Kibanda North, Masindi District, dated 8th November 2017. He denied that he paid the ground rent in his name. He stated that he paid the ground rent in the name of his father Ibrahim Abdulla Lakwor. He contended that because the certificate of title could not be obtained in the name of his late father, that is the reason why it was being processed in the name of Zainab Ibrahim. It was intended that upon Zainab Ibrahim obtaining the certificate of titles, it would be transferred into the name of a registered family enterprise.
- [10] In the lower court, the 1st and 2nd Respondents testified as P. W.1 and P. W.2 respectively. Abibu Arowa testified as D. W.1, Halima Abdul Ssebi testified as D. W.2 and Afsha Nantome Abdallah testified as D. W.3. On 16th October 2020, the trial Magistrate gave judgment in

favor of the Respondents as already stated in paragraph 1 above. Dissatisfied with the judgment, Ibrahim Addalla filed this appeal. When the appeal come up for hearing on 19th January 2024, Counsel for the Appellant informed Court that Ibrahim Addalla had died. Counsel prayed that Abdul Bar Abdallah, a son of Ibrahim Addalla should be given a limited grant of letters of administration for the purpose of prosecuting this appeal, which prayer was granted.

Grounds of appeal:

[11] The following grounds of appeal were formulated.

- i. The learned trial Chief Magistrate erred both in law and fact when he failed to properly and judiciously evaluate the evidence on record and find that the suit land belongs to the estate of the late Ibrahim Abdalla Lakwar who died intestate and not personal property of the late Hajjati Zamzam Ibrahim.
- ii. The learned trial Chief Magistrate erred both in law and fact when he failed to properly evaluate the evidence on Court record and find that the purported will of the late Hajati Zamzam Ibrahim was not a valid.

Legal representation and submissions:

[12] The Appellant was represented by Mr. Samuel Ondoma of M/s Alaka & Advocates. The Respondents were represented by Mr. Kilama Calvin of M/s Nimungu Associated Advocates.

[13] Counsel for the Appellant argued both grounds together. He submitted that the Respondents did not prove ownership of the suit land under any of the land tenures systems provided for in Article 237(3) of the Constitution of the Republic of Uganda, 1995 and Section 2 of the Land Act Cap, 227. Counsel submitted that at the time Zamzam Ibrahim was alleged to have acquired the suit land, the law applicable was the Public Land Act. All land in Uganda was public land being managed by Uganda Land Commission. Municipal Councils were given statutory leases. The Municipal Council would give leases. In the absence of a lease, any person in occupation of the land was a tenant at will who could be evicted because they did not enjoy any protection. Counsel argued that a tenant would pay rent periodically. Once the rent lapses, the land would revert back to the lessor. According to Counsel for the Appellant, the occupation permit and receipts which was relied upon by the Respondents for payment of ground rent does not prove leasehold ownership of the suit land.

[14] Counsel for the Appellant further submitted that the Respondents claimed that they acquired the suit land as a gift inter vivos. Counsel argued that for there to be a gift, there must be intention to give the land, the donor must have delivered the gift (land) to the donee, and the donee must have accepted the gift. In the instant case, there was no intention to give a gift. The gift should have been made in writing during the lifetime of the donor and not through a will. In addition, Counsel submitted that the Respondents claimed that they were given the suit land by Zamzam Ibrahim through a will but there is no proof of the will.

Counsel argued that the will was not attested to. Zamzam Ibrahim was illiterate, she could not write the will in English language. Counsel made reference to the testimony of P. W.1 who testified that he did not know if Zamzam Ibrahim was literate or not.

- [15] Counsel for the Appellant submitted that the Appellant on the other hand, through his witnesses, proved that the suit land belonged to his father the late Abdalla Ibrahim Lakwar who purchased it from Gulu district administration in 1962 using money that the Appellant sent to him. Counsel prayed that the judgment of the lower Court should be set aside and that this Court should find that the suit land belongs to the estate of Abdalla Ibrahim Lakwar.
- [16] Counsel for the Respondents raised a preliminary objection, that the grounds of appeal formulated by the Appellant are too general and vague. Those grounds do not point out the part of the judgment the Appellant is challenging. Counsel submitted that the grounds offend Order 43 Rule 1(2) of the Civil Procedure Rules. Counsel relied on the case of **Katuma Yaranga Versus Edward Musoke CACA No. 2 of 1998** in support of his submission.
- [17] On proof of ownership of the suit land, Counsel for the Respondents submitted that the Respondents adduced both oral and documentary evidence to prove that the suit land was allocated to Zamzam. Counsel pointed out that when the lower court visited the locus in quo, it found the building which was built by Zamzam still in existence. In his view, the Appellant did not adduce any documentary evidence to prove occupation of the suit land. Counsel argued that evidence of possession gives the person in possession title over the suit land unless challenged by a person with a superior title. In support of his submission, counsel relied on the case of **Bramell Versus* Bramell [1942]1KB 370** and **Ocean Estates Ltd Versus Pinder [1969]2 AC 19.** Counsel argued that in the instant case, it was Zamzam who was in possession of the suit land. In addition, counsel submitted that Hajati Zamzam Ibrahim was a tenant by occupancy whose interests are protected by Section 31(2) of the Land. Counsel submitted that although the Constitution and the Land Act provide for land tenure systems, they come into force when the late Hajati Zamzam Ibrahim and the Respondents were in possession of the suit land and the law does not apply retrospectively.
- [18] In reply to the submission of Counsel for the Appellant that there was no gift inter vivos, Counsel for the Respondents submitted that all requirements of a gift were proved. Counsel argued that a gift inter vivos can take effect after death.
- [19] In rejoinder, Counsel for the Appellant submitted that the grounds of appeal are very clear. Ground 1 of the Appeal is to the effect that the trial Chief Magistrate should have found that the suit land is estate property of Abdallah Ibrahim Lakwar. Ground 2 is to the effect that the trial Chief Magistrate avoided the issue of the will.

Consideration and determination of the Court:

[20] Before determining the merits of this appeal, I shall first determine the preliminary objection of Counsel for the Respondents that the grounds of appeal are too general and vague. Order 43 rule 1 (2) of the Civil Procedure Rules, SI 71- 1, provides that:

"The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively."

[21] In the case of *National Insurance Corporation versus Pelican Services CACA No. 5 of 2003,* while interpreting Rule 86 of the Court of Appeal Rules, which is similar to Order 43 Rule 1(2) of the Civil Procedure Rules, the Court relied on the decision of the supreme Court in *Sietco Versus Noble Builders (U) Ltd SCCA No. 31 of 1995,* and held that a ground of appeal must challenge a holding, ratio decidendi and must specify the points which were wrongly decided. (see also:

***Sukuton Ali Versus Augustine Kapkwonyogo & Ors CACA No. 19 of 2012*)**

[22] I have carefully considered the grounds of appeal in the instant case. In ground 1, the Appellant faults the trial Magistrate for failing to properly evaluate evidence on record in order to come to the conclusion that the suit land belonged to the estate of the late Abdhalla Ibrahim Lakwar and not to find as it did that it is personal property of the late Hajati Zamzam Ibrahim. In ground two, the Appellant faults the trial magistrate for failing to properly evaluate the evidence on record and in order to come to the conclusion that the alleged will was invalid. In my view, both grounds are not general and do not in any way offend Order 43 Rule 1(2) of the Civil Procedure Rules. The preliminary objection is accordingly overruled.

[23] I shall now proceed to determine the merits of the appeal. This being a first appeal, this Court has a duty to reconsider all material evidence that was before the trial Court and to come to its own conclusion on the evidence. This settled position of the law was stated by the Supreme Court in *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA No. 17 of 2000.* At page 7, Mulenga J. S. C stated that: that;

"It is trite law that the duty of a first appellate Court is to reconsider all material evidence that was before the trial Court, and while making allowance for the fact that it has neither *seen nor heard the witnesses, to come to its own conclusion on the evidence. In so doing, the first appellate Court must consider the evidence on any issue in its totality and not any piece thereof in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial Court."*

- [24] The issue that has to be determined in ground 1 of the appeal is whether the suit land belonged to the late Abdalla Ibrahim Lakwar or the late Hajati Zamzam Ibrahim. The witnesses of the Appellant testified that the suit land belonged to Abdalla Ibrahim Lakwar. According to D. W.1 Abdallah Ibrahim Lakwar acquired the suit land from Pece Division as a Grade II Development Area in 1962.
- [25] The Respondents' witnesses on the other hand testified that the suit land belonged to Hajjati Zamzam Ibrahim. They testified that Hajjati Zamzam Ibrahim occupied the suit land during her lifetime. The Respondents' witnesses adduced receipts for payment of ground rent issued to Hajjati Zamzam Ibrahim from 1965 – 1970 and from 1972 – 1976 by Gulu Town Council. The receipts were admitted in evidence as PX5i – ii and PX5iv -xii. The Respondents' witnesses also adduced a receipt for payment of occupation permit which was issued to Hajjati Zamzam Ibrahim dated 5th October 1973. The receipt was admitted in evidence as PX5iii. In addition, the Respondents' witnesses adduced the Occupation Permit issued to Hajjati Zamzam Ibrahim as the owner of a building on the suit land. It was stated in the Occupation Permit that the building was intended for residential purposes. The Occupation Permit was dated 20th September 1973. It was admitted in evidence and marked as PX6.
- [26] In order to determine whether Abdalla Ibrahim Lakwar or Hajati Zamzam Ibrahim owned the suit land, I consider it important to analyze the evolution of land law in Uganda with emphasis on land outside Buganda especially in urban areas.
- [27] Following the declaration of Uganda as a British Protectorate, the traditional/customary system of land occupation, ownership and management outside Buganda, which had been in place since time immemorial was changed. *The Uganda Order in Council, 1902* created what was termed Crown land, which was vested in the Governor in trust for His Majesty the King. Crown land was defined in Section 2 of the Order in Council to mean:
- *"...all public lands in Uganda which are subject to the control of His Majesty by virtue of any treaty, convention or agreement of His Majesty's protectorate and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever."*
- [28] Section 7(1) of the Order in Council provided that:
- *"All rights of His Majesty in relation to any Crown lands shall vest in and may be exercised by the commissioner for the time being in trust for His Majesty, or if the Secretary of State at any time with respect to all or any such lands by order under his hand so directs, in such other trustee or trustees for His Majesty as the Secretary of State may appoint."*
- [29] Section 7(3) of the Order in Council provided that:
- *"The Commissioner, or any other trustee or trustees, may make grants or leases of any Crown Lands, or May permit them to be temporarily occupied, on such terms and conditions as he or they may think fit, subject to the provisions of any ordinance."*

- [30] The Order in Council was followed by *The Crown Lands Ordinance, Cap 117* which provided for restriction on conveyances, leases and licenses for temporary occupation of Crown Land. Under Section 20 of the Crown Lands Ordinance, it was unlawful for any person to occupy any crown land within the boundaries of any township or trading Centre unless such occupation is in pursuance of a valid licence or lease. In the case of a licence, it should have been granted by the Governor. In the case of a lease, it should have been granted by the Governor or by a person who was in occupation himself pursuant to a lease or a sublease.
- [31] Under Section 21 of the Ordinance, the Governor had the discretion to issue township temporary occupation licences to occupy Crown land within the boundaries of townships or trading centres and to erect thereon temporary houses or huts or other temporary erections and to plant crops thereon, provided that any house, hut or other temporary erections was erected and maintained to the satisfaction of the Township Authority or other body or person administering the township or trading Centre. The licensee of the township temporary occupation licence would pay rent fixed by the Lands Officer. A township temporary occupation licence would be valid in the first instance up to the 31st December of the year in which it was issued and thereafter until the expiration of any three months' notice to quit. Such notice to quit would be served upon the licensee at any time after the 31st December of the year in which the licence was first issued.
- [32] What was Crown land was largely renamed public land under *The Public Land Act, 1962*. The Act defined "Crown land" and "Crown Lands" to mean:
- "...*all lands in Uganda (not being lands of which any person other than Her Majesty or the Governor is registered under the provisions of the Registration of Titles Act as the* *proprietor of an estate or freehold or of which any person is so registered as the proprietor of an estate in respect of which a final mailo certificate has been given) which immediately prior to the commencement of this Act were -*
- *a) subject to the control or in possession of Her Majesty by virtue of any treaty, convention or agreement, or of Her Majesty's protectorate; or*
 - *b) subject to the control or in the possession of Her Majesty having been acquired for the public service or otherwise howsoever."*
- [33] Under Section 15 of the Public Land Act, urban authorities (municipal council, town council or town boards) were given statutory leases over land which is situate in their area of jurisdiction. Any tenancy or licences which was valid and subsisting immediately prior to the commencement of the Act which was vested in the Governor was to be vested in the urban authority as the controlling authority. Under Section 19 of the Public Land Act, the urban authority had the full power to grant estates and create rights or interest in and to manage, dispose of and otherwise deal with public land vested in it as it thinks fit. Urban authorities therefore had the power grant leases and temporary occupation permits which had hitherto been vested in the Governor by The Crown Lands Ordinance.

- [34] Then there was *The Public Lands Act, 1969* which repealed the The Public Land Act, 1962. Under Section 32 thereof, statutory leases granted to urban authorities under section 15 of The Public Land Act, 1962 was to continue subject to the provisions of the Act. That was the law until the coming into force of the *Constitution of the Republic of Uganda, 1995*.
- [35] The Constitution made far reaching changes in the system of land holding in Uganda and the manner of control and management of land. Article 237 provides that land belongs to the citizens of Uganda and vest in them in accordance with the 4 land tenure systems, that is, customary, freehold, mailo and leasehold. Under Article 286 of the Constitution, statutory leases to urban authorities ceased to exist. However, under Article 237 (5) & (6) of the Constitution, leases granted to Ugandans out of public land (which includes statutory leases to urban authorities) could be converted into freehold in accordance with a law made by parliament. Subsequently, the *Land Act* was enacted to give effect to the provisions of the Constitution. Among the institutions established was the District Land Boards.
- [36] The functions of a District Land Board (section 59 of the Land Act) includes holding and allocating land in a district which is not owned by any person, facilitating the registration and transfer of interests in land, and taking over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority. The district land board also holds in trust for the citizens the reversion on any lease granted by a former controlling authority and may exercise in relation to the lease and the reversion the powers of a controlling authority under the Public Lands Act, 1969. The District Land Boards therefore became successors in title, by operation of the law, to controlling authorities or urban authorities in respect of public land which had not been granted or alienated to any person or authority. See: the case of *Kampala District Land Board and another versus National Housing and construction Corporation SCCA No. 2 of 2004*.
- [37] In the instant case, it is common ground that the suit land was situate in Gulu Town Council. It formed part of crown land which subsequently became public land. Therefore, the only way

Abdalla Ibrahim Lakwar or Hajati Zamzam Ibrahim could have acquired the suit land could have been by obtaining a lease or could have only occupied it pursuant to a valid licence.

- [38] In the case of Abdalla Ibrahim Lakwar, although D. W.1 testified that Abdallah Ibrahim Lakwar acquired the suit land from Pece Division as a Grade II Development Area in 1962, it was a mere assertion without any scintilla of proof. As a matter of fact, D. W.1 had no knowledge of what interest Abdalla Ibrahim Lakwar had on the suit land. He testified that he came to know of the suit land when Zainab Ibrahim asked him to extend a lease for her and obtain a certificate of title. It is not contested that Zainab Ibrahim applied for a lease of the suit land on 15th October 2010 long after Abdalla Ibrahim Lakwar had died in 1972. D. W.1 merely relied on what Kubra told him that the suit land belonged to her father Abdalla Ibrahim Lakwar. Unfortunately, the said Kubra was not adduced as a witness. The evidence of D. W.1 regarding ownership of the suit land by Abdalla Ibrahim Lakwar was therefore

hearsay, not admissible.

- [39] The Appellant relied on a Statutory Declaration of Kubra dated 10th January 2019 which was admitted in evidence as DX1. However, in that statutory declaration, Kubra merely stated that the suit land belonged to her father Abdalla Ibrahim Lakwar. She did not specify how and when her father became the owner of the suit land.
- [40] D. W.2 testified that the suit land belonged to her father Abdalla Ibrahim Lakwar. She did not adduce evidence of either a lease or licence issued in the name of her father in respect of the suit land. She appeared not to have full knowledge of the suit land. According to her, the suit land is situated at Keyo Road.
- [41] D. W.3 testified that Abdalla Ibrahim Lakwar bought the suit land. She did not give any evidence to prove from who and when the suit land was bought by Abdalla Ibrahim Lakwar. She also appeared not to have full knowledge of the suit land. According to her, the suit land is situated at Keyo Road.
- [42] My finding is that none of the Appellant's witnesses adduced any evidence of either a lease or a valid occupation licence issued by the controlling authority to Abdalla Ibrahim Lakwar in order to support the Appellant's claim that Abdalla Ibrahim Lakwar owned the suit land. The Appellants' witnesses did not even adduce any evidence to show that Abdalla Ibrahim Lakwar ever lived on the suit land.
- [43] As for Hajati Zamzam Ibrahim, no evidence was adduced by the Respondents to prove that she was given a lease for the suit land by the controlling authority. P. W.1 testified that Hajati Zamzam Ibrahim stayed on the suit land with the 2nd, 3rd and 4th Respondents and was in possession of the land until she died in 2002. He testified that he was staying with Hajati Zamzam Ibrahim since he was 8 years old. According to him, Abdalla Ibrahim Lakwar was occupying Plot 18 and not the suit land. After the death of Abdalla Ibrahim Lakwar, Abdalla Ibrahim inherited Plot 18, sold it and migrated to Kigumba. This evidence was not challenged in cross-examination.
- [44] P. W.2 testified that she lived with Hajati Zamzam Ibrahim on the suit land until she (P. W.2) got married in 1973. She further testified that she witnessed Hajati Zamzam Ibrahim paying ground rent for the suit land.
- [45] In support of the Respondents' evidence that it was Hajati Zamzam Ibrahim who was in occupation of the suit land, the Respondents adduced receipts for payment of ground rent and occupation permits mentioned in paragraph 24 above. The Evidence of the Appellants witnesses support the Respondents evidence that it was Hajati Zamzam Ibrahim who was in occupation of the suit land and paid ground rent for it. In their testimony, both D. W.1 and D. W.2 admitted that Hajati Zamzam Ibrahim was staying on the suit land. D. W.3 testified that Hajati Zamzam Ibrahim was paying ground rent for the suit land. Although D. W.2 testified that Hajati Zamzam Ibrahim was staying on her father's land and in her father's house, I find that evidence not believable. If indeed she was staying on the suit land belonging to her

father, I do not believe that she would have obtained an occupation permit for the suit land and paid ground rent in her personal name from 1965 up to 1976. The Occupation permit clearly shows that the building on the suit land was her property.

[46] In my view, the receipts and the temporary occupation permit clearly show that it was Hajjati Zamzam Ibrahim and not Abdalla Ibrahim Lakwar who was given the licence by Gulu Town Council (the controlling authority) to occupy the suit land. She was in occupation or possession of the suit land for more than twelve years at the time of the coming into force of the 1995 Constitution. No evidence was adduced to show that Gulu Town Council at any one moment gave Hajjati Zamzam Ibrahim notice to quit the suit land or challenged her stay on the suit land. She was therefore entitled to enjoy security of occupancy as a bonafide occupant of the suit land which formed part of the statutory lease to Gulu Minicipal Council. This is accordance with Article 237(8) of the Constitution and Section 31(1) of the Land Act. Even after the statutory lease to Gulu Town Council was automatically extinguished on the abolition of the statutory lease by the Constitution, it did not mean that her interest in land was thereby abolished or extinguished. Her right as a tenant in possession who held adversely to Gulu Town Council for a long time did not cease to exist. Hajjati Zamzam Ibrahim continued to enjoy the same right as a bona fide occupant of a registered owner, who must be deemed to be the Gulu District Land Board and subsequently Gulu City Land Board under Section 59(8) of the Land Act. I am fortified by the decision of Odoki C. J in the case of **Kampala District Land Board** cited above in that regard.

[47] Be that as it may, as the person who was in possession of the suit land from 1960s up to the time of her death in 2002 unchallenged, Hajjati Zamzam Ibrahim enjoyed possessory title over the suit land. In law, possession confers possessory title upon a holder of land, good and enforceable against any other persons who cannot show a better title*.* In **Boiti Bonny versus Imalingat Lawrence Court of Appeal Civil Appeal No. 239 of 2016 Gashirabaki** J. A, held that:

*"Possession confers a possessory title upon a holder of land and a recognizable enforceable right to exclude all others but persons with a better title. Possession of land is itself a good title against anyone who cannot show a prior and therefore better right to possession (see *Asher v. Whitlock*(1865) LR 1 QB1)."*

[48] The right to possession of land can be inherited, devised or conveyed. In the **Asher versus Whitlock** case cited above, Cockburn CJ stated that;

"But authorities are conclusive to shew that a person in peaceable possession of land has, as against everyone but the true owner, an interest capable of being inherited, devised or conveyed."

- [49] My finding on this issue/ground is that the Appellant failed to prove that the suit land belonged to Abdalla Ibrahim Lakwar in any way. The Respondents on the other hand proved that Hajjati Zamzam Ibrahim enjoyed possessory title over the suit land. Ground 1 of the appeal therefore fails.
- [50] Turning to ground 2 of the appeal, the issue to be determined therein is whether the document dated 12th June 1999 giving the suit land to the Respondents was a valid will of Hajjati Zamzam Ibrahim. The Respondents pleaded that they acquired the suit land from the late Hajjati Zamzam Ibrahim through a gift inter vivos. They attached to their plaint the document dated 12th June 1999 as the document giving them the gift. In the document which was indicated to have been written by Hajjati Zamzam Ibrahim it shows that it is a will/testament. It does not bear any signature of any attesting witness. Although counsel for the Respondents applied to have the document admitted in evidence, Counsel for the Appellant objected to its admission. The document was thus not admitted in evidence.
- [51] In his evidence P. W.1 made reference to the document as a will. He testified that he did not know if Hajjati Zamzam Ibrahim was literate or illiterate. He however stated that Hajjati Zamzam Ibrahim could read the quoran. He further testified that other than the will, there is no document that she authored. He stated that it is the best friend of Hajjati Zamzam Ibrahim who found the will. He further stated that after discovering the will, they had trust in it. P. W.2 testified that the suit land was given to them as a gift but not in a will. He did not adduce any different document from from which the Respondents got the gift.
- [52] D. W.1 testified that he looked at the purported will, it bears the name of Hajjati Zamzam Ibrahim. He testified that it is a forged document. He further testified that the document was rejected by the Sharia Court of Muslim Supreme Council of Kiryadongo on the grounds that Hajjati Zamzam Ibrahim was illiterate and unable to read and write. D. W.2 testified that Hajjati Zamzam Ibrahim did not know how to read and write.
- [53] I have found the evidence of the Appellants more credible that the document dated 12th June 1999 was not authored by Hajjati Zamzam Ibrahim since she did not know how to read and write. If indeed she knew how to read and write I doubt if there would have been no other document authored by her.
- [54] Having found that Hajjati Zamzam Ibrahim did not author the document dated 12th June 1999, the claim of the Respondents that they acquired the suit land from the late Hajjati Zamzam Ibrahim as a gift inter vivos contained in that document cannot be true. Be that as it may, the term gift inter vivos is defined in Halsbury's Laws of England Vol. 18 pp 364 para 692 to mean;

"The transfer of any property from one person gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true possessor to another person with full intention that the thing shall not return to the donor and with full intention on the part of the receiver to retain the thing as his own without restoring it to the giver."

- [55] It is a settled position of the law that for a gift of personal property to be complete and irrevocable, the following conditions must exist. That is, the donor must intend to give the gift, the donor must deliver the property, and the donee must accept the gift. See the case of *George William Kalule Versus Norah Nassozi & Anor Court of Appeal Civil Appeal No. 29 of 2014)*. A gift inter vivos of land may be established by evidence of exclusive occupation and user thereof by the donee during the lifetime of the donor. A gift is perfected and becomes operative upon its acceptance by the donee and such exclusive occupation and user may suffice as evidence of the gift (see *Oyet & Anor Vs Abwola H. C. CA No. 0068 of 2016* and *Ovoya Poli v. Wakunga Charles, H. C. C. A No. 0013 of 2014)*.
- [56] in the instant case, P. W.2 testified that it was during the last funeral rites of Hajati Zamzam Ibrahim that a one Abiba Amin brought a locked suitcase and said that it belonged to Hajati Zamzam Ibrahim. That when the padlock on the suitcase was broken, it was discovered that the suitcase contained among others an exercise book which was read and interpreted to mean that that the Respondents together with Zainabu Abdalla were given the suit land by the late Hajati Zamzam Ibrahim.
- [57] Therefore, even if the document dated 12th June 1999 was to be regarded as a valid document which was authored by the late Hajati Zamzam Ibrahim, it is incapable of giving a gift inter vivos to the Respondents. The alleged gift was not given during the lifetime of Hajati Zamzam Ibrahim. It was only discovered after Hajati Zamzam Ibrahim had already died. Hajati Zamzam Ibrahim did not deliver the alleged gift to the Respondents during her lifetime and the Respondents did not accept the gift during her lifetime.
- [58] In the end, I find that the document dated 12th June 1999 was neither a valid document issued by the late Hajati Zamzam Ibrahim nor did the Respondents acquire the suit land as a gift inter vivos from it. Ground 2 of the appeal therefore succeeds.
- [59] On the issue of costs, the general rule is that costs should follow the events and a successful party should not be deprived of costs except for good cause. See Section 27 of the Civil Procedure Act. In the instant case, given that this appeal has partially succeeded and partially failed it is only fair that each party should bear their own costs of this appeal and those in the lower Court.

Final orders:

- [60] Having considered the merit of this appeal, the following orders are hereby made;

- 1. The decision of the trial Chief Magistrate in Civil Suit No. 12 of 2019, dated 29th January 2020 that Respondents own the suit land exclusively as beneficiaries of the estate of the late Hajjati Zamzam Ibrahim is set aside.
- 2. The estate of the late late Hajjati Zamzam Ibrahim has possessory title over the suit land and they can deal with he same in accordance with the Succession Act.
- 3. Each party to bear their costs of this appeal and the costs in the lower Court.

I so order.

Dated and delivered by email this day of 23rd day of January, 2025

Phillip Odoki

Judge

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Prepared on 13 October 2026 · Esheria