

UGANDA / JUDGMENT

Christine Namayanja v Administrator General and Others (Civil Suit No. 534 of 2016) [2025] UGHCLD 138 (15 July 2025) [2025] UGHCLD 138

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Civil Suit No. 534 of 2016

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL SUIT No. 0534 OF 2016

CHRISTINE NAMAYANJA :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. ADMINISTRATOR GENERAL

(Administrator of the estate of the late Yoweri Kiyaga) 2. KASASA HUSSEIN 3. THE REGISTRAR
OF TITLES :::::::::::::::::::::::::::::: DEFENDANTS 4. MUSINGUZI EDITH KAGEYE

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA JUDGMENT***Introduction;***

1. The plaintiff brought this suit seeking declarations and orders inter alia; cancellation of titles to Land comprised in Block 58 Plot 19 subdivided into several Plots to wit 30, 31, 32, 33, 39, 40, 41, 42, 43, 85, 86, 87, and 88, an order directing the 3rd defendant to amalgamate all the sub-divided titles and reinstatement of the old boundaries of the aforementioned suit land as Block 58 Plot 19, a declaration that the plaintiff is the lawful owner of the suit lands comprised in Block 58 Plot 19 land at Monde Wakiso District, a

declaration that the 4th defendant's land comprised in Block 58 Plot 68 & 44 constitute part of the plaintiff's beneficial share/land from Late Yoweri Kiyaga's estate, a permanent injunction against all the defendants, their agents, servants and or successors in title from dealing, disposing off or selling or in any other way interfering with the suit lands, an eviction order against the 4th defendant from the suit lands and all those claiming title under her, a consequential order directing the 3rd defendant to cancel the 2nd defendant's name on the amalgamated certificated of Title and registration of the plaintiff's name as the legal owner, general damages and costs of the suit.

Background;

2. The plaintiff is a daughter and one of the beneficiaries to the estate of the late Yoweri Kiyaga who was at all material times the registered proprietor of land comprised in Kyadondo Block 58 Plot 7. Following his demise in 1977, the 1st Defendant obtained letters of administration to his estate and accordingly distributed the estate wherein the plaintiff was entitled to 32 acres out of the land comprised in Kyadondo Block 58 Plot 7 at Monde by virtue of a consent decree vide CS No. 153 of 2003.
- 3. The plaintiff subsequently went to the 1st Defendant's office and approached the Assistant Administrator General a one Mr. Mwanje requesting for her certificate of title which he declined to give her despite acknowledging that the same was in his possession. Prior to the distribution the plaintiff had sold 12 acres of the suit land to the 2nd defendant at a consideration of Ug shs120,000,000 but the 2nd defendant only made a part payment of Ug shs 42,000,000 leaving an outstanding balance of Ug shs 78,000,000/=.
- 4. The 1st defendant connived with the 2nd defendant and unlawfully without any colour of right and permission from the plaintiff surrendered the certificate of title to the 2nd Defendant who fraudulently transferred the whole land into his names and later subdivided the same into Plots 30,31,32,33,39,40,41,42,43,85,86,87 & 88 which prompted the plaintiff to report the matter to the OC Kasangati Police office where the 2nd defendant was ordered to surrender the certificate of title which he failed to do.

- 5. That the 2nd defendant mutated the plaintiff's land into various plots and sold them to various people including the 4th defendant

who claims to have purchased Plots 44 and 68 in total disregard of the plaintiff's interest in the land.

- 6. The plaintiff pleaded the following particulars of fraud against the defendants;

Particulars of fraud against the 1st defendant

- i) 1st defendant maliciously refusing to surrender the certificate of title to the suit land to the plaintiff and instead unlawfully giving it to the 2nd defendant in utter disregard of the plaintiff's beneficial interest arising from the estate of the deceased.
- ii) Transferring the plaintiff's title into the 2nd defendant's name without any mandate or authority from the plaintiff as the rightful beneficiary.
- iii) The 1st defendant falsely claiming that the plaintiff had no interest in the suit property whereas not.
- iv) Conniving with the 2nd defendant by transferring the suit land into his names well aware that he still owed the plaintiff money for consideration of the 12 acres sold to him.

Particulars of fraud against the 2nd defendant

- i) Conniving with the 1st defendant to fraudulently transfer all the suit property into his names well aware that the plaintiff is the lawful owner with a beneficial interest in the suit land.
- ii) Transferring the entire suit land into his names well aware that he has purchased 12 acres only.
- iii) Fraudulently causing the subdivision of the suit land from its original description of Block 58 Plot 19 and creating illegal Plots 30,31,32,33,39,40,41,42,43,85,86,87 & 88.
- iv) Transferring all the plaintiff's land into his names even without paying the plaintiff the balance of the consideration being 78 million for the 12 acres he had purchased in utter disregard of the plaintiff's interest.

Particulars of fraud against the 4th defendant

- i) Conniving with the 2nd defendant to buy the plaintiff's land without exercising due diligence to confirm ownership on the ground.
- ii) Conniving with the 2nd defendant to buy the plaintiff's land without conducting a site visit to inspect the land in order to confirm the rightful owner of the same.

The 1st and 4th defendants' defence;

- 7. That the plaintiff without any color of right dubiously obtain registration on the land as an administrator of the deceased Yoweri Kiyaga's estate on the 2/11/1998 vide Registration No. KLA 277409 in total. The plaintiff thereafter caused herself to be registered as the owner of the land and sold it to a one Paul Katibe. The 1st defendant sued the plaintiff and Paul Katibe to recover the land that the plaintiff had already sold. Paul Katibe also sold the land to the 2nd defendant in an agreement dated 19/12/2013.
- 8. The 4th defendant on the other hand states that she purchased land comprised in Kyadondo Block 58 Plot 68 and 44 measuring approximately 0.56960 hectares and 0.611 from the 2nd defendant.
- 9. After the purchase, the 2nd defendant handed over the Certificate of Title of the above land transfer and consent forms to the 4th defendant to have the said transferred to her names. The 4th defendant took possession of the purchased land and is in possession of the same. The 4th defendant also filed a counterclaim seeking orders of removal of the caveat on the land

comprised in Kyadondo Block 58 Plot 44 and 68, damages and costs of the suit against the counter-defendant/plaintiff.

- 10. On the 13th day of May 2025, the plaintiff, 1st, 3rd and 4th defendants executed a consent judgement resolving the dispute amongst themselves in the following terms;
- i) The 1st defendant hereby admits that, as administrator of the estate of the late Yoweri Kiyaga, he, without prior reference to the consent of the plaintiff, the beneficial owner of 32 acres thereof, erroneously transferred the said land to the 2nd defendant then comprised in Kyadondo Block 58 Plot 19 at Monde measuring 33.6896 acres now subdivided into plots 40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,57,58,59,7

105.

ii) The plaintiff's claim against the 2nd defendant shall be limited to 26 acres being her beneficial interest of 32 acres less six acres that the 2nd defendant had duly paid for.

0,71,72,75,76,77,78,79,80,81,82,83,84,85,91,103, and

iii) The said six acres include Kyadondo Block 58 plots 68 at Monde and 44 measuring 1.407 acres and 1.51 acres

respectively which the plaintiff hereby relinquishes to the 4th defendant.

- iv) The 3rd defendant is directed to vacate the caveats lodged by the plaintiff on the Certificates of Title for Kyadondo Block 58 plots 68 and 44 at Monde and register the 4th defendant thereof as proprietor.

- v) The 1st defendant is hereby discharged from any liability and obligation whatsoever towards the plaintiff in connection with the Suit land except in so far as he may be requested to participate as a witness in subsequent suits, if any, against the 2nd defendant and his successors in title. vi) Each party bears their own costs.
- 11. Following the execution of the above consent judgement, the matter proceeded exparte against the 2nd defendant who was served through substituted service but still did not participate in the hearing of the matter.

Locus proceeding

12. On the 29th day of August 2024, while in the attendance of counsel Matovu Akram for the plaintiff, Counsel Mayomba Simon Peter for the 1st defendant, and Counsel Harriet Nabankema

holding brief for counsel Nakamatte, court visited locus in quo pursuant to the **Practice Direction No.1 of 2007** which stipulates that courts handling land matters should as so far as possible, interest themselves in physically visiting properties under dispute before pronouncing themselves on the propriety rights of the parties.

- 13. At the locus visit, court observed the following;
- i) the plaintiff is not in possession of the suit land.
- ii) The 4th defendant is in occupation of 2 & 3 acres of land respectively with banana plantation.

Representation;

14. At the hearing, the plaintiff was represented by Jackie Tenywa Mukasa together with Akram Matovu from M/s Kavuma Kabenge & Co. Advocates and M/s Matovu Kateregga & Co. Advocates while the 1st Defendant was represented by Muyomba Simon Peter from Administrator General's Office, the 3rd Defendant was represented by Mr. Ssekitto Moses and Esther Nakamatte of M/s Nabankema & Nakamatte Co. Advocates represented the 4th defendant.

Issues for determination

- 15. Putting into consideration the terms of the consent judgement executed between the plaintiff, the 1st, 3rd and 4th defendants on the 13th day of May 2025, this Court shall only consider an issue in regards to the 2nd defendant's interest in the suit land.
- i) **Whether the 2nd defendant held any valid interest in the suit land.**
- ii) **What remedies are available to the parties.**

Analysis and determination of the issues;

- 16. **Section 101 of the Evidence Act Cap 8** provides that *"whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts, which he or she asserts must prove that those facts exist".**
- 17. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. **Section 102 of the Evidence Act** goes on to provide that; *"the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and section 103 of the Evidence Act is to the effect that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence"*

unless it is provided by any law that proof of that fact shall lie on any particular person".

18. This being a civil suit, the burden of proof lies with the plaintiff. To decide in her favor, the court has to be satisfied that the plaintiff has furnished evidence whose level of probability is such that a reasonable man might hold that the more probable conclusion is that for the plaintiff contends, since the standard of proof is that on the balance of probabilities/preponderance of evidence. **See: Lancaster versus Blackwell Colliery Co. Ltd 1918 WC Rep 345 and Sebuliba versus Cooperative Bank Ltd [1982] HCB 130.** The burden of proof is on the plaintiff to prove on the balance of probabilities that he has a better claim to the suit property than the one made by the defendants. Whether the 1st defendant illegally and fraudulently distributed and effected transfer of the suit lands into the 2nd defendant's names?

***Issue One;* whether the 2nd defendant held any valid interest in the suit land.**

19. At the point of writing this judgement, it is not in dispute that the plaintiff is the daughter of the late Yoweri Kiyaga and thus a beneficiary to his estate. The Late Yoweri Lwanga was the former

registered proprietor and owner of land comprised in Kyadondo Block 58 Plot 7. The Administrator General, the 1st Defendant herein obtained letters of administration to the said estate and accordingly distributed the same amongst the beneficiaries wherein the plaintiff received 32 acres out of the 208 acres.

- 20. Prior to the distribution, the plaintiff admits to have sold 16 acres out of her 32 acres to the 2nd defendant at a consideration of Ug shs 120,000,000 where the 2nd defendant made a part payment of Ug shs 42,000,000 leaving an outstanding balance of Ug shs 78,000,000 which from the reading of the pleadings remains unpaid to date.

- 21. The 2nd defendant on the other hand, in concert with the 1st defendant fraudulently transferred the certificate of title for all the land comprised in Kyadondo Block 58 Plot 19 into his names and went ahead to subdivide the same into various plots to wit; 40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,57,58,59,60,61,62,63,64,65,68,69,70,71,72,75,76,77,78,79,80,81,82,83,84,85,91, 103 and 105 all of which are registered in the names of the 2nd defendant.
- 22. Fraud connotes any act of dishonesty. This definition has also been noted in the case of **Fredrick Zaabwe versus Orient Bank and others SCCA No. 4 of 2006** where Court defined fraud to constitute an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.
- 23. A false representation of a matter of fact, whether by words or by conduct, false or misleading allegations, or by concealing of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.
- 24. In order to succeed in an action based on fraud, the plaintiff must attribute the fraud to the transferee that is; by showing that defendant is guilty of some dishonest act or must have known of such act by somebody else and taken advantage of such act. *(See: Supreme Court decision of Kampala Bottlers Ltd versus Domanico (U) Ltd SCCA No.22 of 1992).*
- 25. In the instant case, the plaintiff testified that she is a beneficiary of the estate of the late Yoweri Kiyaga who was her father who originally owned the suit land. Following his death, the 1st defendant became the administrator of his estate. The 1st

defendant distributed the estate to all the beneficiaries including the plaintiff who acquired 32 acres forming the suit land and she demanded several times for her title from the 1st defendant's office, all in vain only to realize that her title has been transferred in the names of the 2nd defendant.

- 26. Whereas the Succession Act vests the properties of an intestate in the legal representatives, that is the administrator, the administrator holds such properties as a trustee for the benefit of all the beneficiaries under the estate.
- 27. The law imposes a fiduciary obligation upon the administrator to manage the estate for the best interest of the beneficiaries under the estate. *(See; Re- Estate of Julius Mimi (Deceased) (2019) eKLR as cited in Moshe Mujogya & 3 others v Smart Bwango & 2 others)*
- 28. The Administrator General being the administrator of the estate of the late Yoweri Kiyaga had a fiduciary obligation to the estate beneficiaries and also to ensure that each beneficiary received what was rightfully theirs. On the contrary, the Administrator General who had no interest in the land comprised in Kyadondo Block 58 Plot 19, without any scintilla of right or authority handed

over the certificate of title to the said land to a third party who was not the rightful owner nor was he a beneficiary to the estate in total breach of his duty as a trustee/administrator of the estate for which he duly admitted liability in the consent judgement.

- 29. The 2nd Defendant on the other hand, purchased 16 acres out of the 32 acres which was the plaintiff's beneficial interest in her late father's estate, went ahead and retrieved the certificate of title from the Administrator General's office, transferred the whole land into his names and subdivided the same into various plots which he went ahead and disposed of to third parties including the 4th defendant at the detriment of the plaintiff and with the intention to defraud her of her interest in the same which prompted the plaintiff to lodge caveats on the said land.
- 30. I note that even if the 2nd defendant held any interest in the suit land, it was to the extent of his purchase, the 16 acres and not the whole 32 acres as owned by the plaintiff, however the 2nd defendant did not pay full consideration for the purchase of all the said 16 acres. I am also alive to the principle in **Sharif Osman v Hajji Haruna Mulangwa SCCA No. 38 of 1995**, that the moment a valid contract for sale is made, the vendor becomes in equity a

trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser and the vendor is entitled to the purchase money. In the instant case, the 2nd defendant not only breached the contract of sale by not paying the outstanding balance of Ug shs 78,000,000 but fraudulently transferred the certificate of title to the whole land into his names. Nevertheless, the plaintiff in the consent judgement relinquished the interest of 6 acres in consideration for the Ug shs 42,000,000 that she had received from the 2nd defendant.

31. This Court finds the 2nd defendant's actions not to have been bonafide, the intent was to completely defraud the plaintiff of her interest in her land. The 2nd defendant holds no valid title in the suit land and thus cannot convey any. This principle was enunciated in **Halling Manzoor v Serwan Sign Baram SCCA No.**

9 of 2001 that a person cannot pass title that he does not have.

32. The 4th defendant on the other hand, contended that she was a bonafide purchaser for value without notice of the defects in the 2nd defendant's title. That she purchased the land comprised in Kyadondo Block 58 Plots 68 and 44 from the 2nd defendant at a cost of Uganda Shillings 17,500,000/= (seventeen million five

hundred thousand shillings only) and 28,500,000/= (twenty-eight million five hundred thousand shillings only) respectively.

- 33. That before purchase of the said land, she conducted a search at the Land registry and found no encumbrances and the same was registered in the name of the 2nd defendant and she took possession of the same to date. Court in **Amrattal Purshottan and another versus Singh Bhambra H. C. C. S No. 289 of 2010** noted that a bona fide purchaser is a person who acquires a property without actual or constructive notice of any defects in title.....".

- 34. The doctrine of a bona fide purchaser for value without notice of fraud is set out in **section 181 of the Registration of Titles' Act, Cap 240** which provides that;" *Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he or she is registered as proprietor, any purchaser bona fide for valuable consideration of land under the operation of this Act, on ground that the proprietor through or under whom he or she claims was registered as proprietor through fraud or error; and this applies whether the fraud*

or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever".

- 35. In **Robert Luswese versus G. W Kasule & Another Civil Suit No.1010 of 1983 (unreported)**, it was stated that a bona fide purchaser for value obtains good title even if he or she purchases from a proprietor who previously obtained registration through fraud. The effect of this would be that the 4th defendant acquired good title to the suit land even if the 2nd defendant obtained the title fraudulently.
- 36. I have had the benefit to examine the "Annexures" of the 4th defendant like the sale agreement between her and the 2nd defendant dated 20th July, 2016 and found that the 4th defendant bought the said land at a valuable consideration and the said land was registered in the names of the 2nd defendant, prompting her to believe that the land actually belongs to the 2nd defendant in good faith which qualifies her to be a bonafide purchaser for value without notice.
- 37. The consent executed by the plaintiff, 1st, 3rd and 4th defendants provided under orders 2 and 3 that the plaintiff's claim against the 2nd defendant shall be limited to 26 acres being her beneficial

interest of 32 acres less six acres that the 2nd defendant had duly paid for and that the said 6 acres include Kyadondo Block 58 plots 68 and 44 at Monde measuring 1.407 acres and 1.51 acres respectively which the plaintiff hereby relinquishes to the 4th defendant.

- 38. It is evident from the said consent that the plaintiff acknowledged the fact that the 4th defendant was not aware of the defect in the 2nd defendant's title for which she agreed to relinquish her interest in Plots 68 and 44 as purchased by the 4th defendant.

Issue Two; What remedies are available to the parties.

- 39. The plaintiff prayed for an order directing the Commissioner land registration to cancel all the certificates of title created out of land comprised in Kyadondo Block 58 Plot 19. **Section 161 of the Registration of Titles Act** empowers Court to order the office of the Commissioner for land registration to cancel entries on the certificate of title on grounds of fraud. (See **Hilda Wilson Namusoke & 2 others v Owalla's Home Investment Trust (E. A) LTD & Anor Civil Application No. 14 of 2019**).

- 40. Having found that the 2nd defendant's transfer of the certificate of title into his names and the subsequent subdivision into various

Plots was tainted with fraud, this Court hereby directs the office of the 3rd defendant to cancel all entries on Plots 40,41,42,43,45,46,47,48,49,50,51,52,53,54,57,58,59,60,61,62,63,64,65,69,70,71,72,75,76,77,78,79,80,81,82,83,84,85,91,103 and 105 from the names of the 2nd defendant into the plaintiffs names save for Plots 44 and 68 that belong to the 4th defendant following the consent judgement executed on 13th May 2025.

- 41. The plaintiff prayed for amalgamation of all the sub divided titles and reinstatement of the old boundaries of Plot 19. I find this to be practically impossible due to the third-party interests that were created on the land and the same would be contrary to the terms of the consent judgement executed between the parties.
- 42. With regards to general damages as prayed for by the plaintiff, the law on general damages is that the damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. (**Hadley v Baxendale (1894)** 9

Exch 341)

- 43. The decision in **Kampala District and Board & George Mitala v Venansio Babweyana Civil Appeal No. 2 of 2007** is well settled

law on award of damages by a trial court is that damages are the direct probable consequences of the act complained of. The plaintiff was defrauded of her interest in land for which she has incurred expenses and emotional trail to recover the same which justifies the award of general damages. This Court therefore shall consider the ward of Ug shs 10,000,000 as general damages to be paid by the 2nd defendant.

- 44. On the issue of Cost; Costs follow the event and the successful party is entitled to cost as per the provisions of Section 27 of the Civil Procedure Act. **Section 27 of the Civil Procedure Act states; ***"Provided that the costs of any action, cause or other matter shall follow the event unless the Court or the judge for good reason otherwise orders"*
- 45. The plaintiff being a successful party is entitled to costs of this suit to be paid by the 2nd defendant since the other parties executed a consent judgement and agreed for each party to bear its own costs.
- 46. For the foregoing reasons, I proceed to pronounce judgement and decree for the plaintiff against the defendants with declarations and orders that;
- i) A declaration that the plaintiff is the lawful owner of land comprised in Kyadondo Block 58 Plot 19 (now subdivided into plots 40,41,42,43,45,46,47,48,49,50,51,52,53,54,57,58,59,60,61 ,62 ,63,64,65,69,70,71,72,75,76,77,78,79,80,81,82,83,84,85,91,103 at Monde.

- ii) The office of 3rd defendant is hereby directed to cancel all entries on Plots 40,41,42,43,45,46,47,48,49,50,51,52,53,54,57,58,59,60,61,62,63,64,65,69,70,71,72,75,76,77,78,79,80,81,82,83,84,85,91,103 and 105 from the names of the 2nd defendant into the plaintiff's names save for plots 44 and 68 that belong to the 4th defendant following the consent judgement executed on 13th May 2025.
- iii) A permanent injunction restraining the defendants and all those claiming under them from interfering with the plaintiff's quiet possession and occupation of the suit land.
- iv) General damages of Ug shs 10,000,000
- v) Costs of the suit to be paid by the 2nd defendant.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

15/07/2025

Delivered Electronically via ECCMIS on the 15th July 2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2025/138/eng@2025-07-15>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/christine-namayanja-v-administrator-general-and-others-civil-suit-no-534-of-2016-2025-ughcld-138-15-july-2025-unknown-topic-unknown-court-2025>

Prepared on 14 October 2026 · Esheria