

UGANDA / JUDGMENT

Kyakana and 16 Others v Nyakana and Another (Civil Suit 24 of 2017) [2023] UGHCLD 280 (31 August 2023) [2023] UGHCLD 280

COURT

HC: Land Division (Uganda)

BEFORE

Wagona, J

CASE / FILE NUMBER

Civil Suit 24 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 0024 of 2017

1. SUNDAY CHRISTOPHER KYAKANA

- 2. AMANYA SIMON
- 3. DOREEN BWANGO NYAKANA
- 4. FLAVIA KASABIITI
- 5. DAVID KYOMUHENDO
- 6. TOM MUTALESA
- 7. AMOS NYAKOJJO
- 8. MURUNGI NYAKANA
- 9. DEO KYAKUHA
- 10. KATENDE NYAKANA
- 11. STEPEHN SUNDAY
- 12. BRICH SUNDAY
- 13. MARY BIRUNGI

- 14. SAMUEL NYIRI
- 15. GORETTI NIGHT
- 16. KABAJUMA NYAKANA
- 17. PEREZ MOSES=====PLAINTIFFS

VERSUS

- 1. FLORENCE NYAKANA KABAHENDA. B.
- 2. LINK BUS SERVICES LIMITED===== DEFENDANTS

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

INTRODUCTION:

1. The plaintiffs sued the defendants jointly and severally seeking the following: a declaration that the suit land at Kiculeeta, Bazaar Ward, South Division, Fort Portal Municipality formed part of the estate of the late Ambrose Nyakana Kabaseke; a declaration that the 1st plaintiff unlawfully sold the suit land at Kiculeeta, Bazaar Ward, South Division, Fort Portal Municipality to the 2nd defendant; a declaration that the 2nd defendant unlawfully demolished the family house of Ambrose Nyakana Kabaseke; special damages of Ugx 25,490,000/= being the value of the house, boys quarters and the plantation together with other crops found on the suit land which were demolished and destroyed by the 2nd defendant; an order of eviction against the 2nd defendant from the suit land; an order of demolition of all the developments put on the land by the 2nd defendant; a permanent injunction restraining the 2nd defendant, her agents, servants and or workers from trespassing or dealing with the suit land; General damages; and costs of the suit.

BACKGROUND:

The Case of the Plaintiffs:

2. It was contended by the plaintiffs that they are biological children and beneficiaries of the estate of the late Ambrose Nyakana Kabaseke and that land at Kiculeeta, Bazaar Ward, South Division, Fort Portal Municipality, Kabarole

District formed part of the estate. That the said Ambrose died intestate on the 22nd day of October 2010 and at the time of his death, he had 22 children and the 1st defendant is the widow.

- 3. That some time back in 2012, the 1st defendant fraudulently attempted to apply for letters of administration vide Admin Cause No. 6 of 2012 for the estate of the late Nyakana without the consent of the beneficiaries and without a Certificate of No Objection from the Administrator General, that was caveated by the the plaintiffs.
- 4. That the 1st defendant without the family consent or authority in March 2012, unlawfully and illegally sold the land comprising the family house to the 2nd defendant, which the plaintiffs protested in a letter dated 25th March 2012, addressed to the 2 nd defendant, who however went ahead with the transaction and later demolished the plaintiffs' family house and developed the land into a bus terminal, rendering them homeless. That the 1st defendant used the proceeds of the illegal sale for her personal use.
- 5. That the plaintiffs suffered loss for which they claimed both special and general damages. The plaintiffs thus prayed for judgment in their favour.

The Case of the 1 st Defendant:

6. The 1st defendant in her written statement of defense denied the allegations and contended that by the time of death of Ambrose Nyakana Kabasek in 2010, she and the deceased were legally married and had 8 children. That after the death

of her husband, the Rwenzori Diocese who were the landlord who came in to distribute the estate. That on 20th July 2013, a meeting was held by Rt. Rev. Bishop Reuben Kisembo on behalf of Rwenzori Diocese where it was decided: (a) that the widow takes the matrimonial home with her biological children, (b) that the rest of the children of the deceased were to take another plot forming part of the estate.

- 7. That she later sat with her biological children and they agreed to dispose of the suit land to benefit them all, which resulted in the sale of the land to the 2nd defendant on 14th March 2014 and that the defendants had on their part, also sold the plot they were given by the church as their share of the estate of the deceased, to which the plaintiffs had no objection.
- 8. That in Civil Suit No. 009 of 2014, the 1st plaintiff had acknowledged the fact that the estate was church land that was distributed by the church and the land in issue was given to the 1 st defendant and her children.

The Case of the 2nd Defendant:

9. The 2 nd defendant contended that they lawfully bought the suit land from the 1 st defendant after diligently ascertaining that the 1st defendant had been lawfully given the same by the family of the late Nyakana Ambrose in the presence of the Church Officials of the Church of Uganda, Rwenzori Diocese. That the church later recognized and issued a title to the 2 nd defendant.

10. That having lawfully bought the Kibanja and obtained a certificate of title, the 2nd defendant was entitled to demolish the undesired developments on the land and construct a modern bus terminal to achieve the purpose of acquisition of the land in issue. That the plaintiffs never suffered any loss and as such they are not entitled to the reliefs sought.

The Reply of the Plaintiffs:

- 11. In reply to the written statement of defense, the plaintiffs contended that as much as the land belonged to the Church of Uganda, the estate of the deceased remained the lawful owner of the suit land since he had a home there.
- 12. That the intervention by way of distribution of the estate of the late Ambrose Nyakana by Bishop (Reuben Kisembo) was unlawful, illegal and void ab initio. That it is the administrator of the deceased's estate appointed by court who was competent to distribute the estate of the deceased. That as such the prayers sought in the plaint should be granted.

ISSUES:

- 13. Whether the suit land/property forms part of the estate of the late Nyakana Ambrose Kabaseke.
- 14. Whether the 1st defendant lawfully sold the suit land/property to the 2nd defendant.
- 15. Remedies available to the parties.

REPRESENTATION AND HEARING:

16. *Mr. Katabalwa Francis of M/s Katabalwa & Co. Advocates* appeared for the plaintiffs while *Mr. Nesta Byamugisha of M/s Barya, Byamugisha & Co. Advocates* appeared for the 2nd defendant and Counsel *Nyaketcho Julian of M/s Acali Manzi & Co. Advocates* appeared for the 1st defendant. Both parties filed written submissions which I have considered.

RESOLUTION:

17. **Issue 1: Whether the suit land/property forms part of the estate of the late Nyakana Ambrose Kabaseke.**

Submissions for the Plaintiffs:

- 18. It was pointed out that PW1 had testified that his father the deceased had obtained the suit land from his late father, Gamalyeri Kabaseke and built his home thereon where the children of the deceased had lived and that the deceased died intestate. That the 1st defendant had unlawfully sold off the estate property without the consent of all the

beneficiaries. That prior to the sale, the 1 st defendant had in her application for letters of administration acknowledged that the suit land fromed part of the estate of the late. That the evidence of PW1 and PW2 supported by D2 confirmed that the suit land was the home of the deceased.

- 19. It was contended that the evidence of DW3 to the effect that the late was a mere licensee on church land had no merit as the deceased had enjoyed security

of occupancy and was protected under Section 31(1) of the Land Act as a tenant by occupancy. The court was thus invited to declare the suit land as part of the estate of the late Nyakaana Ambrose Kabaseke.

Submissions for the 1 st defendant:

- 20.It was contended that the late Ambrose Nyakkanawas a licensee on the suit land. I was referred to the decision in **Ababiri Muhamood & others Vs. Mukomba Ananstansia & Anor, Civil Suit No. 22 of 2015** where the Hon. Lady Justice Eva K. Luswata, J (as she was) observed that a license connotes the permission given by the occupiers of land which without creating interest in the land allows the licensee to do some acts which would otherwise be trespass. It was pointed out that Section 29 (4) 4 of the Land Act precludes a licensee from being a lawful or bonafide occupant.
- 21.It was submitted that the evidence on record strongly established that the suit land was owned by the Church of Uganda under Rwenzori Diocese, for which reason PW1 accepted in cross examination that the deceased was not buried on the suit land and that this was further confirmed by the evidence of PW1 in a statement he had filed in **Civil Suit No. 009 of 2014, Florence Nyakana Vs. Beatrice Namara** where he stated that the late was a licensee on the suit land. That the fact of the late being a licensee was further confirmed by the evidence of PW2, DW1, DW2 and DW3.

22.That DW3 explained in re-examination that upon the death of the deceased, his license to use the land expired and the land reverted to the Church for reallocation. That the allocation was renewed by the Church whereby the plaintiffs were given their share of the land that they later sold off. That the suit land was given to the 1st defendant and her children who also sold it off. That the plaintiffs having sold their own share of the land without objection from the 1 st Defendant, were estopped from challenging the sale by the 1st defendant (**IbagaTaratizo Vs. TarakpeFaustina, Civil Appeal No. 004 of 2017**).

Submissions for the 2 nd defendant:

23.Learned counsel for the 2 nd defendant associated himself with the submissions of the 1 st defendant and contended that the deceased was only a licensee and after expiry of the license, the land was distributed among the family members by the Church. That the plaintiffs got their share and sold it and as such they have no claim over the suit land.

Submissions for the Plaintiffs in rejoinder:

24.In rejoinder, it was submitted for the plaintiffs that the deceased was not a mere licensee. That the land formed part of the estate of the deceased and the alleged distribution by Bishop R. Kisembo amounted to intermeddling with the estate of the deceased. That the distribution of an estate of a deceased person was the preserve of court and the Administrator General.

25.It was contended that in the meeting by Bishop R. Kisembo it was never resolved that the 1st defendant takes the home of the deceased and that there was no evidence proving that the deceased was a mere licensee.

CONSIDERATION BY COURT:**BURDEN AND STANDARD OF PROOF:**

26.The plaintiffs bear the burden to prove their claim on the balance of probabilities. Section 101 of the Evidence is to the effect that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. In this case, the legal burden rests on the plaintiffs to prove that the land in issue forms part of the estate of the late Nyakaana Ambrose to secure a judgment in their favour and other reliefs in the plaint.

Issue 1: Whether the suit land/property forms part of the estate of the late Nyakana Ambrose Kabaseke.

27.The plaintiffs in effect contend that the late was a lawful occupant on the suit land by virtue of Section 29 of the Land Act and enjoyed security of occupancy per Section 31 of the Act. That the deceased's interests in the suit land formed part of his estate. The defendants on the other hand argued that the deceased was a licensee on Church land and as such he had no interest to pass on to the estate.

28.Section 29(1) of the Land Act Cap defines a lawful occupant as:

"Lawful occupant" means—

(a)a person occupying land by virtue of the repealed

- *(i) Busuulu and Envujjo Law of 1928;*
- *(ii) Toro Landlord and Tenant Law of 1937;*
- *(iii) Ankole Landlord and Tenant Law of 1937;*
- *(b) a person who entered the land with the consent of the [registered owner,](https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12#defn-term-registered_owner) and includes a purchaser; or*
- *(c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the [registered](https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12#defn-term-registered_owner) [owner](https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12#defn-term-registered_owner) at the time of acquiring the leasehold certificate of title."*
- 29. Section 29 (4) of the Land Act provides an exception to section 29 (1) and states that: "**For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section*."
- 30. Therefore a person on land on the basis of a license from the registered proprietor cannot be taken as a lawful occupant no matter the period of time spent on the land. A licence is personal permission for someone to occupy land. It does not give the licensee a legal interest in (or control over) the land. Without the licence the occupier would be a trespasser. (See *Inwards & others vs*

Baker [1965] 2 WLR 212[1965] 2 QB 29[1965] 1 All ER 446[1965] EWCA Civ 4).

31. A license arises where there is currency of the following:

- (a) there is no intention to enter into a legal relationship.
- (b) there is no right to exclusive occupation.
- (c) the arrangement is a service occupancy that is, limited to use.
- 32. Licenses over land are in three broad categories, that is; (a) bare license, (b) contractual license and (c) licences coupled with a grant of interest. A bare licence is simply the giving of personal permission by the landowner for the licensee (the person with the benefit of the licence) to enter and remain on the land. The licensee is not required to provide consideration for accessing the land. So long as the licence runs, it acts as a defence for the licensee against any charge of trespass on condition the licensee has complied with the terms and conditions of the licence. (See *Tomlinson v Congleton BC*)(<https://www.lawteacher.net/cases/tomlinson-v-congleton-borough-council.php>) [2003] 3 WLR 275 per Lord Hutton and Lord Hobhouse of Woodborough).

- 33. A contractual licence is similar to a bare licence insofar as it grants the licensee permission to access the land. The difference is that the contractual licence includes the giving of consideration by the licensee for the benefit of the licence** (See [Horrocks v Forray](https://www.lawteacher.net/cases/horrocks-v-forray.php) [1976] 1 WLR 230 per Megaw LJ). The underlying contract may be either express or implied.
- 34. A licence coupled with a grant of interest connotes permission given by an owner of land to another with limited rights or specific user rights. This type of

licence confers upon the licensee the right to go on another person's land for the sole purpose of removing something from the land (such as timber, minerals, and crops). This licence therefore includes the rights granted under profits, à prendre to access an interest, coupled with the right to enter land in order to exploit the interest. The licence cannot be revoked during the exercise of the licence (**Wood v Leadbitter** (1845); and [**Hounslow LBC v Twickenham**](https://www.lawteacher.net/cases/hounslow-lbc-v-twickenham-garden-dev.php) [Garden Developments Ltd](https://www.lawteacher.net/cases/hounslow-lbc-v-twickenham-garden-dev.php) [1971] Ch 233). The licence is beneficial to the holder of the licence in two ways: first, it is binding on both the licensor and their successors in title, that is, it is irrevocable. Second, it is capable of being assigned by the licensee to a third party. (See **Supreme Court of India, Civil Appeal Nos. 6546-6552 Of 2003, Pradeep Oil Corporation Vs Municipal Corporation Of Delhi And Anr by Dr. Mukundakam Sharma, J.**).

- 35. In this case, whether or not the late was a lawful occupant or a licensee on the suit land is a question of evidence. The plaintiffs contended that the suit land was their ancestral home and thus formed part of the estate of the late Ambrose Nyakana. The defendants on the other hand claimed that the land belonged to the Church of Uganda under Rwenzori Diocese and that the late was a licensee whose licence expired upon death and the land reverted back to the Church.
- 36. Although it was the evidence of **PW1 Sunday Christopher Kyakana** that the suitland was their home where he lived with his father and the 1st Defendant, and that it formed part of the estate of his late father, he also acknowledged that his father never buried any of his relatives on the suit land and that the deceased

was not buried on the suitland, because it was Church land which had a special burial cemetery where their relatives were buried including his father.

- 37. **PW1** in his witness statement in Civil Suit No. 009 of 2014 (Exhibit DE3) stated under paragraph 8 and 9 that his father never paid any rent to the Church. That he was not allowed by the Church to bury on the land and that their relatives were buried in the Church cemetery at Karamaga including his father. That it was not allowed to build a permanent house on the land or to plant permanent crops without the permission of the Church. That

his father could not transfer the land without permission of the Church. That when his father died, the Church distributed the land including to the 1st defendant herein. PW1 further stated under paragraph 10 that: *"That I know the suit land was formerly part of the land occupied by my grandfather and was licenced to my father by the church after the death of my grandfather in the 1950's."*

- **38. PW2 Flavia Kasabiti** corroborated the evidence of PW1 that the suit land was their ancestral home where their late father lived with the 1st defendant and contended that the sale of the same by the 1 st defendant to the 2nd defendant without their consent was illegal. In cross examination she stated that their father had a mud and wattle house on the land. That she grew up on the suit land raised by the 1st defendant. That none of the relatives were buried on the suit land but they were buried on Church land.
- **39. DW1 Florence Nyakana** testified that the she was a widow of the late Ambrose Nyakana and that during his life time, they lived on the suit land. That the suit land belonged to the Registered Trustees of the Church of Uganda

(Rwenzori Diocese). That her husband was a licensee on the suit land having been licensed by the registered trustees of the Church of Uganda (Rwenzori Diocese). That although the deceased was allowed to stay on the suit land, he could not sale, transfer and giveaway the land without the consent of the Church. That they were also restricted from constructing permanent structures on the suit land or planting permanent crops since they were only licensees. That they were also not allowed to bury on the suit land and as such they could only bury on the Church cemetery in Karamaga where the deceased was also burried. This evidence was supported by the statement of PW1 in Civil Suit No. 009 of 2014 (DEX3) where PW1 confirmed that the suit land belonged to the Church and the deceased was a licensee. In cross examination DW1 stated that the deceased had gotten the land from his late father Kabaseke to build there. That they used to pay rent to the Church in form of "obusulu".

- **40.**The evidence of DW1 was corroborated by **DW2 Mutegeki Geofrey**, a son to the the deceased who stated that the suit land belonged to the Registered Trustees of the Church of Uganda (Rwenzori Diocese). That his father lived on the suit land for his entire life and he was restricted from planting permanent crops or putting up permanent structures thereon. That his father was also not allowed to sell, giveaway, transfer or in any way part with the possession of the suit land without the permission of the Church.
- **41.**The evidence of DW1 and DW2 was corroborated by that of **DW3 Tusiime Robert**, who stated that he was the Household and Community Transformation Coordinator of the Registered Trustees of Church of Uganda situated in Rwenzori Diocese and he had acted as their Land Officer since 2007 to 2017.

That as a Land Officer he was responsible for all land belonging to the Registered Trustees of Church of Uganda in Rwenzori Diocese.

42. DW 3 stated that the parties herein were known to him and that the plaintiffs are children of the late Ambrose Nyakaana and the 1st defendant was the widow. That the 2nd defendant was the current owner of the suit land having purchased it from the 1st defendant and got a leasehold title of 49 years from the Registered Trustees of the Church of Uganda. That the deceased had been a bare licensee on the suit land who had been allowed there by the Registered Trustees of the Church of Uganda, Rwenzori Diocese but he was not allowed to construct/plant permanent structures or crops on it and could not bury any one on the land and neither could he sell, transfer, giveaway or in any way part with possession of the suit land without the consent of the Registered Trustees of Church of Uganda. That when the late Nyakaana Ambrose died, he was buried in the Church cemetery at Karamaga like other licensees in the same area. In cross examination he stated that the late was given the land with conditions of its use and had no proprietary interests in it. That one of the conditions was that he was not allowed to put any permanent structures on the land, not to plant any perennial crops such as coffee, nor to bury on the land and he was only required to pay a fee meant for maintenance of the Church burial grounds where the licensees were buried. That the above conditions were written and given to the licensees including Nyakaana Ambrose but that it was not in a contractual form. That the first licensee on the suit land was Kabaseke, the father to the late Ambrose Nyakaana. That Kabaseke had been an employee of the Church and after the death of Nyakaana, the Church re-distributed the land among his children.

ANALYSIS OF THE EVIDENCE:

- 43. The plaintiffs contended that the late Ambrose was a lawful occupant who enjoyed security of occupancy. Section 2 of the Land Act defines a tenant by occupancy to mean a lawful or bonafide occupant as defined by section 29 of the Act. A lawful occupancy under Section 29 (1) is limited to a person who occupied land by virtue of: (a) the Busuulu and Envujjo Law of 1928; (b) the Toro Landlord and Tenant Law of 1937; (c) the Ankole Landlord and Tenant Law of 1937; or (d) a person who entered the land with the consent of the [registered owner](https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12#defn-term-registered_owner) and includes a purchaser; or a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the [registered owner](https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12#defn-term-registered_owner) at the time of acquiring the leasehold certificate of title.

- 44. Further Section 31(3) of the Land Act provides that a tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall, with the approval of the Minister, be determined by the Board. Therefore for one to qualify as a lawful occupant, they must prove that they have been paying rent to the registered proprietor or that they were a customary tenant whose interests were not compensated by the registered owner.
- 45. In this case the plaintiffs did not bring evidence to establish any of the above circumstances. On the contrary, and as contended by the defendants, PW1 admitted in cross examination that the land was licenced to his father. A licensee is precluded from claiming to be a lawful occupant under Section 29 (4) of the Land Act. Although DW1 testified that they used to pay rent to the

Church in form of "obusulu", DW3 who served as Land Officer of the Church clarified that what was being paid was administrative expenses for maintenance of the Church cemetery.

- 46. The evidence clearly demonstrates that Ambrose Nyakaanaas was a bare licensee on the land who was allowed there by the Registered Trustees of the Church of Uganda, Rwenzori Diocese to use the land under set conditions. He was not paying any consideration to the registered proprietor except to contribute to the administrative expenses relating to the Church cemetery. PW1 and PW2 supported the evidence of the defendants that the deceased only had a semi permanent house on the land and as he could not be allowed by the landlord to put up any permanent developments. PW1 further confirmed through DE3 that the land was only licenced to his late father. Therefore in my view, he did not qualify as a lawfull occupant.
- 47. It was the evidence of DW1, DW2 and DW3 that the deceased occupied the land as a licensee who utilised the land under restrictions including not burying relatives on the land or constructing any permanent structures thereon. In my view, as opposed to a license, a lawful occupant enjoys unrestricted use of the land as long as he pays the annual ground rent. What is prohibited under the Act is selling or leasing the land where priority should be given to the registered proprietor. The restricted manner in which the late Ambrose Nyakaana used the suit land precluded him from being a lawful occupant and confirms that he was a licensee. That being the case, a licence operates during the life time of the

licensee and and could not be passed on to his successors in title. This is peged on the firm principle that a licence does not confer any proprietary interests.

48. In conclusion, I find and hold that the suit land did not form part of the estate of the late Ambrose Nyakaana. I therefore resolve this issue in the negative.

Issue 2: Whether the 1st defendant lawfully sold the suit land/property to the 2nd defendant.

- 49. It was contended for the plaintiffs that the 1st defendant did not present any evidence to prove that she had been given the suit land by the Church and that the sale was fraudulent as the family never consented to it. That since the land was a residential holding, it belonged to all beneficiaries of the deceased including the plaintiffs by virtue of the Succession Act. further, that the 1st defendant did not secure letters of administration over the estate and as such she lacked the capacity to dispose of the suit land and that the sale constituted intermeddling in the estate.
- 50. In response learned counsel for the 1st defendant contended that the sale was lawful as the 1st defendant had obtained authorization from the Church who were the registered proprietors of the land in issue and the sale had been okayed by the Bishop of the registered proprietor. That the interests of the late were distributed by the Church and the 1st defendant and her children were allocated the land in issue which they sold while the plaintiffs were also given land which they sold off. That as such the sale was lawful.

51. Learned counsel for the 2nd defendant associated himself with the submissions of the 1st defendant and argued that since the estate was distributed and the portion in issue given to the 1st defendant, she had lawfully sold their interest therein to the 2nd defendant who later obtained a lease from the registered proprietor.

CONSIDERATION BY COURT:

- 52. There is uncontroverted evidence that following the death of the deceased Bishop Reuben Kisembo on behalf of Rwenzori Diocese presided over a family meeting of members of the family of the deceased. There is strong evidence by the defendants that was not successfully challenged, that at the said meeting, it was decided to allocate the suitland to the 1st defendant and her biological children that was later sold, while the plaintiffs were also allocated another piece of land that was later sold by the 1st, 2nd and 3rd plaintiffs after the beneficiaries wrote to the Church appointing the 1st, 2nd and 3rd plaintiffs to represent them. The letter dated 18th March 2014 addressed to the Bishop of Rwenzori Diocese where the children who were given the plot nominated the names of the three plaintiffs (1st, 2nd and 3rd) to represent them in pursuit of their plot is Exhibit DE.4. The minutes of the family meeting which took place on 20th July 2013 are contained in Exhibit DE2.
- 53. Regarding how the land was distributed by the Church at the meeting, PW1 supported the evidence of the defendants in his statement (Exhibit DE3) filed in Civil Suit No. 9 of 2014 where in paragraph 13 he stated as follows: "*That of*

the reminder of the land which was four plots the biggest portion was licenced to the widow, one plot his biological son and one small plot was licenced jointly to sixteen of my father's children who are not biological children to the plaintiff. That the two big plots licenced to the widow were the ones which had family house and gardens for sustainance of the family but she proceeded to dispose them off for a price to link Bus company without my knowledge as the heir or of most of the children."

- 54.DW3 further supported the evidence of DW1 and DW2 and he testified that he was a Land Officer of the Rwenzori Diocese from 2007 to 2021. He attended the meeting presided over by the Bishop where the plaintiffs were allocated plot 46 Byara Road which they subsequently sold to Sabiiti Naphtal who was later granted a 49 year lease by the Church. That the land in dispute was licensed to the 1st defendant by the Church and she later sold the same to the 2 nd defendant.
- 55.In totality, the available evidence demonstrates that after the death of the late Ambrose Nyakaana who was a licensee on the suit land, the landlord/registered proprietor (the Registered Trustees of the Church of Uganda, Rwenzori Diocese), granted fresh licences over land to the 1st defendant and the plaintiffs on the different portions which formed part of the land formerly used by the deceased. I find that on this basis, the new licensees who incuded the 1st defendant, gained the right to deal with the licensed pieces of land to the extent permitted by the registered proprietor. In this case the 1st defendant acquired the right to deal with the suitland land to the extent permitted by the Church. Any such dealings in the suitland by the 1st defendant could thus only be challenged by the registerered proprietor who granted the license who however has come to

court through DW3 to support the transaction and subsequently leased the suitland to the 2nd defendant . Similarly, the plaintiffs were granted a license on a different piece of land which they also sold to one Sabiiti with the consent of the Church which granted a 49 years lease to the said Sabiiti. The Church supported both the transaction by the plaintiffs and the defendants.

- 56.I therefore find that the sale of the interests of the 1st defendant in the suitland was lawful.
- 57.Since the suit land did not form part of the estate of the late Nyakaana Ambrose, nor part of the area where they were licensed to use by the registered proprietor, I find that the plaintiffs lacked locus to challenge the sale of the suit land to the 2nd defendant.

REMEDIES:

58.I find that the plaintiffs have on a balance of probabilities failed to prove their case against the defendants and as a result, this suit is hereby dismissed with costs awarded to the defendants. It is so ordered.

Vincent Wagona

High Court Judge / FORT-PORTAL

DATE: 31/8/23

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