

UGANDA / JUDGMENT

Lule and Another v Kibirango and 2 Others (Civil Suit 382 of 2011) [2024]

UGHCLD 251 (2 October 2024)

[2024] UGHCLD 251

COURT

HC: Land Division (Uganda)

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Civil Suit 382 of 2011

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| o | THE REPUBLIC OF UGANDA |

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IN THE HIGH COURT OF TIGANDA AT KAMPALA

(LAND DTVISION)

CTVL SUTT NO.382 OF 20II

I. LTILE EMMA

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2. ENID KISAKYE: :PLAINTIFFS

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VERSTIS

I. HENRY KIBIRANGO

2.. IACKIE MAZINGA

3, JOAN KAYAGA DEFENDANTS

BEFORE: HON. JUSTICE PHILLIP ODOKI

JUDGEMNT

Introduction:

- [1] The Plaintiffs instituted this suit against the Defendants seeking for, a declaration that they are the lawful owners of land comprised in Block 25 Plot 162land at Lugala, hereinafter referred to as 'the suit land'; a permanent injunction to restrain the Defendants, their agents, servants and / or successors in title from threatening, intimidating or in any way interrupting the Plaintiffs use and enjoyment ofthe suit land; an order ofvacant possession against the Defendants; general damages; interest; and costs of the suit.

Plaintiffs' case:

- [2] The Plaintiff pleaded that their father, the late Emest Lule, purchased the suit land from the late Theophilus Mazinga and their father was registered as the proprietor thereof in 1976.

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o Following the demise of their father, their mother, Margaret Kigongo Lule and their paternal uncle, Wilson Musisi, applied for and were granted letters of administration to their father's estate by the High Court in 1983. In 2008, Margaret Kigongo Lule and Wilson Musisi were registered on the Certificate of Title ofthe suit land as administrators ofthe estate of the late Ernest Lule, In 2011, the adminisfiators of the estate transferred the suit land to the Plaintiffs as beneficiaries of the estate of the late Emest Lule and they were registered as proprietors thereof After obtaining registratron ofthe suit land into their names, the Plaintiffs embarked on developing the suit land. However, the Defendants, who are children of the late Theophilus Mazinga, threatened the Plaintiffs, claiming that they are the rightful owners of the suit land, thereby frustrating the Plaintiffs development of the suit land. The Defendants fenced off the suit land and planted bananas thereon. The Plaintiffs contend that the Defendants have no claim over the suit land since their late father sold offthe suit land and therefore it does not form part ofhis estate. The Plaintiffs further contend that because of the Defendants' conduct, they have suffered loss and inconvenience for which they seek to be compensated in general damages by the Defendants.

The Defendants' case:

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- [3] The Defendants denied the allegation that the suit land was purchased by the father of the Plaintiff. They instead filed a counterclaim against the Plaintiffs and the administrators ofthe estate of the late Ernest Lule. They pleaded that the suit land is a subdivision from land comprised in Kibuga Block 25 Plot 60 which was registered in the name of Temuteo Bazizakiwa Lule. In 1975 their late father, Theophilus Mazinga, acquired the suit land and

registered it into his name. Since 1975 up to the time of filing the Written Statement of Defense, the family of the late Theophilus Mazinga has been in quite use and enjoyment of the suit land without any interruption from

anyone. They contend that the transfer of the suit land from the name of their late father, Theophilus Mazinga, into the name of the Plaintiffs' father, Ernest Lule, was illegal and fraudulent. The particulars of fraud and illegality which was pleaded against Ernest Lule was that he purportedly received an instrument of transfer from Theophilus Mazinga before Theophilus Mazinga got registered as owner of the suit land. They also alleged fraud on the part of the Plaintiffs and the administrators of the estate of the late Ernest Lule. The particulars of the fraud were that they connived to transfer the suit land into their names and that the administrators of the estate of the late Ernest Lule failed to indicate the suit land as one of the properties his properties in their application for letters of administration. They contend that the actions of the Plaintiffs and the administrators of the estate of the late Ernest Lule was intended to deprive the Defendants of their interest in the suit land. They prayed for, a declaration that the suit land constitutes the estate of the late Theophilus Mazinga; a declaration that Margaret Kigongo Lule and Wilson Musisi unlawfully transferred the suit land into the names of the Plaintiffs; an order directing the Registrar of Titles to cancel the subsequent registration and reinstate Theophilus Mazinga as the registered proprietor; a permanent injunction against the counter-defendants, their agents or successors in title from interfering with the Defendants' quiet possession and occupation of the suit land; general damages; interest; and costs of the counterclaim.

Agreed facts:

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[4] The parties filed a Joint Scheduling Memorandum in which the following facts were agreed upon

- 1. The Plaintiffs are registered as proprietors of the suit land.
- 2. The Certificate of Title was transferred in the names of the Plaintiffs' father in ¹⁹⁷⁶

Issues:

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[5] The issues for the determination of this Court which were agreed upon in the Joint Scheduling Memorandum are,

- 1. Whether the Plaintiffs are the lawful owners of the suit land.

- 2. Whether the suit land constitutes the estate of the late Theophilus Mazinga.
- 3. What remedies are available to the parties.

Evidence adduced:

- [6] The Plaintiff testified as P. W. 1, Margaret Kigongo testified as P. W.2 and Latimer Makanga testified as P. W.3. The Plaintiff adduced 8 documents which were admitted in evidence and marked as PE1 to PE8. That is, a photocopy of Certificate of Title for the suit land and a certified copy thereof as PE1 and PE8 respectively; a letter from M. Serwadda & Co Advocates dated 17th August 2010 requesting for vacant possession of the suit land from the family of Theophilus Mazinga in favor of the administrator of the estate of the late Ernest Lule (PE2); a letter from M. Serwadda & Co Advocates dated 17th August 2010 addressed to the Chairman L. C.1 requesting for permission to open boundaries of the suit land (PE3); Police bond form of Margaret Kigongo dated 17th March 2011 (PE4); a letter from Kavuma Kabenge & Co. Advocates dated 20th September 2011 informing the family of Theophilus Mazinga to vacate the suit land in favor of the administrator of the estate of the late Ernest Lule (PE5); inventory report of the estate of the late Ernest Lule filed in the High Court on the 27th June 2011 (PE6); and the Removal of Charge dated 25th August 1976 (PE7).
- [7] The Plaintiff and 3rd Defendants testified as D. W.1 and D. W.2 respectively. The Defendants adduced 3 documents which were admitted in evidence as exhibits. That is, the Certificate of Title for Kibuga Block 25 Plot 60 (DE1); the area schedule for Block 25 Plot 60 dated 16th June 2020 (DE2); and the transfer instrument by Theophilus Mazinga to Ernest Lule dated 14th April 1975 (DE3).

Legal representation and submissions:

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- [8] At the hearing, the Plaintiff's Counter- defendants were represented by Mr. Muse Musimbi of I/Ws Kavuma Kabenge Advocates. The Defendants/ Counter claimants were represented by Mr. Paul Mwere of M/s Mwere & Co. Advocates. At the close of the hearing, the Court gave counsel directives to file written submissions, which directives were duly complied with. I have taken into account the submissions of counsel in the determination of the issues before this Court.

Burden and standard of proof:

- [9] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or 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. (See section 101 and 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda). The opposite party can only be called to dispute or rebut what has been proved by the other party (See *Sebuliba versus Co-operative Bank* (1982) HCB

129),

- [0] The standard of proof required is on the balance of probabilities. In *Miller versus Minister of Pensions* (1947) 2 ALL ER 372 Lord Denning stated;

"That the degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'we think it is more probable than not,' the burden of proof is discharged, if the probabilities are equal, it is not."

Analysis and determination of the Court:

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I 1] I shall begin with the preliminary objection which was raised by counsel for the Plaintiffs / Counter - defendants that the counterclaim is barred in law. Counsel submitted that the late Ernest Lule got registered on the suit land on the 25th August 1976. Theophilus Mazinga died in 2010, after 34 years, without challenging the registration of Ernest Lule. According to counsel, the claim by the Defendants/ Counter - claimants as beneficiaries or administrators of the estate of the late Theophilus Mazinga that Ernest Lule obtained registration of the suit land illegally and fraudulently is barred by limitation since the cause of action arose on the 25th August 1976. Counsel submitted that the claim by the Defendants/ Counter - claimants does not fall within the exceptions in the Limitation Act. He invited the Court to reject the counterclaim with costs to the Plaintiffs.

- [2] Counsel for the Defendants/ Counter - claimants on the other hand submitted that the Plaintiffs' assertion that the Ernest Lule obtained registration of the suit land on the 25th August 1976 is not true since the subdivision of Block 25 Plot 60 into plots 162, 163 and 164 took place in 2003. Counsel further submitted that the objection is an attempt to derail the Court from

administering substantive justice. In addition, counsel submitted that the Defendants/ Counterclaimants are protected by the exception of fraud in the Limitation Act.

- [13] In rejoinder, counsel for the Plaintiff/ Counter - defendants submitted that the Plaintiff/ Counter - defendants did not plead any disability to support the late filing of the counterclaim.

- [14] Order 7 rule 1(d) of the Civil Procedure Rules provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. In cases for recovery of land, as the instant one, Section 5 of the Limitation Act provides that:

"5. Limitation of actions to recover land

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No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person."

[5] I do not agree with the submissions of counsel for the Defendants/ Counterclaimants that the preliminary objection is intended to derail the Court from administering substantive justice. In *Usanda Revenue Authority Versus Ueanda Consolidated Properties Ltd (1997 - 2001)* UCL 149 Twinomujuni JA stated that:

"Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. "

[16] The nature, purpose and effect of statutes of limitation was well stated by Barko, JA in *Application by Mustapha Ruru for order of orders of Certification, prohibition and injunction. Civil Appeal No.25 of 1996* where he stated that:

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"Statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest reipublicae ut sit finis litum. meaning that litigation shall be automatically stifled after fixed length of time, irrespective of merits of the particular case. A good illustration can be found in the following statement of Lord Greene M. R in *Hilton Vs Sutton Steam riv* 19¹⁶¹ where he said-

"But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.""

[17] In the present case, the Counterclaimants' cause of action is for recovery of land. One of the prayers being sought in the counterclaim is for an order directing the Registrar of Titles to cancel the registration of the suit land into the names Ernest Lule. The factual basis of the cause of action is that the transfer of the suit land from the name of their late father, Theophilus Mazinga, into the name of the Plaintiffs' father, Ernest Lule, was illegal and fraudulent. In addition, the Defendants/Counterclaimants are seeking an order directing the Registrar of Titles to cancel the registration of the suit land into the names of the administrators of the estate of the late Ernest Lule and in the name of the Plaintiffs on account of fraud.

[18] Counsel for the Plaintiffs has argued that the transfer into the name of Ernest Lule took place on the 25 August 1976 while counsel for the counter - claimant argue that the transfer into the name of Ernest Lule, took place in 2003 since the subdivision of Block 25 Plot 60 into plots 162, 163 and 164 took place in 2003.

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[19] I have carefully examined the Certificate of Title for the suit land (PE1 and PE8). It clearly shows that Ernest Lule got registered on the 25th August 1976 under instrument No. KLA 81534. Instrument No. KIA 81534 (ED3) is the transfer which was tendered in evidence by the Defendant/ counterclaimants. It clearly shows that it was lodged for registration on the 25th August 1976. In my view, the insertion of the date of 10th February 2003 in Area Schedule (ED2), which counsel for the Defendant/ Counterclaimants relied on to argue that the transfer took place in 2003, does not in any way prove that the transfer took place in 2003. First, ED3 was extracted by the cartographer on the 16th June 2020 long after the suit was filed. Secondly, it is not a document of transfer. Thirdly, the date of 10th February 2003 must have been an error in extracting the records since the Certificate of Title for the suit land (PE1 and PE8) and the removal of charge dated 25th August 1976 (PE7) all clearly show that plot 162 existed in 1976. Fourthly, the Defendant/ Counterclaimants did not adduce any evidence to prove that PE1, PE7 and PE8 are false documents. There is thus clear evidence that the transfer of the suit land into the name of Ernest Lule took place on the 25th August 1976.

[20] The suit land having been registered on in the name of Ernest Lule on the 25th August 1976, the right of action against Ernest Lule accrued to Defendants/ Counter - claimants or to Theophilus Mazinga from whom they are claiming the suit land on the 25th August 1976. However, the counterclaim seeking to cancel the registration of the suit land in the name of Ernest Lule was filed in this Court on the 15th December 2017 more than 40 years clearly out of time.

[21] The counsel for the Counter claimant has sought to rely on the exception of time limitation on account of fraud. Section 25 of the Limitation Act provides an exemption to the limitation period provided for in the Act, in that in the case founded on fraud or mistake, the period of limitation begins to run when the plaintiff has discovered the fraud or the mistake, or could with reasonable diligence have discovered it. However, the Plaintiff must plead the exemption in the plaint. Order 7 rule 6 of the Civil Procedure Rules provides that:

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"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the grounds upon which exemption from that law is claimed. "

[22] In the present case, the Counter - claimants did not plead any ground upon which the exemption was being sought. It is inconceivable that Theophilus Mazinga who was registered as proprietor of the suit land on the 28th August 1975 would have failed to know after a period of 30 years that the suit land was registered in the name of Ernest Lule on the 25th August 1976. Had he exercised reasonable diligence; he would have discovered the alleged fraud. In *Kasova Justine & Anor Vs. William Kaiia & 3 others* Civil Suit No. 6 of 2015 the Court observed thus:

"The statute of limitation therefore is a sword used by one in possession to cut and kill whatever claim a person may have over land. The sword cares not about how valid the claim could be, how touching the case may be. It has no mercy to whoever it finds, it pays no attention to the age of the claimant or tribe or stature of people or their social, cultural or economic background. Once it falls, it cuts all with no mercy, and leaves no such claim standing. Therefore, for one to avoid such sword of vengeance, they should bring their

claim within the time provided for under the Limitation Act or, must plead provisions as provided for under the Act. " Underlined for emphasis

[23] I therefore find that the counterclaim, in so far as it seeks cancellation of the registration of the name of Ernest Lule on the Certificate of Title, on account of fraud allegedly committed by Ernest Lule on the 25th August 1976 is barred by the Limitation Act and is accordingly rejected. However, in so far as the counterclaim seeks the cancellation of the name of the administrators of the estate of the late Ernest Lule and the name of the Plaintiffs on the Certificate of Title of the suit land, the counterclaim is not barred by the limitation Act since the administrators were registered on the Certificate of Title on the 23rd July 2009 and the Plaintiffs were registered on the 3rd August 2011 less than the 12 years limitation provided for in the Limitation Act.

Issue 1: Whether the Plaintiffs are the lawful owners of the suit land.

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Issue 2: Whether the suit land constitutes the state of the late Theophilus Mazinsa.

[24] It was an agreed fact that the Plaintiffs are registered as proprietors of the suit [and. Under Section 59 of the Registration of Titles Act, Cap 230, a certificate of title issued under the Act is conclusive evidence that the person named therein is the proprietor of the land. Section 59 of the Registration of Titles Act, thus provides that;

"59. Certificate to be conclusive evidence of title

No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor [or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power." Underlined for emphasis.

[25] However, under Section 77 of the Registration of Titles Act;

"Any certificate of title, entry, removal of incumbrances or cancellation, in the Register Book procured or made by fraud, shall be void as against all parties or privies to the fraud. "

[26] Additionally, under Section 176 (c) of the Registration of Titles Act, where any person is deprived of land by a registered proprietor by fraud, the person who has been deprived of the land can maintain an action for ejectment or other actions for recovery of the land. Section 176 (c) of the Registration of Titles Act thus provides that;

" 176. Registered proprietor protected against ejectment except in certain cases

No action of ejectment or other action for recovery of any land shall lie or be maintained against the person registered as proprietor under this Act, except in any of the following circumstances;

(a)

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(b)

o (c) the case of a person deprived of land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud; "

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127) In Fedrick J. K Zaabwe v. Orient Bank Ltd & 5 others SCCA No. 04 of 2006. Katureebe, JSC relied on Black's Law Dictionary & Edition case 660. where fraud was defined as;

"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. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture... A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. " Bad faith" and "fraud" are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc...

As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of

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Of what is false whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture... "

128 In Kamtala Boulers Ltd -Ys- Damanico (U) Ltd, (5. C. Civil Appeal No. 22192). Wambuzi, C. J stated at page 7 of his judgment that;

"...fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act. "

[29] The learned Chief Justice further stated that:

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"Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters."

130 In Wvo Enerq Upanda Ltd vs Lydia Khitu. SCCA No. 7 of 2015 Tumwesigye JSC at page 12 held that;

"Direct evidence is not the only way to prove knowledge of fraud by the transferee. The knowledge can be inferred from circumstantial evidence. "

[31] In the present case, the particulars of fraud which the Counterclaimants pleaded were that:

1. The Plaintiffs connived with the administrators of the estate of the late Ernest Lule to transfer the land into their names well aware that the same was subject to a dispute.
- o 2. Margaret Kigongo Lule failed to indicate the suit land as one of the properties of Ernest Lule when she petitioned for letters of administration yet she claimed to have received the suit land on their wedding day as a gift from Theophilus Mazinga.
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3. The late Ernest Lule purportedly received an instrument of transfer from Theophilus Mazinga before the later got registered as owner of the suit land.

[32] I have already found that the counterclaim, in so far as it seeks cancellation of the registration of the name of Ernest Lule on the Certificate of Title, on account of fraud allegedly committed by Ernest Lule on the 25th August 1976, is barred by the Limitation Act. It is therefore pointless to determine whether Ernest Lule committed any act of fraud by obtaining registration of the suit land into his name.

[33] Be that as it may, the Counter -claimants did not challenge the authenticity of the signature of Theophilus Mazinga on the transfer form (ED3). ED3 is a certified copy of the transfer. It was certified by the Commissioner Land Registration. It is a document of more than 30 years. Under Sections 78 and 90 of the Evidence Act it is presumed to be genuine and that it was duly executed and attested by the persons by whom it purports to be executed and attested. No evidence was adduced by the Counter - claimants to prove that the date of 14th April 1975 and the word "Gift" was inserted by Ernest Lule and that the intention was to deprive Theophilus Mazinga of his land. In my view, ED3 on its own does not prove fraud on the part of Ernest Lule since it was authored by Theophilus Mazinga. It is possible that Theophilus Mazinga could have written a wrong date or chose to transfer the land before it was registered in his name. That cannot be fraud which is attributable to Ernest Lule.

[34] On the allegation of fraud committed by the administrators of the estate of the late Ernest Lule by failing to indicate in the petition for letters of administration that the suit land is one of the properties of Ernest Lule, in my view the allegation is not well founded. Failure to include the suit land in the application does not prove fraud. The Counter - defendants were duty bound to prove that the failure was intentional to deprive Theophilus Mazinga of the suit land. No such evidence was [ed. D. W.2 testified that she forgot to include the suit land in the application. I find her reason to be innocent without any indication that she was being fraudulent.

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[35] On the alleged connivance between the Plaintiffs and the administrators of the estate of the late Ernest Lule to transfer the land into their names well aware that the same was subject to a dispute, D. W.1 and D. W.2 testified that around 2006 the Plaintiffs approached Theophilus Mazinga claiming to be the owner of the suit land. Theophilus Mazinga referred the 1st Plaintiff to her daughter, Jackie Masinga, to handle the matter. Jackie Masinga requested the 1st Plaintiff to provide documents to prove his claim but he failed until late 2010. They thereafter held a meeting between their family and the family of Plaintiffs. The family of the Plaintiffs indicated that they had a Certificate of Title for the suit land. However, before the Certificate of Title could be availed, 1st Plaintiff tried to forcefully take possession of the suit land by depositing building materials which prompted her to report the matter to the police for criminal trespass and forgery. According to D. W.1 and D. W.2, the acts of the administrators of the estate of the late Ernest Lule in transferring the suit land while police was still investigating the matter amounted to connivance to defeat the Defendants' interest in the suit land.

[36] P. W. I on the other hand testified that he was shown the suit land by his mother in 2007. At the time the suit land was vacant and he embarked on clearing the suit land. He engaged surveyors

o to reopen the boundaries of the suit land. After the boundary reopening, there was a disagreement because the 1st Defendant was claiming that he was taking their land. Theophilus Mazinga referred them to her daughter, Jackie Masinga, to handle the matter. They thereafter held a meeting between their family and the family of the Defendants. He was asked to provide a land title. He provided a photocopy but Jackie Masinga rejected it. He testified that when he took his materials on the suit land, it was the same time the suit land was in dispute. He further testified that the dispute was on when the Certificate of Title was transferred in the name of the administrators and in the names of the Plaintiffs. P. W.2 testified that she felt no problem to transfer the Certificate of Title when there was a dispute because it was their land.

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[37] From the evidence on the court record, it is very clear that what was referred to as a dispute was the claim by either party over the suit land and the subsequent criminal case which was filed at the police. Counsel for the Plaintiffs submitted that because there was no caveat or a court order halting transaction, the transfers cannot amount to fraud. Counsel for the Counterclaimant did not make any specific response to that submission. I am in agreement with counsel for the Plaintiffs submission. The mere fact that the Defendants were claiming ownership of the suit land did not constitute any bar to the administrators of the estate of the late Ernest Lule to transfer the land into their names and subsequently transferring the same into the names of the Plaintiffs. As administrators, they were duty bound to administer the estate and distribute the estate to the beneficiaries. If indeed the Defendants wanted to stop the process, they should have obtained an injunction from Court or lodged a caveat.

o [38] I therefore find that the Counter-claimants failed to prove connivance or fraud on the part of the administrators of the estate of the late Ernest Lule or the Plaintiffs. The Plaintiffs proved that the suit land was registered in the name of Ernest Lule on the 25th August 1976, then registered in the name of the administrators of his estate on the 23rd July 2009 and finally in their names on the 3rd August 2011. In the absence of evidence that the Plaintiffs obtained registration into their name by fraud, the Certificate of Title is conclusive evidence that the Plaintiffs are the proprietor of the suit land. Defendants on the other hand did not adduce any evidence to prove that the suit land belongs to the estate of the late Theophilus Mazinga. It is inconceivable that Theophilus Mazinga would have been the owner of the suit land and yet for over 30 years he was not aware that suit land was no longer in his name. Issue 1 is therefore resolved in the positive, while issue 2 is resolved in the negative.

Issue 3: What remedies are available to the parties

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[39] Having found that that the Plaintiffs are the owners of the suit land, their prayers for ^a declaration that they are the lar{ul owners ofthe suit land; a permanent injunction to restrain the Defendants, their agents, servants and / or successors in title from threatening, intimidating or in any way intemrpting the Plaintiffs use and enjoyment of the suit land; and an order of vacant possession against the Defendants are accordingly granted.

[40] On the prayer for general damages, according to Halsburv's Laws of f,neland. 4th Edition reissue Volume 12(1) oaraqranh 812. general damages are defined as:

"... those losses, usually bul nol arclusively non pecuniary, which are not capable of precise quantification in monetary terms. T'hey are those damager which will be presumed

o to be natural or probable consequence ofthe wrong complained of; with the result that the Plaintiff is only required to assert that damage has been suffered. "

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[41] P. W.1 testified that after the death of Theophilus Mazinga, Defendants started planting crops on the suit land without their permission. He further testified that his building materials which he put on the suit land was converted by the l't and 3'd Defendants. In addition, he testified that the Defendants opened a criminal case against him and his mother to inconvenience him and subsequently deprive him ofthe suit land. As a result ofthe Defendants actions, he was prevented from using the suit land since 2007 and yet the Defendants continue to illegally till the suit land and derive sustenance therefrom. D. W. 1 denied removing the building materials of the ^I"1 Plaintifl He however admitted planting cassava, maize and beans on the suit land starting in 2011. D. W.2 admitted reporting the matter to the police.

[42] In my view, the alleged conversion is a tort which should have pleaded separately. The alleged unlawful arrest and trespass are also a separate cause ofaction in tort which the Plaintiffs should have pleaded separately. They did not do so. I however find that because of the Defendants wrongful claim of ownership of the suit land, the Plaintiffs were denied use of the suit land for now over 5 years. I therefore find that and award ofgeneral damages ofUg. Shs. 50,000,000/: is appropriate compensation to the Plaintiffs.

[43] On the prayer for interest, the principles applied by this court in the award ofinterest are clear and are set out in section 26 (2) of the Civil Procedure Act which provides that:

O „,ywhere lthe decree isfor the payment of money, the court may in the decree, order interest at slrch rdte as the court deems reasonable to be paid on the principal sum adludged from the date of the suit to the dote of the decree, in addition to any interest adjudgod on such principal sunnr for any period prior lo tlte institution oftlrc suit, withfurther interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date ofpayment or to such earlier date as the court thinla fit."

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[44] The above position of the law was wherein the Court of Appeal held that; reaffirmed in *Lwansa vs. Centen Bank* fi9991 EA 175

"Section 26(2) of the Civil Procedure Act empowers the court to award three types of interest; interest adjudged on the principal sum from any period prior to the institution of the suit, interest on the principal sum adjudged from the date of filing the suit to date of the decree, and interest on aggregate sum from the date of the decree to the date of payment in full."

[45] I consider that interest on the general damages of 15% per annum from the date of this judgment till payment in full is appropriate.

[46] On the prayer for the costs of this suit, the general rule is that costs 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. I have not found any good cause in this case why I should deny the Plaintiffs the costs in this matter.

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Orders:

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[47] In the end, having carefully considered the merits of this case, the following orders are hereby made.

- ¹. ^A declaration that the Plaintiffs are the lawful owners of the suit land.
- 2. A permanent injunction is hereby issued to restrain the Defendants, their agents, servants and / or successors in title from threatening, intimidating or in any way interfering with the Plaintiffs use and enjoyment of the suit land.
- 3. An order of vacant possession against the Defendants is hereby issued.
- 4. The Defendants are ordered to jointly and severally pay the Plaintiffs general damages of Ug. Shs. 50,000,000/- (Uganda Shillings Fifty Million).
- 5. The general damages in 4 above shall attract interest of 15% per annum from the date of this judgment till payment in full.
- 6. The Defendants are ordered to jointly and severally pay the Plaintiffs the costs of the suit.
- 7. The Defendants' counterclaim is dismissed with costs to the Counter defendants.

I so order

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Dated and delivered this 2d October 2024

Ir\\, ii1

Phillip Odoki Judge.

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CASE PAGE <https://chat.esheria.ai/case-law/uganda/lule-and-another-v-kibirango-and-2-others-civil-suit-382-of-2011-2024-ughcld-251-2-october-2024-unknown-topic-unknown-court-2024>

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