

UGANDA / JUDGMENT

Nabyonga Grace v Sembatya Abdu and Others (Civil Suit No. 048 of 2013) [2025] UGHC 214 (20 April 2025)

[2025] UGHC 214

COURT

High Court of Uganda

BEFORE

Tweyanze, J

CASE / FILE NUMBER

Civil Suit No. 048 of 2013

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA CIVIL SUIT NO. 048 OF 2013

DAISY NABYONGA GRACE :: PLAINTIFF VERSUS

- 1. SEMBATYA ABDU 2. JAMIRU LUSWATA. Administrators of the Estate of the late Hajji Masudi Kiriggwajjo Salongo) 3. YUDAYA NAMITANDA 4. KATO HAMIDU
- 5. BAJJA MANISULU::DEFENDANTS
- 6. KATAYIRA FRANCIS
- 7. NALUYIGA TINA NALONGO
- 8. SAFINA NAJJEMBA
- 9. SEMBATYA SULAIMAN

Consolidated With Civil Suit No. 046 Of 2013

- 1. HAJARA NASOLO (WIDOW)
- 2. SSEMWANGA SABITI
- 3. NAJJEMBA SAFINA
- 4. BAJJA MANISULU :: PLAINTIFFS

VERSUS

- 1. SEMBATYA ABDU

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possession of the suit land, Counter-Claim that the sale was fraudulent and seek to protect their interests.

Representation and hearing

4. The Plaintiff (Daisy Nabyonga Grace) was represented by *M/s Solis Advocates*. The 1st-4th Defendants, Sembatya Abdu, Jamiru Luswata, Yudaya Namitanda and Kato Hamidu were represented by *M/s Lutakooome & Co. Advocates*. The 5th-9th Defendants, Bajja Manisulu, Katayira Francis, Naluyiga Tina Nalongo, Safina Najjemba, and Sembatya Sulaiman were represented by *M/s Mukiibi & Kyeyune Advocates*. Since High Court Civil Suit No. 48/2013 and High Court Civil Suit No. 43/2013 were consolidated, the parties and their Counsel cut across in these suits.

Visiting locus

5. The Court visited the locus in quo on 11th July 2022, with observations duly recorded and considered. But specifically, the 5th-9th Defendants (Bajja Manisulu, Katayira Francis, Naluyiga Tina Nalongo, Safina Najjemba, and Sembatya Sulaiman) were in possession of the suit land. The evidence was by witness

statements, cross-examination, and written submissions, which have been evaluated and considered in this judgment.

Preliminary Objections

- 6. The 1st to 4th Defendants raised two preliminary objections: First, 1. **Whether the Plaintiff in Civil Suit No. 048 of 2013 has a cause of action against the 1st to 4th Defendants.** Counsel argued that the Plaintiff's amended Complaint fails to disclose a cause of action, as she received the Certificate of Title and no breach of the sale agreement is evident. They contend liability lies with the 5th to 9th Defendants' interference, for which the 1st to 4th Defendants, who are no longer proprietors, cannot be held accountable.
- 7. The test for a cause of action requires a Plaintiff to demonstrate a right, its violation, and the Defendant's liability (see *Auto Garage vs. Motokov (No. 3) [1971] EA 51; Ainomugisho Winfred & 8 Ors vs. Fatuma Dusto Nalumansi & 3 Ors, HCT-00- CC-MA 2084 of 2016)*. This is assessed by Court from the pleadings alone (See *Kapeeka Coffee Works Ltd vs. NPART, Civil Appeal No. 03 of 2000*).
- 8. In this case, the Plaintiff alleges a contractual right to vacant possession, breached by the 1st to 4th Defendants' failure to deliver it, as implied under the sale agreement (addendum dated 3rd October 2011). This establishes a prima facie cause of action. The Defendants' argument that their liability ceased upon Title transfer is unpersuasive, as the duty to ensure vacant possession persists unless excluded. Given the need for evidence beyond pleadings, this objection is inappropriate for preliminary determination (see *Yuda Lutta Musoke vs.

Greenland Bank*, HCCS No. 506 of 2001 [2002] KALR 533; *Mukisa Biscuits vs. Western Distributors* [1969] EA 696). The objection is rejected.

- 9. The Second objection is, as to **Whether the 6th, 7th, and 9th Defendants (Katayira Francis, Naluyiga Tina Nalongo, and Sembatya Sulaiman) have locus standi to pursue their Counter-Claim.** Counsel argued that these Defendants are not beneficiaries of the Estate, and they lack authority to challenge its Administration, citing Section 191 of the Succession Act, Cap 162 (now Cap 268), and *Silver Byaruhanga vs. Fr. Emmanuel Ruvugwaho*, *CACA No. 113 of 2011*.
- 10. Locus standi requires a right to be heard as per *Osborn's Concise Law Dictionary*, 11th Ed.; and *Dima Dominic Poro vs. Inyani Godfrey*, *Civil Appeal No. 17 of 2016*. The 6th, 7th, and 9th Defendants' Counter-Claim asserts possession of the suit land at the time of sale, conferring a right to challenge the transaction (see *Njau vs. City Council of Nairobi* [1976–1985] 1 EA 397). In this case, the undisputed evidence of the 6th,

7th, and 9th Defendants' possession suffices for locus standi, which clearly places them with a right to be heard. This objection is also rejected.

11. Since all the preliminary objections have failed, I now turn to resolve the matter on merits.

Issues for Determination

- 12. The Joint Scheduling Memorandum dated 10th January 2022 framed the following issues:
- *1. Whether the Plaintiff, Daisy Nabyonga Grace, validly and properly acquired the suit land.*
- *2. Whether the 1st to 4th Defendants lawfully acquired Letters of Administration to the Estate of the late Hajji Masudi Kiriggwajjo Salongo.*
- *3. What remedies are available to the parties?*

Burden and Standard of Proof

13. In civil proceedings, the burden of proof lies on the party asserting a fact (see *Sections 101, 102, and 103, Evidence Act, Cap 8* (Revised Edition), with the standard being on a balance of probabilities as per the case of *Miller v. Minister of Pensions* [1947] 2 All ER 372. Where fraud is alleged, the burden is higher than mere balance of probabilities (See *Kampala Bottlers Ltd vs. Domanico (U) Ltd*, SCCA No. 22 of 1992). The legal burden initially rests with the Plaintiff, shifting evidentially upon establishing triable issues (*Asha Ali Suleman vs. Nassanga Aysha Salma*, Civil Suit No. 338 of 2015 [2022]).

Analysis

14. In order to properly resolve the dispute in the consolidated suits, I will first address the second issue as its outcome substantially impacts on resolving issue one.

Issue 2: Whether The 1st to 4th Defendants lawfully acquired Letters of Administration to the Estate of the late Hajji Masudi Kiriggwajjo Salongo

15. It is undisputed that the suit land was registered in the names of the 1st to 4th Defendants and Bajja Manisulu as Administrators under Administration Cause No. 0108 of 2010. The Plaintiffs in Civil Suit No. 046 of 2013 and Counter-Claimants in Civil Suit No. 048 of 2013 allege fraud in obtaining these Letters of Administration.

- 16. In the instant case, evidence reveals that initial Letters of Administration were granted to the Administrator General on 7th May 2008, who renounced them on 16th January 2010 following a purported family resolution appointing the 1st to 4th Defendants. Court notes that there was no such resolution produced nor proven in Court by the 1st to 4th Defendants. A Certificate of No Objection dated 20th June 2010 (DEX7) listed Sembatya Abdu (brother), Jamiru Luswata (nephew), Yudaya Namitanda (widow), Bajja Manisulu (son), and Kato Hamidu (son) as Administrators. However, testimonies of DW1, DW2, DW4, DW6 and evidence in Court established that Kato Hamidu is a stepson, Yudaya Namitanda was divorced from the late Hajji Masudi Kiriggwajjo Salongo in 1982 and thus ineligible to be widow by the time of his death as per the uncontroverted testimony of DW3. Further the testimony of DW1, DW2, DW4, and DW6 that Sembatya Abdu and Jamiru Luswata are not rightful beneficiaries to the Estate of the late Hajji Masudi Kiriggwajjo Salongo was unchallenged by cross-examination.
- 17. Under *Section 230(2)(c) of the Succession Act, Cap 268 (Revised Edition)*, Letters of Administration may be revoked for "just cause," including fraud or false representation. Fraud must be strictly proved with particulars (See *Kampala Bottlers Ltd vs. Domanico (U) Ltd*, SCCA No. 22 of 1992; Order 6 rule 3, Civil Procedure Rules; and *Okello vs. Uganda National Examinations Board* [1993] II KALR 133).
- 18. The Counter-Claimants/5th-9th Defendants allege: Misrepresentation of relationships to wit; Sembatya Abdu as brother, Yudaya Namitanda as widow, Kato Hamidu as son. They also allege fabrication of a family meeting and forged minutes which supported the 1st-4th Defendants Petition of Letters of Administration. The 1st to 4th Defendants denied these allegations, but the unchallenged evidence of material falsehoods in their petition meets the heightened burden of proving fraud. In *Fredrick Zaabwe vs. Orient Bank*, SCCA No. 4 of 2006, Court defined fraud as intentional perversion of truth to induce reliance, and in this case before, it has been established that Court relied on the 1st – 4th Defendants' misrepresentations as to the relationships to grant Letters of Administration them under Administration Cause No. 0108 of 2010.

- 19. The 5th-9th Defendants have proved the dishonesty of the 1st to 4th Defendants in the said grant. Moreover, Priority for administration lies with widows and children (See **Sarah Ssebowwa vs. Peter Ssebowwa** [1991] HCB 95), and in the instant case, 1st – 4th Defendants deliberately misrepresented Court in order to obtain the Letters of Administration for the Estate of the late Hajji Masudi Kiriggwajjo Salongo. According to **Section 230 (2) (c) of the Succession Act Cap 268 (Revised Edition*)* ignorance or inadvertence does not save the situation. For as long as the

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allegation was untrue, whether made ignorantly or deliberately as in this case, it is sufficient to annul the grant.

- 20. I find that the 1st to 4th Defendants unlawfully acquired Letters of Administration to the Estate of the late Hajji Masudi Kiriggwajjo Salongo on 20th October 2010 through fraud. The grant is therefore revoked.

Issue 1: Whether the Plaintiff (Daisy Nabyonga Grace) validly and Properly acquired the Suit Land

- 21. The Plaintiff (Daisy Nabyonga Grace) purchased the suit land on 18th November 2010 for UGX 80,000,000/=, with the Certificate of Title transferred to her name. Under **Section 21 of the Succession Act, Cap 268**, the property of an Intestate devolves upon the personal representative in trust for beneficiaries. **Section 188** vests Administrators with the deceased's rights, and **Section 267** empowers disposal with beneficiary consent, subject to Estate interests.
- 22. In this case, there is no any evidence to show that the 1st-4th Defendants obtained consent from beneficiaries, including the 5th to 9th Defendants, who were in physical and actual possession the land. The Plaintiff only relied on the 1st to 4th Defendants' fraudulently acquired Letters of Administration, conducting a registry search but ignoring visible actual occupation of the 5th to 9th Defendants. The Court's locus visit confirmed the 5th to 9th Defendants' actual possession of the suit land. Courts have held that a bona fide purchaser for value must hold title, purchase in good faith without notice of fraud, and pay consideration (See **Hannington Njuki v. William Nyanzi**, HCCS No. 454 of 1996). However, the Plaintiff's inadequate due diligence and the 1st-4th Defendants' fraud, coupled with actual notice of occupation by the 5th to 9th Defendants, invalidates the Plaintiff's Title under *S*ections 76, and 160(c) of the Registration of Titles Act Cap 240 (Revised Edition)**.
- 23. I find that the Plaintiff did not validly acquire the suit land. Her registration as proprietor was and is still unlawful and therefore should be cancelled, and the Title be restored to the Estate of the late Hajji Masudi Kiriggwajjo Salongo.

ISSUE 3: What remedies are available to the parties?

24. The Plaintiff's claim against the 5th to 9th Defendants fail due to her invalid Title, but her remedies lie against the 1st to 4th Defendants for the fraudulent sale. The Plaintiffs in HCCS No. 46 of 2013 / the 5th to 9th Defendants (Counter-Claimants) in HCCS No. 48 of 2013, prayed for general damages of UGX 300,000,000/= having suffered loss and inconvenience since 2011 due to the fraudulent grant, sale, and

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transfer of the suit land against the Plaintiff in HCCS No. 48 of 2013 and the Counter-Defendants in HCCS No. 46 of 2013. However, I find that amount way off the mark and I award general damages of UGX 100,000,000/= in total, against the Plaintiff in HCCS No. 48 of 2013 and the 1st to 4th Defendants in HCCS No. 48 of 2013 / Defendants in HCCS No. 46 of 2013, jointly and severally, for the deprivation of quiet enjoyment caused by their deliberate wrongful acts. General damages compensate for the probable consequences of such acts (*see Kiwanuka Godfrey T/A Tosumi Auto Spares and Glass Mart vs. Arua District Local Government, H. C. Civil Suit No. 186 of 2006*).

- 25. Therefore, Judgment is entered for the Plaintiffs in Civil Suit No. 046 of 2013 and the Counter-Claimants in Civil Suit No. 048 of 2013 as follows:
- a. A declaration that the 1st to 4th Defendants fraudulently obtained Letters of Administration for the Estate of the late Hajji Masudi Kiriggwajjo Salongo under Administration Cause No. 0108 of 2010, and the grant is hereby revoked.
- b. An order is issued to cancel the name of Daisy Nabyonga Grace's from the Certificate of Title on the land known as Buddu Block 325 Plot 797 at Nyendo, Masaka City and restoring it to the Estate of Hajji Masudi Kiriggwajjo Salongo.
- c. An order is issued for the cancelation of the 1st to 4th Defendants' names from the Certificate of Title on the land known as Buddu Block 325 Plot 797 at Nyendo, Masaka City and restoring it to the Estate of the late Hajji Masudi Kiriggwajjo Salongo.
- d. A declaration that the Plaintiff, Daisy Nabyonga Grace did not validly acquire the land at Buddu Block 325 Plot 797 at Nyendo, Masaka City.
- e. An order is issued directing the 1st to 4th Defendants to render a true account of the Estate of the late Hajji Masudi Kiriggwajjo Salongo.
- f. An order is issued for a refund of UGX 80,000,000/= by the 1st to 4th Defendants to the Plaintiff in HCCS NO. 48 of 2013 (Daisy Nabyonga Grace) as money had and received at a commercial rate of 24% per annum from the time of filing the suit till payment in full. She is also awarded general damages of UGX 20,000,000/= (Twenty Million Shillings) for the inconveniences caused to her by the 1st-4th Defendants.

- g. The Plaintiffs in HCCS No. 46 of 2013 / the 5th to 9th Defendants (Counter-Claimants) in HCCS No. 48 of 2013, are awarded general damages of UGX

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100,000,000/= in total, against the Plaintiff in HCCS No. 48 of 2013 and the 1st to 4th Defendants in HCCS No. 48 of 2013 / Defendants in HCCS No. 46 of 2013, jointly and severally.

- h. Interest on (g) above at 6% per annum from the date of this judgment until payment in full.
- i. Costs awarded to the Plaintiffs in Civil Suit No. 046 of 2013/the 5th to 9th Defendants (Counter-Claimants) in Civil Suit No. 048 of 2013.

I so order.

Judgment delivered electronically at Masaka this 20th day of April, 2025.

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