

UGANDA / JUDGMENT

Osele John and 18 others vs Ikinu Deborah and another (Civil Case 29 of 2014) [2022] UGHC 98 (20 October 2022)

[2022] UGHC 98

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Civil Case 29 of 2014

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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Civil Suit No. 0029 of 2014

- 1. Osele John
- 2. Ogwang Emmanuel
- 3. Okwi Boniface
- 4. Oonyu Patrick
- 5. Ojilong Simon
- 6. Ogweere Clement
- 7. Okia Sam
- 8. Opolot William
- 9. Oonyu Richard
- 10. Ogweere Edward
- 11. Ogwang Julius
- 12. Ingorot Charles
- 13. Arikod William
- 14. Odong Charles

- 15. Odong Julius
- 16. Okalang Julius
- 17. Atiang Janet Christine
- 18. Opesen Tom \$25\$
- 19. Ekau David

.....

Versus

- 1. Ikinu Deborah
- 2. Registrar of Titles 30

\$10\$

$\$S$

Before: Hon. Justice Dr Henry Peter Adonyo:

Judgment.

1. <u>Background:</u>

The plaintiffs filed this suit against the defendants seeking an order mutating the certificate of tile LRV 1186 FOLIO 17 land at Omatenga, 10 Owogoria Kumi by excluding the land measuring 149.63 hectares that was included on the certificate of title measuring approximately 191.49 hectares, permanent injunction restraining the 1st defendant or her agents from interfering with the plaintiffs' ownership of their land measuring 149.63 hectares that was included in the certificate of title LRV 1186 15 FOLIO 17 measuring approximately 191.49 hectares, special and general damages and costs.

The plaintiffs contend that they are the rightful owners of the suit land measuring 149.63 hectares which they state were fraudulently and without any claim of right included by the $\$2^{\rm nd}$ defendant on the Title LRV 20 1186 Folio 17 upon application by the $\$1^{\rm st}$ defendant's father.

The plaintiffs attest that they acquired the land by way of inheritance from their late fathers with the 1st defendant after the death of her father, fraudulently forbidding them from cultivating the land on grounds that her father was the registered proprietor.

The plaintiffs further aver that the $\$1^{\rm th}$ defendant's father, the late David Livingstone Ogwang, fraudulently and forcefully surveyed the suit land by deploying soldiers who harassed and intimidated clan members and subsequently had all land in question tilted to their disadvantage.

Accordingly, the plaintiffs pray to this court to have mutated such piece of \$5 land which does not belong to the ¹ defendant.

The ¹ defendant in her written statement of defence raised preliminary objections that the plaint does not disclose a cause of action on the basis the plaintiffs had no locus standi to sue, that the suit was time barred and that she could not be sued in her capacity as a defendant in a suit against the estate of the late David Livingstone Ogwang.

\$20\$

She denied the plaintiffs' claim and contended that they have never owned the suit land nor had possession of it at any one time. That the suit land belongs to the late Brigadier David Livingstone Ogwang who is the registered proprietor who inherited it from his father.

That the land from early on was surveyed and registered in the names of Ogwang in 1982 and all the locals knew it and none of the plaintiffs laid any claim on it for over 30 years.

That some of the plaintiffs had asked the late Ogwang for permission to cultivate the land during planting seasons and upon the death of the 1st defendant's father, the late Brigadier David Livingstone Ogwang, the plaintiffs then began claiming the land.

The ¹ defendant further raised a counter claim that the plaintiffs, had without any colour of right over the property, insisted on obstructing the

defendant from cultivating the land and were threatening violence. \$-25\$

That the plaintiffs intentionally and fraudulently well knowing that the land belongs to the estate of the late David Livingstone Ogwang trespassed upon it and started using the same.

- 2. Issues raised during scheduling:
- a. Who is the rightful owner of the piece of land measuring 149.63 Hectares included in the certificate of title LRV 1186 FOLIO 17 land at Omatenga, Kumi?
- b. Whether the title was acquired lawfully?
- c. Whether the plaintiffs' action is time barred?
- d. Whether the plaintiffs' have locus standi to bring this suit?
- e. What remedies are available to the parties?
- 3. Representation: 15

The plaintiffs herein are represented by M/s Ogire & Co Advocates of Soroti while the ¹ defendant was represented by M/s Omongole & Co Advocates of Kampala. The 2nd defendant never filed any defence nor was

it represented. 20

An amended plaint was filed by the plaintiffs though the defendants never did so. No reason is shown by the records for the non-doing so.

4. <u>Summary of Evidence on record:</u>

PW1, Osele John (Plaintiff 1) in his testimony stated that he knew the 1st defendant as his sister, the daughter of his late uncle Brigadier David Livingstone Ogwang. He stated that he is the rightful owner of 35 gardens which form part of the suit land that was wrongfully included by the late Brigadier Ogwang in the certificate of title without his consent. That he

$\overline{5}$

acquired his 35 gardens by way of inheritance from his late father Ogwang $\overline{5}$ Emuge who died in 1958 and was buried on the suit land.

That he was born, raised and subsequently started his family on the 35 gardens. That he had used the same piece of land uninterrupted till 10.03.2014 when the 1^{st} defendant stopped him and other plaintiffs from using the land because her father had surveyed and obtained a land title and that she does not know anybody occupying that piece of land measuring 149.63 hectares except that she only knows the land title.

That around 1974 and later 1975 the late Brigadier Ogwang requested the clan leaders of Irarak Ijipai clan to have the clan land surveyed so that it was protected from encroachers which the clan rejected because they each

had their separate pieces.

That upon this rejection the late Brigadier Ogwang forcefully went and deployed soldiers on the clan land while the surveyors were planting survey mark stones.

That in 1978 the late Brigadier came back and convened a clan meeting 20 where he assured each clan member that he had finished surveying the land and that each member should continue owning and cultivating in his or her piece that he/she had inherited.

He further stated that after the forceful survey the late Brigadier Ogwang never stopped any of the plaintiffs from using their respective pieces of land.

He told court that he had 6 graves of his beloved ones including his great grandparents, grandparents, brothers and son who passed on in 1998, 1994, 1958, 1944, 2008 and 1998, respectively.

He further stated that when the late Brigadier Ogwang passed on he was buried at his home located at Owogoria village in Kumi District which land $\overline{5}$ is distinct from the clan land.

During cross-examination, PW1 Told court that he was informed that Brigadier Ogwang had got a clan land title but they never used to have land titles for clan land.

\$10\$

He stated that in 1982 Amin was President and that he did not know how land was owned then but that customary land existed and at that at that time if one wanted to own land they could buy from the customary owner. He told court that the issue was reported to the LC III by Deborah and Okuku because they wanted vacant possession in 2014. 15

That prior to that he had raised the land issue with Ogwang but he did not file a case against him.

That since 1982, Ogwang informed them that he had obtained a title for the clan.

During re-examination he stated that David Livingstone was alive by the time his parents died and were buried on the suit land and he did not raise 20 any objection. That before his death, Brigadier Ogwang never evicted him from the suit land and neither did his widow.

PW2, Okia Sam (Plaintiff 7) in his testimony stated that he knew the 1st defendant as the daughter of his late brother Brigadier Ogwang. That he is the rightful owner of 20 gardens which form part of the suit land which 25 he acquired by inheritance from his late father Ingorot Yokosapati who died in 1960 and was buried on the suit land. He told court that he was born, raised and also married in the 20 gardens.

He corroborates PW1's evidence on how Brigadier surveyed the land and where he was buried when he died in 1999. He has 8 graves on the suit 30

land including his parents who died in 1960, Ipusit who died in 1997, his brother who died in 1996 and his children who died in 1979 and 2004. During cross-examination he stated that he stays 6 kms from the 1st defendant's home.

That the clan could not argue with the late brigadier because he was a soldier. He told court that had a home on the suit land which he built in 1965 and that even Habitat International constructed for him a house in 2010.

That Brigadier lived peacefully with them. That he got to know of the title in 2014 when he saw the certificate of title but not the one in the 1st defendants trial bundle but that the other was a map. He told court that 15 had never seen the 1st defendant survey the suit land and there was no title in her name, that the fraud was committed by her father which fraud he did not bring to the attention of the clan or local council.

During re-examination, he clarified that his home was on the suit land but was 6km from the 1st defendant's home. That when the late Ogwang retired he went straight to his home in Owogoria and he did not disturb them.

PW3. Okwi Boniface (Plaintiff 3) in his testimony stated that he knew the 1st defendant as the daughter of his late brother Brigadier Ogwang. That he is the rightful owner of 18 gardens which form part of the suit land 25 which he inherited from his father Achoda Joseph who died in 1962 and who was buried on the suit land.

He told court he was born, raised and later married on the 18 gardens. He corroborates PW1 on how the late Brigadier surveyed the land and where he was buried.

- During cross-examination he stated that the late David Livingstone was 5 his paternal uncle and they were of the same clan. That Brigadier added his land to the title in 1977 because he was a soldier and it was done without the acceptance of their elders. He did not report the forceful survey to the police.
- During re-examination he said the late Ogwang was not reported to police \$10\$ because of fear.

PW4, Opesen Tom (Plaintiff 18) in his testimony stated that he knew the 1st defendant as his sister, a daughter of his late father Omoojo Enos and Mary Ogwang (Brigadier's wife). He told court that he was a coadministrator together with Atiang Janet and Ekaut David over the estate 15 of the late Omoojo and were the rightful owners of 2 gardens which form part of the suit land which were fraudulently included by the 1st defendant's adoptive father in a certificate of title.

That Omoojo Enos acquired the 2 gardens by way of purchase from Merisa s/o Otukuri way back on 09.06.1974. That together with his coadministrators he has been in occupation of the 2 gardens uninterrupted till 2014 when the 1st defendant stopped them from using the gardens.

During cross-examination he stated that his father informed him that the 1st defendant was his sister and the late David Livingstone was their family friend. He further told court that he belongs to the Ikarabwok Ikulang Abukui clan which is not the same as the 1st defendant's clan.

He told court that only cultivates two gardens which he took over from his parents in 2006 and he did not know it was titled till 2014.

During re-examination he stated that he used to cultivate the suit land with his father and before 2014, the 1st defendant was not using the two 30 gardens.

PW5, Ibaat Eugenio in his testimony stated that he knows the 1st defendant as his niece, daughter of his late cousin Ogwang David Livingstone. That he was a witness to a land sale between Omoojo Enos and Merisa s/o Otukuri and that before the sale they moved around the suit land. That immediately after the sale Omoojo Enos occupied the 2 gardens till his death. 10

That the suit land does not belong to the 1st defendant as she is in lawful and peaceful occupation of her late father's piece of land from childhood and had never been in occupation of the disputed land.

That her late father only surveyed the land to protect it from would-be land encroachers.

During cross-examination he stated that the late Merisa was not related to Brigadier Ogwang or Emuge Ogwang. That the land Enos bought was in Akule village near the lake and Okuku was occupying the two gardens. That the late Brigadier Ogwang was buried in his home in Okoria. He told court that there were no soldiers during the survey.

DW1, Ikinu Deborah Ogwang (Defendant 1) in her testimony stated that she is a holder of letters of administration to the estate of the late Brigadier Ogwang.

That the plaintiffs had no interest at all in the suit land as it belonged to her late father who inherited it from his father Ochella Nathaniel who 25 inherited it from his grandfather Ogwang Emuge. She told court she was informed by her late mother that her father inherited the suit land around 1972 and had enjoyed quiet possession without any claim from or disturbance from any of the plaintiffs.

That her father obtained a lease of 44 years in 1982 which was still 30 subsisting to date and that she was informed by her lawyers that by 1980

all land was public land and one could only obtain a lease if they wanted $\$S$ to own land.

She further told court that her father acquired the lease without any protest during the survey or any other processes.

That her father was asked by people to cultivate the land and he would allow them including some of the plaintiffs but that after the death of her $\$10$ father in 1999, the plaintiffs then started claiming ownership of the suit land around 2002.

That in 2003 the 8th, 9th and 10th plaintiffs filed a complaint against her late mother Mary Ogwang and her uncle Okuku James in the area Land Tribunal but that the said Land Tribunal decided the land suit in favour of 15 her father's estate but the $\$8^{\text{th}}$ and $\$9^{\text{th}}$ and $\$10^{\text{th}}$ plaintiffs did not appeal against that and as such this matter was *res judicata* against them.

That her mother commenced execution of the tribunal judgment so as to evict the $\$8^{\text{th}}$, $\$9^{\text{th}}$ and $\$10^{\text{th}}$ plaintiffs off the suit land but due to sickness she

- failed to complete execution but the 8th, 9th and 10th plaintiffs voluntarily stopped using the land briefly but later then re-entered the land while acting in contempt and from then continued using the suit land which prompted her mother to seek assistance from the LC II who wrote a letter to Kumi Police station.
- That on 27th April 2002, the 1st plaintiff wrote to her late brother Ogwang 25 Eliud reporting to him that the $\$17^{\text{th}}$, $\$18^{\text{th}}$ and $\$19^{\text{th}}$ plaintiffs were trespassing on the suit land and that he should go and stop them and he signed the letter as a caretaker of the suit land and not an owner.

That in 2005 the 1st plaintiff was accused by some people in the LC1 Court and during the hearing he stated that the suit land belonged to Ogwang

David Livingstone and so it was shocking to see that he was now claiming $\$S$ ownership of the suit land.

That the suit land belonged to her father's estate and they have always had actual and implied possession of the it. That her father did not obtain the certificate through forgery, fraud or coercion.

During cross-examination she stated that she got letters of administration \$10\$ in 2000, the late David Livingstone constructed a home in Owogoria and he is buried there.

That some of the plaintiffs were in Owogoria and Agule, that the relationship between Owogoria, Omatenga and Agule was that by that time the places were all called Owogoria but after decentralisation 15 Owogoria, Omatenga and Agule became different locations but on the earlier pieces of land as indicated on the land title which was of 1982.

This witness identified DEX1 as a lease offer form dated 09/01/73 addressed to Ogwang David Livingstone for 12 Hectares at Agulo Kumi, Teso. She stated that the application of late Ogwang was dated 08/06/1971 and before 1971 Agulo existed.

She also stated that the lease granted by the urban authority dated 28/06/1982 refers to land at Omatenga, Owogoria Kumi approximately 191.46 Hectares and she did not see any document relating to an application for this land.

She further stated that she did not receive any payment receipts for the land in her custody.

That the current geographical location is Agule but in the title it reads Omatenga, Owogoria. That the 1st map had 149.69 hectares and the 2nd one had s 41.83 hectares. She told court that her late father had a

permanent home in the second land and that this was where he, his wife $\$S$ and some of his children were buried.

She told court that she could not confirm that some of the plaintiffs had stayed on the upper map land, but some of them were caretakers or workers and that she only knew Mzee Ibaat who used to stay with them but she did not know of any relationship with him.

She confirmed that Atiang Janet was a daughter of her father's friend Omoojo Enos and her mother never told her of any relationship with Janet. She did not get any information on any litigation in relation to her late father and any of the plaintiffs and she did not know if her father ever visited any of the plaintiffs. She states that the plaintiffs were staying on

15 the land in Owogoria but she does not know how long they had stayed there.

She admitted to not knowing of anything about the lineage with plaintiffs, that the only people she had knowledge of were her uncles and that Okuku James was the best person to answer issues of lineage.

She confirmed that it was her mother who informed her that her father had the land in question and because she was young her father could not tell her.

She did not hear of any eviction after the acquisition of the title, she also adds that it is not only after that her father died that she started saying the 25 plaintiffs should go away from the land for in in 2003 some of the plaintiffs took her mother to LCI, LCII, LCIII Courts as well the land tribunal. She stated that the Land Tribunal directed the plaintiffs to move out of the land and they did temporarily. She further admitted that the Land Tribunal did not conclude that the suit land belonged to her late 30 father's estate but that she had been in effective occupation of the land where her father constructed a house and was buried and that some of the $\{S\}$ plaintiffs had always been on the suit land.

She told court that she had not yet been born by the time the survey was done but that she was informed that it was not done forcefully with use of soldiers. She stated that she shares a great great grandfather called Omuge with Osele and when her father was alive the plaintiffs did not have an

issue with him.

During re-examination she stated that she was informed that the survey was peaceful by PW5 who all along has been staying with them in Owogoria

DW2, Ogwang Apollo, a brother to the 1st defendant, testified that the suit land belonged to their late father who inherited it from their 15 grandfather Ochella Nathaniel. That they have always lived on it and utilized the land without any disturbance and some of the plaintiffs started disturbing their mother in 2002 yet they had no interest in the suit land. That the plaintiffs used to work for his father as casual labourers and he allowed them to cultivate the suit land but they started claiming 20 ownership of the land after his father died but had made no claims of ownership when his father was still alive and only started building recently in order to take possession.

During cross-examination he stated that is not always at home because he 25 was a long distance driver. That the land in question is about 191.4 hectares partly located at Owogoria and Agule. That the home of the late Brigadier was at Owogoria and he was buried there as well as his son Ekuni. When shown the land title he stated that the distance the two pieces of land was about four kilometres. He also confirmed that at page 6 of DEX1 the acreage is 12 hectares at Agule but at page 1 of the same 30 exhibit it is 191.4 hectares and it is not the same number as in the lease

offer. He does not know the year and the land some of the plaintiffs were $\overline{5}$ allocated to use but he knows they were given 47 acres, however, he did not know the neighbours to these 47 acres or how it is utilised.

He could not tell whether before his death, the late Brigadier had tried to chase the plaintiffs but knows that he told them not to build permanent houses on the suit land and the plaintiffs only built after his father died. When the plaintiffs started building permanent structures the 1st defendant and their uncle Okuku told them to leave.

He told court he stays on the land at Owogoria together with the 1st defendant, Akol George and that Okuku stays in the land at Agule.

He did not recall Ekau being arrested but he knows that Okuku and Ekau 15 kept fighting over the cultivation of the land at Agule and they went to Kumi Court. He did not know the relationship between Ogwang Emuge Agelun and Ogwang David Livingstone.

During re-examination he told court that his father constructed a house in Owogoria where he was buried with his son and the other land was used 20 as a farm land that this practice had been continued by Okuku James and some relatives called Ochola and Okia James who had homes on the farm land.

That Osele John was a caretaker and others just came to the land from Kidongole, Amuria, etc. as casual labourers

DW3, Okuku James testified that his late brother Ogwang David Livingstone who owned the suit land. He told court that he grew up in the area and had always known that Ogwang David Livingstone owned the land. That Ogwang David Livingstone inherited the land from their late father Ochella Nathaniel who permitted the plaintiffs to cultivate 47

gardens because he was then not staying on it. That it was not true that S the land was clan land as it was owned individually by his late father.

That after his brother Ogwang David Livingstone died, he started taking care of the suit land on behalf of the widow and children. That in 2003, the 8th, 9th and 10th plaintiffs filed a case against him and Ogwang's widow at the Land Tribunal claiming ownership of the suit land but lost.

That when he received summons to file a defence in the Land Tribunal he wrote a letter to the tribunal explaining that the suit land belonged to his late brother.

That later in 2005 Agoe Rose filed a complaint against the 1st plaintiff claiming ownership of the same suit land and Osele John, the 1st plaintiff, 15 categorically stated that he was not the owner of the suit land and that it belonged to the late Ogwang.

That in 2002 the 17th, 18th and 19th plaintiffs encroached on the suit land and the 1st plaintiff wrote a letter to Ogwang Eliud reporting them and in this letter he stated that he was only a caretaker.

During cross-examination he stated that he grew and lives in Agule Village. That Ogwang David Livingstone, his wife and son resided in Owogoria and this home is about 3 miles from the suit land. He told court he did not know Ogwang Emuge but Ochella Nathan is his father. That before

Ogwang David Livingstone died he did not chase some of the 25 plaintiffs off the suit land. The order by the land tribunal does not give them the land in question it merely stated that the land in dispute was titled. That Ibaat Eugenio stayed away from the land at Owogoria after he gave his testimony in court.

During re-examination he stated that Achoda used to stay on land which 30 belonged to Ogwang D. L.

DW4, Akol George, testified that the 1st defendant was his aunt, a $\$$ cousin to his mother the late Mugena Stella. He reiterated what the other defence witnesses stated on ownership of the land and how the plaintiffs came to be on the suit land.

During cross-examination he stated that his mother was still alive and that his father comes from Nyero but he does not have land there but in Agule. $\$10$ He testified that there is a case where the land tribunal court declared him the owner of the land. That he found one or two of the plaintiffs on the land, that is, Mzee Osele (P1) and Ibaat Obaa Eugenio but the rest he did not know. That Ogwang David Livingstone was a prominent soldier but he did not see him moving with two jeeps of soldiers. 15

A locus in quo visit was made by court after the receipt of all the testimonies of witnesses above and during *locus in quo* it was established that the following persons were on the suit land, that is Osele John (P1), Oonyu Patrick (P4), Oonyu Richard (P9), Odong Charles (P4), Okwi Boniface(P3), Acha Alice, Okia Samson(P7), Ogwang Julius(P11), Okalany

Julius(P16) (built in 2018), Ojilong Simon (P5), Okwi Charles, Ochom John Bosco, Achoda Joseph, Igorot Gilbert, Opolot George William and Ogwere Edward (P10). All of them had homesteads on the suit land.

The home of Ocela, Okuku's brother was seen on the suit land and outside the house were 15 graves, two being graves of the Brigadier's 25 grandparents.

Oonyu Patrick showed 12 graves with the oldest being 1962, Osele John showed 11 graves including that of Ogwang Emuge buried in 1958, Okia Samson showed 7 graves including Ipusit Esther the mother to Odong Sam, Odong, stepmother called Akyoto Mary and his father Ingorot Yokosapati. Ojilong Simon showed 3 graves with the oldest being that of

his father Ogweere. Ingorot Gilbert showed 7 graves with the oldest being $\$$ that of Olupot David buried in 1954. Okwi's homestead had 3 graves Habitat for Humanity Houses were seen on the suit land where Okia lives but before that there were grass thatched houses. There was another Habitat for Humanity house and a grass thatched houses to the west of Osele's house.

$\$10$

Survey mark stones were also seen around the suit land.

5. Resolution:

- a. Who is the rightful owner of the piece of land measuring 149.63 Hectares included in the certificate of title LRV 1186 FOLIO 17 land at Omatenga, Kumi?

The plaintiffs are claiming 149.63 hectares of land allegedly included on the certificate of title measuring approximately 191.49 hectares. They claim they are the rightful owners of the suit land located at Omatenga, 20 Owogoria Kumi and they inherited the same from their late fathers. PW1 Osele John testified that he inherited his land from his father the late Emuge Ogwang who died in 1958 and was buried on the suit land, this was confirmed during the locus visit.

PW2 Okia Sam acquired his land through his father Ingorot Yokosapati 25 who died in 1960 and was buried on the suit land and during locus his grave was confirmed on the suit land.

PW3 claimed through his father Achoda Joseph. PW4 claimed the suit land through his father Omoojo Enos who purchased land from Merisa s/o Etukuri in 1974 and PW5 testified that he was a witness to this agreement.

During locus as noted above, most of what the plaintiffs alluded to were $\$$ confirmed and many of them showed the graves of their loved ones dating as far back as 1958.

The plaintiffs aver that the land is clan land and the late Brigadier their clan brother had it surveyed and titled without their consent. It is the evidence of PW1 to PW3 that around 1974 and later 1975 the late Brigadier Ogwang requested the clan leaders of Irarak Ijipai clan to have the clan land surveyed so that its protected from encroachers which the clan rejected because they each had their separate pieces. That upon this rejection the late Brigadier Ogwang forcefully came and deployed soldiers

Abukui Clan.

- on the clan land while the surveyors were planting survey mark stones. 15 That in 1978 the late Brigadier came back and convened a clan meeting where he assured each clan member that he had finished surveying the land and that each member should continue owning and cultivating in his or her piece that he/she had inherited.
- The plaintiffs further claim that they were born and raised on the suit land 20 and they utilised the same peacefully till 2014 when the 1st defendant stopped them from using the land because she had a title to the same. DW1 in her testimony stated that some of the plaintiffs have always been on the land and from the testimony of the five plaintiff witnesses, the majority of the plaintiffs belong to the Irarak Ijipai clan and the land is clearly clan 25 land, with exception to PW4 who belongs to the Ikarabwok Ikulang

The 1st defendant on the other hand claims the land belonged to her late father Ogwang David Livingstone who inherited the land from his father Nathaniel Ochella who also inherited from Ogwang Emuge. That her 30 mother informed her that her father inherited the land in 1972 and obtained a lease in 1982 without any protest from the plaintiffs.

She further claimed that the plaintiffs were only allowed to cultivate the 5 land by Brigadier Ogwang David Livingstone but only began claiming the land in 1999 after the death of Ogwang David Livingstone.

That the plaintiffs were casual labourers on the suit land. DW2 and DW3 added that the late Ogwang David Livingstone gave the plaintiffs 47 gardens, however, the location and neighbours of these gardens was not known to them.

DW3 further claimed that the suit land is not clan land but was individually owned land. DW1 and DW2 claimed they have always been in peaceful possession of the suit land, however, this is contradicted by their

- testimonies that they live in the land in Owogoria where the late Ogwang 15 David Livingstone constructed a permanent home and was buried with his wife and children. From the testimonies of all witnesses it is undisputed that Ogwang David Livingstone had land at Owogoriya and that is where constructed his permanent how, lived and was subsequently buried.
- DW3's claim that the land is not clan land cannot stand given the evidence 20 adduced in court and at locus in quo.

Ikinu Deborah (DW1) in her witness statement stated that she is not related to most of the plaintiffs and most of them were not from the same clan, however, during cross examination she stated that she shares a great grandfather called Emuge with Osele John who is the 1st plaintiff. The 1st defendant and her witnesses all failed to make mention of the clan to which the late Ogwang David Livingstone and his family belonged, and this only confirms the evidence by the plaintiffs that the late Ogwang David Livingstone was their brother/ uncle from the same clan.

The fact that Osele John (PW1) testifies of an inheritance of land from one S Ogwang Emuge whom the 1st defendant calls great grandfather cannot be ignored.

It was also brought out in evidence that Ikinu Deborah, the 1st defendant was not familiar with her father's lineage and even she testified that Okuku James who testified as DW3 was in a better position to answer 10 questions on the same. Okuku James (DW3) was not aware of the relationship between Ogwang David Livingstone and Emuge Ogwang and the same applies to DW2 brother to the 1st defendant. This is strange as all of them trace Ogwang David Livingstone's inheritance all the way to

Emuge yet interestingly could not connect the relationship between the 15 two.

From what is on record, there is a clear relationship between the plaintiffs and the 1st defendant that points to the fact that the suit land is indeed clan land.

The evidence above also indicates that after the survey the late Ogwang David Livingstone never evicted the plaintiffs off from the land and it is the undisputed testimony of PW1 that after the survey Ogwang David Livingstone told the clan members to keep occupying their individual pieces of land they'd each inherited and furthermore after he even retired he went to his home in Owogoria and never bothered the plaintiffs on the 25 land.

The evidence also clearly shows that when alive the late Ogwang David Livingstone did not have a problem with the plaintiffs being on the suit land.

With regard to the Land Tribunal ruling the ¹st defendant was relying upon, all defendant witnesses admitted that the land was not ruled as

theirs but the Land Tribunal conclusion and ruling was merely pointing to the fact of the suit land being titled.

Okuku James (DW₃) in his testimony stated that he started taking care of the suit land on behalf the late Brigadier Ogwang David Livingstone's widow and children who were still in school. This testimony was in direct

contradiction with his claim and that of DW1 and 2 that Osele was the only 10 who was caretaking the land on behalf of Brigadier Ogwang David Livingstone and if indeed DW3 was caretaking the land then at what point did Osele do the same.

The letter the defendants seek to rely on dated 27th April 2002 wherein

Osele names himself a caretaker cannot be relied upon as during cross-15 examination he denied having ever seen that letter and did not know who wrote it.

From the foregoing, I find that the plaintiffs have proved on a balance of probability that they are the rightful owners of the suit land measuring 149.63 Hectares included in the certificate of title LRV 1186 FOLIO 17 land

at Omatenga, Kumi.

b. Whether the title was acquired lawfully?

The plaintiffs aver that the late Ogwang David Livingstone without their 25 permission surveyed and included their land on the certificate of title registered in his names.

In Fredrick Zaabwe vs Orient Bank SCCA No.04 of 2006, fraud was defined as;

"The intentional perversion of truth for purpose of inducing another in reliance upon it to part with some valuable thing belonging him or to surrender a legal right."

Further, the Supreme Court in *Kampala Bottlers Ltd vs Damanico*

(U) Ltd SCCA No.22 of 1992, stated that fraud must be directly or by 10 necessary implication, attributed to the party against whom it is alleged, as shall be done hereunder.

Again in **Kampala Bottlers Ltd vs Damanico**, (Supra) the court found that fraud must be proved strictly, the burden being heavier than a balance of probabilities generally applied in civil matters.

In **FAM International vs Mohamed Hamid El Faith Civil Appeal No. 16 of 1993**, the court also explained the standard of proof, noting that the standard is more than a mere balance of probabilities though less than proof beyond reasonable doubt.

*In **Nanteza Nabeta vs Konde Civil Suit No. 391 of 2010***, the court noted that fraud must be attributed to the party accused of committing it. It was held that the party must prove that fraud was attributed to the transferee.

It must be attributable either directly or by necessary implication, that is,

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.

As per the authorities cited above the acts of fraud must be committed intentionally, must be attributed to the party accused of committing it, directly or by necessary implication.

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The particulars of fraud are set in the amended plaint as follows; 5

The particulars of fraud as pleaded are;

- (i) Wrongfully making false statements declaration or misrepresenting in her application to being the said land under the operation of the R. T. A.
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- Surveying, applying, leasing and obtaining the land title in her (ii) names in respect of the above said land without notice of the plaintiffs and in order to defeat the plaintiffs' unregistered interest.
- (iii) Suppressing and concealing or assisting or joining or being privy to suppression or withholding of the above material facts or information from the Uganda Land Commission.
- Surveying the suit land without prior knowledge and consent of (iv) the village authority and immediate neighbours.
- Causing the entry and or inclusion of the names of the 1st (v) defendant into the title.
- (vi) Failure or neglect of the 2nd defendant to notice the above mentioned glaring irregularities.

Every specific element of fraud pleaded must also be proved beyond the balance of probabilities. Secondly, that the fraud must be attributed to the

transferee as was held in **Kampala Bottlers Ltd v Damanico (U) Ltd 25 SCCA No.22 of 1992**.

From the evidence seen above the plaintiffs are claiming fraud on part of the late Ogowang David Livingstone. These cannot be imputed on the 1st defendant as she was not the one who got the title and even the same is not in her names.

It is clear to me that from the evidence adduced by the plaintiffs, their clan brother Ogowang David Livingstone was the one who surveyed and titled the suit land without their consent. This fact is gleaned from the testimonies of PW1 to PW3 who told court that around 1974 and later 1975 the late Brigadier David Livingstone Ogowang requested the clan leaders of

Irarak Ijipai clan to have the clan land surveyed so that it is protected from 10 encroachers which though the clan rejected because they each had their separate pieces, the late Brigadier Ogowang forcefully went ahead to survey the suit land after deploying armed soldiers as the surveyors planted survey mark stones.

- These witnesses further confirmed that in 1978 the late Brigadier David 15 Livingstone Ogowang went back to the suit land and even convened a clan meeting where he assured each clan member that since he had even completed surveying the suit land and secured it for the clan, each clan member should continue owning and cultivating in his or her piece of inherited land. He did not talk of any title with the plaintiffs only finding 20
- out about the title in regard to the same in 2014 when the 1st defendant stopped them from using the land.

The 1st defendant's witnesses were all not present when the survey of the land was carried out. Each of the defence witnesses base their testimonies that the survey was not protested merely on hearsay.

The Plaintiffs witnesses (PW1-3) stated that the late Ogowang David Livingstone did not inform the clan or local council or elders of the titling of the land. PW1 also stated that he did not know about land titles on clan land.

The 1st defendant on the other hand did not adduce any evidence to the contrary showing that her late father informed the elders, clan or

community of the survey and titling before it happened, especially since 5 this was clan land with various families occupying it.

The 1st defendant did not offer an explanation on the variance in acreage as seen in her documents. The certificate of title shows an acreage of 191.46 hectares' land at Omatenga Owogoria Kumi, with a lease of 44

years starting from 1982. The lease offer form indicates that the late \$10\$ Ogowang David Livingstone applied for land on 8.6.1971 and it shows 12 hectares at Agule Kumi.

Without any proof that the plaintiffs were aware that the suit land was titled, I would conclude and find that the title certificate of title LRV 1186

FOLIO 17 measuring approximately 191.49 hectares, was fraudulently acquired by the late David Livingstone Ogwang and not Ikinu Deborah. So fraud is attributed to the late David Livingstone Ogwang and not the 1st defendant nor the 2nd defendant.

c. *Whether the plaintiffs' action is time barred?* 20

From the evidence led above it is clear that the plaintiffs discovered the land title in respect of certificate of title LRV 1186 FOLIO 17 measuring approximately 191.49 hectares, 2014 when the 1st defendant stopped them from using the suit land.

This suit was filed in the same year of 2014. The limitation period under **section 5 of the Limitations Act** therefore does not apply to them.

d. Whether the plaintiffs' have locus standii to bring this suit?

Black's Law Dictionary 9th Edition, the expression "locus standii" means the right to bring an action or to be heard in a given forum.

The plaintiffs sued Ikinu Deborah Ogwang, the 1st defendant as the person who forbade them from cultivating the suit land, which land they claimed \$10\$ was their inheritance, on grounds that her late father was the registered proprietor of the same.

It is indeed true from the evidence on record and which fact is not disputed that Ikinu Deborah Ogwang, the 1st defendant is one of the administrators of the estate of the late Ogwang David Livingstone and as such this suit is against late Ogwang David Livingstone estate is properly brought against her in that capacity. I accordingly find that the plaintiffs had locus standii to bring this suit.

***e. What remedies are available to the parties?* 20**

The plaintiffs sought an order mutuating the certificate of title LRV 1186 FOLIO 17 land at Omatenga, Owogoria Kumi by excluding 149.63 hectares from the 191.49 hectares, a permanent injunction, special and general damages.

Having found as a matter of fact and evidence that the land measuring 149.63 hectares belongs to the plaintiffs, it is prudent that an order mutuating the title LRV 1186 FOLIO 17 land at Omatenga, Owogoria Kumi be made such that the plaintiffs' land measuring 149.63 hectares be mutated from the title LRV 1186 FOLIO 17 land at Omatenga, Owogoria Kumi which has a total of land measuring 191.49 hectares.

\$25\$

$\$S$

- Furthermore, since it is clear to this Honourable Court that the land S measuring 149.63 hectares belong to the plaintiffs, then it is in order to issue a permanent injunction against the 1st defendant and her agents restraining them from interfering with the plaintiffs' possession of the said 149.63 hectares of land.
- However, special damages were neither pleaded nor proved so no order \$10\$ will be made in their regard.

As for general damages, I find that this is not be necessary considering the close relations between the parties especially the 1st plaintiff and the 1st defendant. This Honourable court deems it that in order to promote harmony between the aggrieved parties herein, no general damages be

As for costs, the plaintiffs are the successful parties herein and there is nothing shown to show why they should not get the costs incurred in prosecuting this suit. I accordingly award them the cost of this suit by virtue of section 27 of the Civil Procedure Act.

6. Orders:

awarded. Accordingly, none is awarded.

The plaintiffs have successfully proved their case as against the defendants and as such judgment is made in their favour as against the defendants.

An order is hereby issued to the Registrar of Titles who is the second defendant, to mutate the certificate of title LRV 1186 FOLIO 17 land at Omatenga, Owogoria Kumi by excluding the land measuring 149.63 hectares that was included on the certificate of title measuring approximately 191.49 hectares.

- A permanent injunction is hereby issued restraining the 1st defendant or her agents from interfering with the plaintiffs' ownership of their land measuring 149.63 hectares that was included in the certificate of title LRV 1186 FOLIO 17 measuring approximately 191.49 hectares.

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No order for special and general damages are awarded to the $\overline{a}$ plaintiffs as none was proved.

No order as to general damages is awarded to the plaintiffs as this Honourable Court finds that it is not necessary considering the close relations between the parties especially the 1st plaintiff and the 1st defendant between whom harmonious relationships must forever be maintained.

The plaintiffs are awarded the costs of this suit as against the 1st defendant only.

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge

\$20th \$ October 2022

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