

UGANDA / JUDGMENT

Ssekibuule Ismail and Others v Kiyimba Dirisa and Others (Civil Suit No. 99 of 2021) [2025] UGHC 564 (20 February 2025)

[2025] UGHC 564

COURT

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Civil Suit No. 99 of 2021

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

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MPIGI CIVIL SUIT NO. 99 OF 2021

|| 1. SSEKIBUULE ISMAIL || || |

|-----|-----|-----|-----|--|

|| 2. NAKIBINGE MAJID || || |

|| 3. NAKIMBUGWE HASIFA || ||

|| (Beneficiaries to the estate of || || |

|| the Late Kateregga Abdul) || || |

|| | VERSUS || |

| \$\cdot\$ - \$ | \$\mathbf{r} = \mathbf{r}\$ \$ || || |

10 1. KIYIMBA DIRISA 2. KALANZI ABRAHAM 3. KIGGUNDU

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK

15

Judgment

.....

The plaintiffs brought this suit against the defendants for; protection of the estate of the late Kateregga Abdul from being alienated; a declaration that the 2nd and 3rd defendants are trespassers; a declaration that the suit land is the estate of the late Kateregga Abdul; a declaration that the defendants intermeddled with the deceased's estate: a declaration that the acts of the defendants in dealing with the suit land are fraudulent, illegal and a nullity; cancellation of the 2nd defendant from the certificate of title relating to the suit land and the same reverts back into the names of the late Kateregga Abdul who was the owner; a permanent injunction restraining the defendants and their agents from further trespassing on the suit land, the estate of the late Kateregga Abdul or in any other way interrupting the plaintiffs' use and enjoyment of the suit land and costs.

Brief background:

It is the plaintiffs' case that they are sons and daughter respectively, beneficiaries to the estate of the late Kateregga Abdul of Gala, Mpigi Town Council, the owner of land measuring approximately 3 acres situate at Gala, Mpigi Town Council, which he purchased from the late Kizza Henry, heir of Alphonse who was the registered proprietor. That part of the suit land has for time immemorial served as burial grounds for the family of the late Kateregga Abdul without any interference whatsoever, the other part of the suit land houses the deceased's matrimonial home and also the rest of the land is used for subsistence farming and utilized by the

That before the death of Kateregga Abdul, he had fully paid up the registered proprietors of the suit land being that he was formerly a kibanja holder, and

1 | Page

plaintiffs.

acquired a legal interest and indeed the suit land was surveyed and is now Block 90 Plot 254 situate at Gala. That due to the untimely death of Kateregga Abdul, the 1st defendant through fraud registered himself on the certificate of title, which is the property of the late Kateregga Abdul without any lawful justification and went ahead and dealt with it illegally.

That in November, 2019 the plaintiffs discovered that the 1st defendant had transferred the suit land into his name which is the estate of the late Kateregga Abdul without Letters of Administration and thereafter caused a transfer into the name of the 2nd defendant.

10 That the plaintiffs hurriedly lodged a caveat with the Commissioner Land Registration and have since caveated the suit land to prevent the mischief of the 2nd defendant in further dealing with it.

15 The 1st defendant in his defence contended that the kibanja on the suit land belonged to the estate of his late grandfather Juma Ssegamwenge who left behind three children and two of his daughters are still surviving beneficiaries of the late Juma Ssegamwenge and not the purported children of the late Abudl Katerega. He denied any fraudulent acts in relation to the suit land and claimed to have purchased the legal interest therein from the registered proprietor Kizza Henry.

- 20 The 2nd and 3 defendants in their Written Statement of Defence averred that the 2nd defendant is the lawful and registered proprietor of the suit land comprised in Mawokota Block 90, Plot 254 land at Kalumba — Gala, Mpigi District, having paid valuable consideration from the 1st defendant who was the former owner of the same and therefore not trespassers as alleged by the plaintiffs. Thus, the plaintiffs are not entitled to the reliefs sought.
- 25 Representation:

Counsel Ismail Wandera represented the plaintiffs while Mr. Mudde John Bosco appeared for the 2nd defendant. Only the plaintiffs filed written submissions.

Issues:

- 1. Whether the suit property forms part of the estate of the late Katerega Abdul to which the plaintiffs are beneficiaries?
- 2. Whether the 1st defendant fraudulently sold the suit land to the 2nd defendant with his knowledge? Or in the alternative, whether the 2nd defendant is a bonafide purchaser for value without notice?
- 3. Whether the subsequent sale of the suit land by the 2nd defendant to the 3rd defendant is impeachable for fraud?
- 4. What remedies are available to the parties?

Resolution:

In civil matters the burden of proof lies on the plaintiff to prove their case as against the defendant and the standard of proof is on a balance of probabilities.

Section 101 of the Evidence Act provides; $\mathbf{S}$

> "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

Section 102 provides that; 15

> "The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side."

Section 103 provides; 20

> "The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person".

Section 104 provides;

"The burden of proving any fact necessary to be proved in order to enable" any person to give evidence of any other fact is on the person who wishes to give that evidence."

Issue 1: Whether the suit property forms part of the estate of the late Kateregga Abdul to which the plaintiffs are beneficiaries?

Counsel for the plaintiff submitted that PEX4, a letter dated 29th July, 2013 from UGASURV, surveying and mapping consultants Limited to D/AIP Muwanika 35 Aggrey seeking acknowledgement of titles and deed plans, under item 19, earmarked Kateregga Abdul having paid all. Thus, the suit land was still under survey process pending titling and there was no explanation as to how the 1st defendant acquired legal interest in the suit land. That the evidence of PW1 was corroborated by PW2 who produced PEX2 a letter dated 28th June, 2016 by the 40

3 | Page

Omutaka (Land lord) Henry Kizza Walungama forwarding PW2 to his lawyer Hasifa Nmalindwa to be assisted on the issues regarding the suit land.

Counsel concluded that the evidence of PW1 and PW2 proves that their late father Katerega Abdul was a kibanja owner who later acquired a legal interest in the suit

land unlike the 1st defendant who has not shown this court how he acquired his 5 interest in the same.

Having carefully looked at the parties' pleadings, exhibits, evidence as adduced and submissions, it is my finding that the 1st defendant does not deny that his father the late Kateregga Abdul had equitable interest on the suit land. The plaintiffs in

- their evidence adduced PEX4 dated 29th July, 2013 addressed to the O/C Land 10 Protection showing land titles and deed plans on Mawokota Block 90 which shows that Kateregga Abdul was registered for Plot 254 having acquired the legal interest from the registered proprietor and was yet to obtain a certificate of title. This piece of evidence was not challenged by the defendants.

- The \$1^{st}\$ plaintiff, PW1 in his evidence refuted the \$1^{st}\$ defendant's claims that he is 15 the one who built their mother a house on the suit land but rather, he only repainted and replaced the iron sheets and has never built any structure on the suit land. That the main house on the suit land was constructed by their late father and was also occupied by the \$1^{st}\$ defendant.
- During the locus in quo visit the plaintiffs were found in occupation and utilization 20 of the suit land together with their mother and none of the defendants had ever used the same.

I hereby find and hold that the suit property forms part of the estate of the late Kateregga Abdul to which the plaintiffs are beneficiaries. This issue is resolved in the affirmative.

Issue 2: whether the \$1^{st}\$ defendant fraudulently sold the suit land to the \$2^{nd}\$ defendant with his knowledge? Or in the alternative, whether the \$2^{nd}\$ defendant is a bonafide purchaser for value without notice?

Counsel for the plaintiff submitted that the \$1^{st}\$ defendant failed to defend the case as well as the \$2^{nd}\$ defendant failed to adduce evidence of ownership of the suit land. 30 That it was the evidence of DW1, the \$2^{nd}\$ defendant that at the time of purchase the suit land had a house and graveyards and this was enough to put him on notice that there were existing equitable interests on the land and, had he exercised due diligence he would not have fallen prey to the fraud but he simply went ahead and registered himself on the certificate of title well knowing that there were other 35

interests on the land. Further, that PEX2 indicates that the land had no

4 | Page

developments which is real fraud on the part of the \$2^{nd}\$ defendant since he knew that the house on the suit land was being occupied by the \$1^{st}\$ defendant's mother.

During the locus in quo visit the \$2^{nd}\$ defendant confirmed that he never visited the suit land before purchase. That during cross examination he told court that he sold the suit land to the \$3^{rd}\$ defendant who also did not appear in court.

\$\mathsf{S}\$

The \$1^{st}\$ defendant in his Written Statement of Defence averred that he was well aware that their family had an existing equitable interest of a kibanja on some part of the suit land. That he was approached by the registered owner a one Henry Kizza Walungama around 2017 to purchase the suit land measuring 1.273 hectares. The

\$1^{st}\$ defendant went ahead and made reference to receipts of busulu and taxes paid 10 by the late Kateregga Abdul to the land lord however, these were not attached to his defence.

The 1st defendant did not attach the sale agreement proving his purchase of the legal interest in the suit land. Secondly, the 1st defendant in my opinion claims to have bought the legal interest however, the same had already been bought by his 15 late father who had however, not yet been registered on the certificate of title before his death. And the 1st defendant in an act of dishonesty transacted with Kizza Henry to defeat the interest that his mother and siblings had in the suit land.

- PEX1 indicates that the 1st defendant sold to the 2nd defendant at a consideration of UGX 10,000,000/= yet the sale agreement indicates that the 2nd defendant paid 20 cash of UGX 120,000,000/= as consideration for the suit land. In cross examination DW1 stated that he bought the suit land at 120,000,000/ \$=\$ and found one house when he went for inspection. He admitted having never utilized the suit land or ever taking possession of the same.
- It is my considered view that the 1st defendant fraudulently sold the suit land to the 2nd defendant who did not conduct any due diligence even after finding the suit land being occupied by the 1st defendant's mother. Thus, the 2nd defendant cannot claim to be a bona fide purchase for value without notice of fraud. This issue is hereby resolved in the affirmative.
- Issue 3: whether the subsequent sale of the suit land by the 2nd defendant to the 3rd defendant is impeachable for fraud?

Counsel for the plaintiff submitted that the 3rd defendant never appeared in court as such it is hard to prove whether the sale ever materialized. That a sale can only be established through proof of purchase and DW1 himself did not present one

which leaves his evidence hearsay and above all fraudulent. 35

I agree with the submissions above, the 3rd defendant nor the 2nd defendant adduced in evidence any proof of a transaction between the two of them. The 3rd defendant did not even appear in court at all to challenge the allegations of the plaintiffs. In the case of Domaro Bahangana & Another v. Attorney General, Constitutional Petition No. 53 of 2010, it was held that;

> "The respondent has not challenged such evidence by way of other" evidence to the contrary. The respondent opted not to call any evidence at all with regard to the matters in issue. In the absence of any evidence to the contrary we do accept the unchallenged evidence of the petitioners. We accept that the affidavits of the petitioners establish the facts as set out above."

This issue is hereby resolved in favour of the plaintiffs.

Issue 4: what remedies are available to the parties?

The plaintiffs in the instant case have proved their case as against the defendants on a balance of probabilities. Judgment is hereby entered in favour of the plaintiffs in the following terms;

- 1. A declaration that the suit land forms part of the estate of the late Kateregga Abdul.
- 2. A declaration that the defendants intermeddled with the deceased's estate.
- 3. A declaration that the acts of the defendants in dealing with the suit land are fraudulent, illegal and a nullity.
- 4. An order is hereby issued for the cancellation of the $\$2^{\wedge}\{nd\}\$$ defendant from the certificate of title relating to the suit land and the same reverts back into the names of the late Kateregga Abdul.
- 5. A permanent injunction is hereby issued restraining the defendants and their agents from further trespassing on the suit land, the estate of the late Kateregga Abdul or in any other way interrupting the plaintiffs' use and quiet enjoyment of the suit land.
- 6. Costs of the suit are hereby awarded to the plaintiffs.

I so order. 30

Right of appeal if any explained.

OYUKO ANTHONY OJOK

JUDGE

20/02/2025 35

6 | Page

$\mathsf{\$S}$

25

Source & reproduction note

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

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2025/564/eng@2025-02-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ssekibuule-ismail-and-others-v-kiyimba-dirisa-and-others-civil-suit-no-99-of-2021-2025-ughc-564-20-february-2025-unknown-topic-unknown-court-2025>

Prepared on 13 October 2026 · Esheria