

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 1088 OF 2021

- 1. ZALWANGO MARGRET NALONGO**
- 2. LUMASI JOHN KAZIBWE**
- 3. KIMERA EDDY**

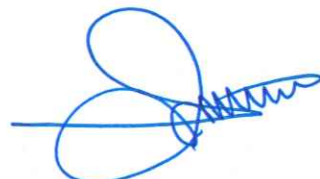
(Administrators of the estate of the late Festo Banja)

(suing through their Attorney Kiconco Medard) ::::::::::::::: PLAINTIFFS

VERSUS

- 1. LADHA KASSAM & COMPANY LIMITED**
- 2. EBRAHIM KASSAM AND SONS PROPERTIES LTD**
- 3. NUHU WADEMBERE**
- 4. COMMISSIONER LAND REGISTRATION**
- 5. MUGUMYA MOSES**
- 6. BLUE CITY INVESTMENTS LTD**
- 7. MELVIN KARUHANGA**
- 8. FERDINAND MUSIMENTA**
- 9. ATTORNEY GENERAL ::::::::::::::: DEFENDANTS**

BEFORE: HON JUSTICE. DR. FLAVIAN ZEIJA

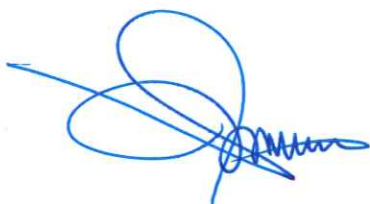


JUDGMENT

By a 2nd amended plaint, the plaintiffs brought this suit for a declaration that the land comprised in Plot No. 3 Block 408 land at Sisa belongs to the estate of the late Festo Banja, a declaration that plots represented by the defendants as No. 206-210, Block 408 FRV 3 Folio 15 land at Sisa were created fraudulently and or that the same are fake and nonexistent, an order for cancelation of the said titles or any subsequent titles there out, restoration of the same to mailo tenure, eviction and demolition orders, mesne profits, special, general, aggravated and punitive damages, interest and costs of the suit.

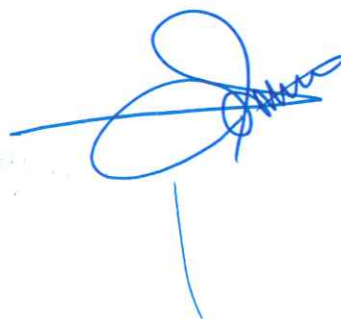
The Plaintiffs through their Attorney Kiconco Medard allege that they are joint administrators of the estate of the late Festo Banja who died intestate. That the late Festo Banja acquired a title of the land comprised in Mailo Register Vol.46 Folio 23 before the same was brought to the new Register in 1959 and registered as Block 408, Plot 3, Busiro, Land at Sisa, Buganda in 1960. The foretasted title had no encumbrances whatsoever at the said time save for a charge of UGX 150 as survey fees.

That the plaintiffs secured registration onto the same in 2018 in the capacity as administrators to the estate of the late Festo Banja. However, it later came to the plaintiffs' knowledge that some persons in collusion with the 4th defendant, fraudulently subdivided and or procured the subdivision of plot No. 3 thereof into plots 39, 40,41 and 42 but the said subdivisions were reversed upon the plaintiffs' complaint seeing the reversion of the same to plot 3 block 408. Meanwhile the 1st defendant had in the year 2018 in a resolution moved to divide/share amongst themselves the suit land. In December 2019, there was an attempt to subdivide plot 3 into plots 206, 207, 208, 209, and 2010 and registration of the same into the 1st defendant's name which did not materialize and a search conducted on 30th January 2020 indicated Festo Banja as the registered proprietor.



That the defendants' claim that plot 3 of Block 408 MRV 46 Folio 23 land at Sisa under private mailo tenure has been converted into freehold and subdivided into plots 206, 207, 208, 209 and 210 were acts done with or condoned by the 4th defendant acting in collusion with 1-3rd defendants. That plot 210 has been transferred and or registered into the names of the 3rd defendant. Plot 208 has been transferred and or registered into the names of the 2nd defendant. That in Misc. Cause No. 273 of 2019 of which the plaintiffs were not parties, the 1st defendant moved court to determine the tenure of the land and upon receipt of the ruling thereof, the 1st defendant moved the 4th defendant to cancel the Mailo title of Festo Banja that was in the system and instead of the 9th defendant legally challenging the said order as provided in the law, rather directed the 4th defendant to comply with the Court order. That the shareholders and directors to the 1st defendant were not natives to hold freehold tenure. That plots 206, 207 and 209 were fraudulently acquired by the 5th and 6th defendants and the 5th defendant have since merged those plots into plot 334 on the same block. That the 7th and 8th defendants are directors of the 6th respondent and perpetrated the alleged fraud. Through the use of force with the help of police the defendants are in possession of the suit land save for the 4th and 9th defendants and the 9th defendants agents have omitted to restrain the illegal occupation and use of the suit land. All actions of the defendants have caused the plaintiffs mental anguish and financial loss to the estate of the late Festo Banja

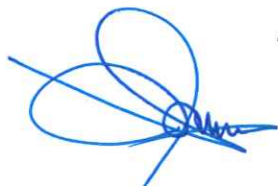
In its defence, the 1st defendant denies all the plaintiffs' allegations and raised preliminary objections to wit; the plaintiffs have no cause of action against the 1st defendant and the suit should be struck out; the plaintiffs' suit, if anything is barred by the law of limitation and it should thereby be dismissed; the suit is barred in law as it violates the legal principle *delagatus non protest delegare* – therefore, the suit should be struck out or dismissed with costs.

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In the alternative, that about the 4th day of June 1955, the first defendant as a body corporate, promoted and governed by Ugandans of Asian origin acquired the land comprised in Freehold Register Volume 3 Folio 15 plot 3 land at Sisa measuring approximately 130 acres.

The ownership of the said land comprised in Freehold Register Volume 3 Folio 15 Busiro Plot 3 land at Sisa dates as far back as the 25th day of March 1926 and was created and held under the Crown Grant No. 11856. The earliest predecessor in title of the first defendant took the suit land legitimately and for value after it had been purchased from and released by Festo Banja to His Excellency, the Governor of Uganda Protectorate as it were on the 6th day of September 1915. The first defendant has enjoyed quiet possession since, save for the time it was under the Departed Asians Custodian Board. It was in or about the year 2019 that the 1st defendant came to learn that the 4th defendant had without rational cause and by administrative error created and superimposed a mailo certificates of title over the first defendant's land comprised in Freehold Register Volume 3 Folio 15 Plot 3 land at Sisa.

The said illegal mailo certificates of title had been created by a one Daniel Oundo Malinga who was an official of the 4th defendant through manipulation and or in conspiracy with the plaintiffs and their said attorney, purportedly based on mailo register volume registers as records for historical purposes. The 1st defendant petitioned court vide H.C. Misc. Cause No. 273 of 2019: Ladha Kassam & Co. Advocates Vs. the Commissioner Land Registration challenging the irrational and illegal exercise of administrative powers of the 4th defendant in creating and purporting to superimpose mailo certificates of title over the first defendant's freehold estate. Upon hearing, the High Court issued an order of mandamus and certiorari directing the 4th defendant to cancel all mailo certificates of title that were purportedly and illegally created and superimposed over the first defendant's land. Upon service of the order the 4th defendant carried out investigations and established that the purportedly created mailo

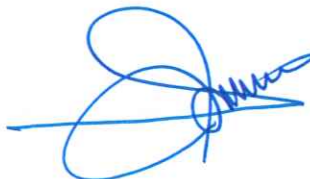


certificates of title comprised in Busiro Block 408 plot 3 at Sisa were procured and created illegally based on already closed historical records and reconstructed over the same land comprised in Freehold Register Volume 3 Folio 15 Plot 3 land at Sisa. The office of the 4th defendant on the 8th of October 2020 under instrument No. WBO-00270340 expunged the said mailo certificates of title. That given the gravity of the illegality and fraud committed by the plaintiffs at the hands of their attorney Kiconco Merdard the office of the Commissioner Land Registration advised the Director Criminal Investigations Directorate of the Uganda Police to commence criminal proceedings against the said plaintiffs and their said attorney. The 1st defendant contends that it was the owner of the suit land between 1955 to 2019 having acquired the same bonafide and for value from a line of five predecessors in title.

That as the legal owner of the suit land, around December 2019, it subdivided the land into several plots to wit, FRV 3 folio 15 plot 210, FRV 6324 Folio plot 2016, FRV 6328 Folio 25 plot 207, FRV 6328 Folio 6 Plot 207 and FRV 6328 Folio 7 plot 209 all at Sisa and the plots were for bonafide and value transferred to the 2nd defendant, Wilfred Bugingo, the estate of the late Onali Kassam, the estate of the late Ahmed Kassam, the estate of the late Jetha Hussein. The 1st defendant denies the allegations of fraud and illegality.

The 2nd defendant in its defence retaliates the preliminary objections raised by the 1st defendant and proceeds to raise two more preliminary objections to wit, that suit is bad in law and contravenes the mandatory provisions of the succession Act; the premise of the suit with regard to tenure is res judicata.

The 2nd defendant avers that it is the lawful and registered proprietor of the suit land comprised in Freehold Register Volume WAK6324 Folio 6 Block 408 Plot 208 having acquired the same bonafide and for value from the first defendant.

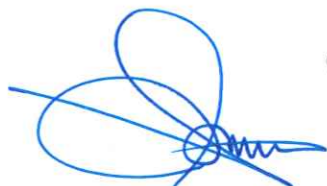


The 3rd defendant in addition to raising similar preliminary objections avers that he is the registered proprietor of the land comprised in freeholder register volume 3 folio 15 Plot 210 having acquired the same bonafide and for value from a one Bugingo Wilfred. That he acquired the same vacant, took over vacant possession, was cultivating the same until recently when he graded his land for estate business.

The 4th defendant in its defence raised preliminary objections similar to 1st and 2nd preliminary objections of the 1st defendant and denies all allegations of the plaintiffs. Further avers that the certificate of title comprised in Mailo Register Block 408 plot 3 land at Sisa was cancelled in favour of certificate of title in respect of freehold register volume 3 folio 15 pursuant to a court order issued in High Court Misc. Cause No. 273 of 2019.

Furthermore, that the evidence on their record shows that the certificate of title in respect of Freehold Register Volume 3 Folio 15 was issued on 25th day of March 1926 to Alihahomed Jamal in respect of 130 acres at Sisa Busiro County Mengo district held under crown grant No. 11856 and the same was transferred to Ladha Kassam and Company under instrument No. 129639 of 4th June 1995. That the same Ladha Kassam and Company holds a certificate of title comprising plot 4 Block 408 of approximately 111/2 acres at Busiro being a lease for 49 years with effect from May 1970 comprised in Leasehold Register Volume 822 Folio 4 issued under instrument No. 1900045 of 12th May 1972 out of Freehold Register Volume 6 Folio 16 upon a grant from the registered trustees of the Native Anglican Church of Uganda.

That the plaintiffs procured the expunged mailo certificate of title comprised in Busiro Block 408 Plot 3 Sisa on the basis of the cancelled and closed historical record that was illegally "reconstructed" which resulted in the duplication of the mailo certificate on the same piece of land held under freehold register volume 3 folio 15.



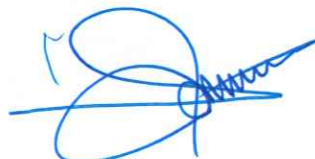
That at the time of fraudulent procurement of the said mailo title, the same piece of land has at all material times been held under the already existing title under Freehold Register Volume 3 Folio 3 whose current registered proprietor is the 1st defendant.

That the historical record further shows that the said land which was originally held under Mailo Register Volume 46 folio 23 was on 6th September 1915 transferred by Festo Banja to the Governor of the Protectorate of Uganda on a consideration of a sum of rupees one thousand, nine hundred and fifty (Rs.1950) under instrument of transfer No. 302 of 22nd November 1915 and therefore, the same does not form part of the estate of the late Festo Banja to be administered by the plaintiffs using letters of administration granted in the year 2017. That the subdivision of the suit land on request of the 1st defendant was done legally.

The 5th defendant in addition to raising similar preliminary objection denies in toto the plaintiffs' allegations. He contends that he is the registered proprietor of the suit land comprised in freehold register volume WAK6324 Folio 5 Plot 206 and Freehold Register Volume WAK6328 Folio 25 plot 207 respectively having acquired the same bonafide and for value from Nurali Ahmed Kassam and from Kassam Aunali Akila Alarakhia, respectively, who are the fifth defendant's immediate predecessors in title.

In their defence, the 6, 7, and 8 defendants raised preliminary objections that the suit is barred in law and is res judicata. They all deny allegations by the plaintiffs. The 6th defendant contends that it purchased the suit land bonafide and for value. The 7th and 8th defendants contend that they are mere directors of the 6th defendant which is a body corporate and there are no circumstances justifying lifting of the cooperate veil.

The defence for the 9th defendant is similar to that of the 4th defendant.



The preliminary objections mentioned above were also raised and determined by this Court in Misc. Application. No. 1088 of 2021 arising from this suit. I will therefore, not delve into them. However, suffice to note, is that they all have no merit and are accordingly overruled.

Representation

As at filing written submissions, representation was as follows; the Plaintiffs were represented by M/s Allan & Partners Advocates and M/s Arthur-Arutha and Co. Advocates. The 1st, 2nd, 3rd and 5th defendants were represented by M/s Lwere, Lwanyanga & Company Advocates and M/s Musoke & Marzuq Advocates. Commissioner Land Registration and Attorney General for the 4 and 9th defendants respectively. The 6th, 7th and 8th defendants by M/s MMAKS Advocates. Counsel filed written submissions which I will not reproduce but rather refer to in the course of this judgment, where necessary.

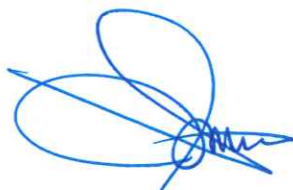
Issues

The following issues were flamed for trial;

1. Whether the plaintiff have a cause of action?
2. Whether the suit land is held under mailo or freehold?
3. Whether there was any fraud committed in the transactions affecting the suit land?
4. Whether the transferees who are the defendants are bonafide purchasers for value?
5. What remedies are available to the parties?

Objection raised in the plaintiffs' written submissions

The plaintiffs in their written submissions citing O.17 r4 of the CPR raised an objection that the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th and 9th defendants' omitted to give evidence in opposition to the



suit and prayed to proceed ex-parte against the said defendants. In response, counsel for the defendants submitted that the objection is not well founded because; they indicated to court that they will rely on the evidence of DW1 and secondly there is no particular number of witnesses required to prove any fact as provided for in Section 133 of the Evidence Act.

With due respect to counsel for the plaintiffs, I find that this objection is not founded in law. Counsel for the plaintiffs cited O.17 r 4 CPR and O.1 r 12 of the CPR out of context. The purpose of O.17 r 4 CPR is to give the court the liberty to determine a suit without being delayed by a party who has failed to produce evidence. Whereas O.1 r 12 CPR is concerned with pleadings and not evidence at trial. The authority of Marvin Byaruhanga Vs. AG Misc. Cause No. 149 of 2016 is also cited out of context since all the defendants in their respective written statements of defence rebutted all the plaintiffs' allegations.

Although I agree with counsel for the plaintiffs that all statements of witnesses filed on court record that were not formally tendered in court are of no evidential value, this does not per-se imply that the plaintiffs have discharge their duty of proving their case. This being a civil matter, the plaintiffs have a duty to prove their case on the balance of probabilities generally. In addition, since the plaintiffs causes of action is also based on fraud, the position of the law is that allegations of fraud are of a serious nature and must be strictly proved, calling for a standard of proof, although not as high as proof beyond reasonable doubt but higher than the ordinary balance of probabilities that is normally applicable to civil matters. (see Ratlal G. Patel vs. Baiji Makayi (1957) EA 31 at 317 and Fredrick Zaabwe vs. Orient Bank & others SCCA No. 4 of 2006). This duty subsists even in instances where a party has proceeded ex-parte. The assumption that a fact is proved merely because the opposite party has omitted to give evidence is not correct in law. Whoever alleges must prove his/her allegations to the standard required by the law.


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As rightly submitted by Counsel for the 1st -3rd and 5th defendant, section 133 of the Evidence Act Cap 6 does not require any particular number of witnesses to prove a fact. I do not know of any authority and none has been cited capable of persuading this Court, that defendants who are jointly sued have a responsibility to bring separate and distinct witnesses. Since those defendants filed a defence, they are entitled to being heard including in their final submissions. The plaintiffs have a duty to prove their allegations on the standard mentioned above. In any case, the defendants stated they are going to rely on the evidence already adduced by the Commissioner for Land Registration and that was their evidence since they thought that adducing further evidence would be reinventing the wheel. Therefore, the objection lacks merits and it is overruled.

Resolution of issues

Issue1: Whether the plaintiffs have a cause of action?

Although this issue was framed for trial, it was in my view, not necessary. This issue is only necessary where the plaintiff raises concerns in light of O. 7 r 11(a) of the Civil Procedure Rules which provides that a plaintiff may be rejected by the court if it does not disclose a cause of action. The Court of Appeal in *Kapeka Coffee Works Ltd V NPART CACA No.3/ 2000* held that in determining whether a plaintiff discloses a cause of action, the court must look only at the plaintiff and its annexures if any and nowhere else. This issue would have been necessary if rejection of a plaintiff for non-disclosure of a cause of action was in question. That is why the cause of action is determined by looking at the plaintiff or its annexures and nowhere else. In order to prove that there is a cause of action, the plaintiff must show that the plaintiff enjoyed a right; that the right has been violated; and that the defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by



amendment. See *Tororo Cement Co Ltd V Frokina International Ltd* Civil Appeal No. 2/2001. It is not disputed anywhere that the plaint does not disclose a cause of action. As I indicated above in the facts constituting the plaintiffs' allegations, it is clear that the plaint discloses a cause of action. All counsel ought to have known that a cause of action is distinct from the question of existence of evidence to support the claim.

Issues 2, 3 and 4

Issue2: Whether the suit land is held under mailo or freehold?

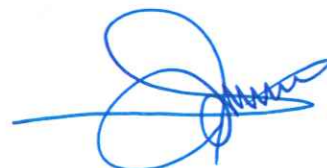
Issue 3: Whether there was any fraud committed in the transactions affecting the suit land?

Issue 4: Whether the transferees who are the defendants are bonafide purchasers for value?

I will handle issues 2, 3 and 4 concurrently.

Looking at the evidence on Court record, I have looked at PID1 which is a mailo certificate of title in the names of Festo Banja registered on 19 July 1915. However, D.Exh 13 is the Crown Grant Number 11856 signed pursuant to the Crown Land Ordinance 1903 and the Crown Land Conveyance Rules 1908 between the Governor of the Ugandan Protectorate and Fredrick Stirman on 22nd February 1917. It is shown therein, that the purchaser paid one Rupee to the Governor and complied with the provisions of the Crown Lands Ordinance 1903 and the rules thereto and the same was registered as Crown Lands Register Volume 41 Folio 19 at 3.00pm on 23rd February 1917.

D.EXh. 12 indicates an indenture between Fredrick Stirman and a one Alimahomed Jamal dated 19th December 1925 under instrument number 2405 which was used to create FRV 3 Folio 15 issued to Alimahomed Jamal for 130 acres at Sisa Estate in Busiro County Mengo



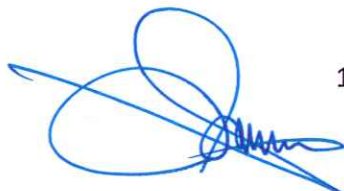
district. Therefore, D.EXh. 13 and D.EXh 19 explain very clearly how the title to the suit land was converted from mailo tenure to freehold tenure.

The question now is whether the tenure of the suit land was rightly converted from mailo tenure to freehold tenure? The question of conversion of mailo tenure to freehold tenure was clearly expounded (and I agree) by Hon. Lady Justice Prof. Lillian Tibatemwa Ekirikubinza JSC in the case of Emmanuel Lukwajju versus Kyaggwe Coffee Curing Estate Ltd and Commissioner Land Registration Civil Appeal No. 02 of 2016 thus, ... following the 1900 Uganda (Buganda) Agreement, the Baganda notable and nobles who were allotted land in square miles discovered its economic value and started selling it off. Some of these sales were made to non-natives before the passing of the 1906 Land Transfer Ordinance and the 1908 Land Law.

The Land Transfer Ordinance 1906 prohibited natives to transfer land (whether in perpetuity or otherwise) to non-natives without the consent of the Governor. So transfer of mailo land to non-natives was done prior to 1906 or, if done after that date, with the consent of the Governor and Lukiiko. The same was expounded by Henry West in his book *The Mailo System in Buganda* at Page 17.

According to Morris & Read (1966) the radical title of all land in Uganda was vested in the Crown, save for that held under Mailo tenure in Buganda. Some freeholds were granted to Africans who were holding such land customary tenure. And in 1916 the Secretary of State decreed that there would be no further alienation in freehold to non-Africans.

This position is confirmed in the Annual Colonial reports for Uganda Report for 1910-11 pages 20-21. It stated that following the Lukiiko consent to a native's land sale and payment of the purchase price, the land would then be transferred to the Governor. After fulfilment of the



development conditions by the purchaser, then the Governor would grant the land in freehold to the non-native purchaser.

The colonial policy and practice was to allow negotiations of sale and purchase between natives (Mailo owners) and non-Africans purchasers particularly in Buganda, Tooro and Ankole where commercial agriculture was being practiced for growing rubber, tea and coffee. Upon purchase, the natives would transfer the mailo interest to the Governor which transfers were registered as mailo documents. The registration of the said mailo document would cause the closure of the said mailo register for that particular land. Thereafter, the Governor would grant the land in freehold to the commercial European or Asian farmer who purchased that particular land from the native owner.

The Land Transfer Ordinance 1906 especially section 2 prohibited the transfer of mailo to non-Africans without the consent of the Governor. When the consent was secured, the Governor would issue an indenture in favour of the non-native purchaser granting a freehold thereof. A freehold register would then be issued to the purchaser bearing the Grant number endorsed on the indenture.

When the steps above were completed, the mailo register in respect of the land would be closed and freehold register opened.

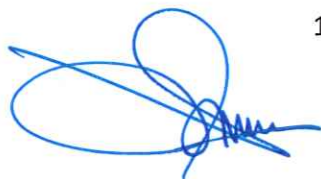
In the instant case, as already evaluated above, the Governor under Crown Grant No. 11856 dated February 22, 1917 granted freehold tenure of the suit land to Fredrick Stirman who in turn under indenture No. 2405 dated December 19, 1925 sold the same to Alimahomed Jamil to whom FRV 3 Folio 15 was issued on March 25, 1926.

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Therefore, from the evidence on Court record, whereas it is true that the suit land was registered in the names of Festo Banja on 19 July, 1915 under mailo tenure. The same was converted to freehold tenure under the circumstances herein above explained hence the closure of the mailo register. The conversion was rightly done in line with the laws governing land conveyancing at that time. There is no evidence that this freehold tenure of the suit land was further changed. Therefore, the current tenure of the suit land is freehold.

When PW1 was testifying, he tendered the "Duplicate" mailo title to court for comparison with the photocopies tendered in evidence. When counsel for the Commissioner for Land Registration who is also a registrar of titles looked at the title, he noticed that it was the original which is supposed to be in custody of the Registrar of Titles. When it was submitted to me, I confirmed that indeed it was the original title which is supposed to be in the custody of the Registrar of Titles. This points to a criminal Act. I then confiscated the title and I'm due to pass on the title to the Registrar of Titles after delivering this judgement. I had thought of causing the arrest of the plaintiffs who are the Donors of the power of attorney but the Donee kept them out of site, including at the time of visiting locus in quo. What the plaintiffs did was to get the records of the closed Mailo file after it was converted into freehold and recreated the Mailo interest with connivance from the officials in the land registry system. This is not only illegal but also criminal. This issue should be taken up for investigation by the Criminal Investigations Department of the Uganda Police Force for possible prosecution of all the perpetrators.

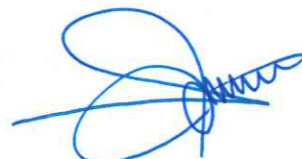
It was submitted by counsel for the plaintiffs that there is no proof that the late Festo Banja sold the suit land to the governor, no crown register was tendered in court and no evidence of migration of tenure. First of all, as already indicated DEX. 13 and DEX. 19 indicates how the tenure changed from mailo tenure to freehold tenure. This was way back in 1925. Since that time, there is no proof that the late Festo Banja during his life time challenged that



conversion nor any one from his representatives until the plaintiffs attempted to fraudulently register themselves in 2018, after a period of 93 years. Clearly the estate of the late Festo Banja is estopped by lapse of time from claiming otherwise. The 1st defendant got registered as a proprietor in 1955 and enjoyed vacant and quiet possession from that time until when the plaintiff started claiming interest in 2018. When Court visited locus in quo, it was the defendants in occupation of the land. There was no iota of evidence that the plaintiffs or any of their predecessors in the alleged interest have ever occupied any part of the suit land.

During the trial, the defendants made a prayer to court to investigate the records of the Succession Register to establish whether the late Festo Banja's estate included the disputed land. I indeed in my letter dated January 08, 2024, wrote to the Administrator General inquiring about the status of the records in the Succession Register pertaining the estate of the late Festo Banja. In a letter dated January 12, 2024, by the Deputy Administrator General, the response by the Administrator General's office was clear. The estate of Festo Banja did not include the disputed land and in fact, Festo Banja had a successor. That puts into question the Letters of Administration possessed by the plaintiffs. But this is not a question for this court to inquire into now. I gave the Administrator General's response to the parties in time to crosscheck the authenticity of the records. No one raised any objections to this Court. My letter to the Administrator General and the response thereto are on court record.

Be that as it may the certificate of title that was transferred to the plaintiffs under instrument WAK000183981 was in respect of a certificate of title reconstructed under instrument KLA2175 of 18.5.1960 and as testified by DW1 there is no proof authorizing the reconstruction of the said certificate of title and therefore, its source is unknown. The plaintiff did not provide proof of the source of reconstructing that title when there was already an existing freehold tenure title of the 1st defendant on the suit land. The 1st defendant has been the lawful

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registered proprietor of the suit land since 1955 and since all 2-3rd defendants and 5 and 6th defendants acquired titles either directly from 1st defendant or from those who acquired from the 1st defendant, they acquired good title. Similarly, the 4th defendant acted legally when it subdivided the suit land at the instance of the 1st defendant.

Issue: What remedies are available to the parties?

For the reasons given herein above, the plaintiffs are not entitled to any of the reliefs sought. This suit is dismissed with costs to all defendants. It is apparent that the donee of Powers of Attorney did not disclose the identity of the Donors. Under the law of Agency, where a person acts for an undisclosed or unidentified principal, the Agent is personally liable. Therefore, in the event that Medard Kiconco is unable to disclose the whereabouts of the Donors, he will be personally liable to pay the costs of the suit. It is possible to act for a fictitious principal for purposes of avoiding liability in the event of determining the suit against the fictitious principal. The plaintiffs and the donee of their Powers of Attorney should be investigated for possible prosecution for being in possession of the Original Certificate of title which is the property of the Registrar of titles/Commissioner Land Registration.

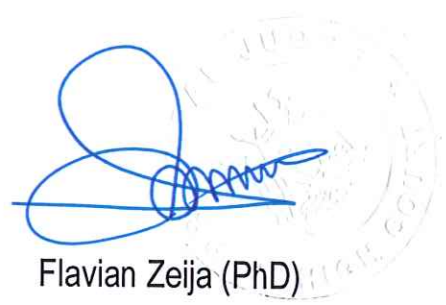
Consequently, I make the following orders;

- a) This suit is dismissed with costs to all the defendants.
- b) If the donee of the Powers of Attorney is unable to disclose the whereabouts of the plaintiffs, he will be personally liable to pay the costs of this suit.
- c) The Criminal Investigations Department of the Uganda Police Force is directed to investigate the plaintiffs and the donee of their Powers of Attorney for possible prosecution for being in possession of the Original Certificate of title which is the property of the Registrar of Titles/Commissioner Land Registration.



d) The Original Certificate of title which this Court confiscated from PW1 is hereby returned to the Registrar of Titles/Commissioner Land Registration for safe custody.

Dated at Kampala this 5th day of July 2024



Flavian Zeija (PhD)
PRINCIPAL JUDGE

