THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

CIVIL SUIT NO. 343 OF 2005

1.	KAT	UMBA	JAMES	ROE	BERT
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- 2. CHARLES SALI SENTONGO
- 3. BERNARD KANAALA
- 4. NAGAWA ROSE

(Administrators of the late Temutewo Bigomba of Nkima Clan)

VERSUS

1. ROBINA BIGOMBA KIRAGA

(Administrator of the estate of the late Temutewo Bigomba of Musu Clan)

2. ADMINISTRATOR GENERAL

(Administrator of the estate of late Nasanairi Kiraga)

3. REGISTRAR OF TITLES

::::::::::::::::::::::::: DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] As per the amended plaint, the Plaintiffs as administrators of the estate of the late **Temutewo Bigomba** of Nkima Clan instituted this suit against the Defendants for a declaratory order that the suit land situate in **Busiro measuring 6 miles**, 59.60 acres and residue of 244 acres at Kitende, Kawoto, Bwebajja, Lumuli, Kitovu, Kabulamuliro, Ddundu and Mazzi estates all along Entebbe Road, Buganda (herein after referred to as the



suit land/belong to the estate of the late **Temutewo Bigomba** of Nkima clan.

- [2] It is the Plaintiffs' case that on 8/11/1911, the late **Temutewo Bigomba**, as a chief was allotted the suit land and issued a Final certificate (F.C) of title **No.8848** by Her Majesty Government as its absolute owner, following the 1900 Buganda Agreement.
- [3] That the late **Temutewo Bigomba** who was the father of the late **Zakayo Kapere**, the grandfather of **Bernard Kanala** (3rd plaintiff) and great grandfather of **Robert Katumba** (1st plaintiff) died intestate in 1922. However, that upon his death, the 3rd Plaintiff was under the Nkima custom installed as the deceased's heir.
- [4] That on 14/3/1931, the Defendants' grandfather, **Nasanairi Kiraga** got fraudulently registered as owner of the absolute mailo of land comprised in **F.C No.8848 Vol.16**, **Folio 10**, the land was registered in the names of **Temutewo Bigomba** in 1911. That the names of the deceased were under unclear circumstances erased out.
- [5] The Plaintiffs averred and contended that the Defendants' grandfather **Nasanairi Kiraga** was fraudulently registered as owner of the suit land and they particularised fraud as inter alia, obtaining title without a succession certificate, being a Musu clan but purporting to be of Nkima clan and heir of **Temutewo Bigomba**.
- [6] The Plaintiffs further contended that the Defendants have no interest whatsoever in the suit land either in equity or under customary law as they are not related to **Temutewo Bigomba** of Nkima clan, the original allottee from Her Majesty's Government.
- [7] The 1st and 2nd Defendants denied the Plaintiffs' allegations and contended that on or about 8th November 1911, Her Majesty Government through the Governor of the Uganda Protectorate allotted to **Temutewo Bigomba** (grandfather to Temutewo Bigomba, the late husband of the 1st Defendant of Musu clan, 6 sq miles (59.60 Acres) at Kitende, Kawoto, Kabulamuliro,



Lumuli, Kitovu estates in Busiro County (Now Wakiso District) under the **Provisional certificate** (P.C).

- [8] That by the time the survey and demarcation of the 6 sq miles and 17.65 acres was completed, **Temutewo Bigomba**, the original allottee was already dead and was not survived by any child and consequently on 14/3/1931, the Governor allotted the land to his brother **Nasanairi Kiraga**, the appointed customary heir in whose name a **Final Certificate (F.C)**No.8848 and a **Certificate of title under Mailo Register Vol. 16 Folio 10** for the reduced acreage of 6 sq miles, 17.65 acres on the said estates, Busiro, was lawfully registered and issued to **Nasanairi Kiraga** as the proprietor thereof.
- [9] That upon the death of **Nasanairi Kiraga** which occurred on or about 13 Jan.1957, his estate was lawfully administered by the late Lukiiko of the Buganda Government, the "Muyingo" head of Musu clan distributed the land to his beneficiaries among whom was **Temutewo Bigomba**, the 1st Defendant's late husband who got 250.00 acres on the above estate and a **Certificate of succession No.31104(a)** dated 21/6/1959 was accordingly issued and on 25/5/1959 it was registered in the Register Book under **Instrument No.21578**.
- [10] During scheduling, the following were greed upon facts:
 - 1. The suit land measuring 6 sq miles, 59.60 acres was allotted to **Temutewo Bigomba** in 1911 by the colonial Government.
 - 2. In 1982, letters of administration granted to **Bernard Kanaala vide Mengo A.C No.6 of 1981** for the state of **Zakayo Kapere** were revoked **(vide Mengo A.C No.138/1982).**

Issues for determination

- [11] During scheduling, the following issues were framed for determination by court:
 - 1. Whether the Plaintiffs are the rightful owners of the land situate in Busiro measuring 6 sq. miles, 59.60 acres.

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- 2. Whether the 1^{st} Defendant's grandfather Nasanairi Kiraga lawfully acquired the land situate in Busiro measuring 6 miles 59.60 acres.
- 3. Whether Temutewo Bigomba Kiraga, the 1st Defendant's husband lawfully acquired the 244 acres of land at Kitende.
- 4. What remedies are available to the parties.

Burden and Standard of proof

[12] The general rule as per **S.101** of the Evidence Act, Cap 6 is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. The standard of proof in civil cases is on balance of probabilities, See Miller Vs Minister of Pensions (1947)2 All ER 372, Progressive School and Anor Vs Serunjogi and Ors [2001-2005] 2 HCB 12. The burden of proof in this case is therefore on the Plaintiffs to prove their case on the balance of probabilities.

Counsel legal representation

- [13] The 1st Plaintiff was self-represented while the 2nd 4th Plaintiff were represented by Mr. Omongole Richard, Ms. Lilian Omurangi, Mr. Matovu Charles and Mr. Serwanga Godfrey. Mr. Eric Kiingi and Ms. Martha Akurut represented the 1st and 2nd Defendants respectively.
- [14] The 3rd Defendant, Registrar of Titles was duly served with court process but never filed a defence and as a result, did not participate in these proceedings.

Resolution of Issues

[15] The 1st and 2nd issue appear inter linked. They shall be dealt with together while the 3rd and 4th issues shall be dealt with separately.

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Issue No. 1: Whether the Plaintiffs are the rightful owners of the land situate in Busiro measuring 6 miles, 59.60 acres

- [16] The Plaintiffs' case is that on the 8/11/1911, the late **Temutewo Bigomba**, being a chief was issued a **Final Certificate** (F.C) of Title No.8848, the suit land, by Her Majesty's Government following the 1900 Buganda Agreement as the absolute owner of land situate in **Busiro measuring 6 miles**, 59.60 cares and residue of 244 acres at Kitended, Kawoto, Bwebajja, Lumuli, Kitovu, Kabulamuliro, Ddundu and Mazzi estates all along Entebbe Road in Buganda. That **Bernard Kanaala**, son of **Zakayo Kapera** was installed as his heir under the Nkima custom. **Zakayo Kapere** was the son of the late **Temutewo Bigomba**. That on 14/3/1931, **Nasanairi Kiraga** (father in law of the 1st defendant) fraudulently registered himself as the absolute owner of mailo land comprised in the suit land and had **Temutewo Bigomba's** name crossed out under unclear circumstances.
- [17] Counsel submitted further that the Plaintiffs' claim to the land moved from the late **Temutewo Bigomba** to his son **Zakayo Kapere**, then to **Bernard Kanaala** (Zakayo Kapere's son) and now to the Plaintiffs who are both beneficiaries and administrators to the estate.
- Bigomba in 1922, his grandson Bernard Kanaala was installed as his heir and because he was young, then aged 5 years old, a one Hamu Mukasa (deceased) was appointed guardian to the heir. That it is the said Hamu Mukasa who together with Nasanairi Kiraga created a fictitious Temutewo Bigomba of Musu clan and fraudulently put the suit land into the names of Nasanairi Kiraga who subsequently distributed it to his beneficiaries.
- [19] Counsel concluded that the Plaintiffs are the rightful owners of the suit land given that they are descendants of **Temutewo Bigomba** and therefore beneficiaries of his estate.
- [20] The 1st Plaintiff **(PW1)** adduced evidence that the 1st Defendant's grandfather in law **Nasanairi Kiraga** was fraudulently registered as the owner of the suit land on 14/3/1931 as per **P.Exh.4** when the names of his

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great grandfather **Temutewo Bigomba** of Nkima clan were under unclear circumstances crossed out from the Final Certificate Title of the suit land and substituted with that of **Nasanairi Kiraga** of the Musu clan.

- [21] In case of fraud, it is trite law that fraud must be specifically pleaded and strictly proved, the burden being heavier than on a balance of probabilities generally applied in civil matters; **Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No.22 of 1992.**
- [22] It is an agreed fact that the suit land measuring 6 square miles, 59.60 acres was allotted to **Temutewo Bigomba** in 1911 by the Colonial Government. According to the Plaintiffs, the allottee **Temutewo Bigomba** was of the Nkima clan who died intestate on 25/8/1022 as per his death certificate on record **(P.Exh.2)**. The Defendants refute this. According to them, the said allottee of the suit land was **Temutewo Bigomba** of the Musu clan who died some time in 1912/12 as clearly put across by **Bulega Christopher** (DW2) in his Witness Statement. The central issue therefore is who of the **Temutewo Bigomba** was the rightful allottee of the suit land.
- [23] According to the Plaintiffs, the late **Temutewo Bigomba** of the Nkima clan being a chief under the reign of Kabaka Mwanga II was allotted and issued a **Final Certificate (F.C) of title No. 8848** by Her Majesty's Government. The Uganda official **Paul Kawulukusi** (PW4), the General Secretary of the elders of E'kima clan explained in his evidence that the late **Temutewo Bigomba** was a chief of the palace at Mengo i.e, the reign of Kabaka Mwanga II and he is the one who was the foreman during the digging of the Kabaka's lake. That therefore he was given the suit land by the Kabaka as one of his servants as well as the practice at the time. It is the further evidence of the Plaintiffs that the said **Temutewo Bigomba** died on the 25/8/1922 as per his death certificate admitted in evidence as **P.Exh.2.**
- [24] Counsel for the 1st Defendant submitted suggesting that the Plaintiffs' ancestor **Temutewo Bigomba** could not have owned land in Busiro at Kitende, the location of the suit portions of land when all the evidence on record show that he was of Kyagwe, Mukono where he was buried. Indeed, during cross examination, **Namutebi Rose Kanaala** (PW5) wife of the late **Bernard Kanaala**, the grandson of **Temutewo Bigomba**, conceded that the

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deceased was not a resident of **Busiro** but **Bunya village, Kyagwe, Mukono** where he was buried. She however explained that Busiro at Kitende, was not their burial ground. The deceased was buried at his ancestral home in Kyagwe.

- [25] In my view, however, it is my finding that even though the said **Temutewo Bigomba** had his ancestral home as Bunya-Kyagwe, Mukono where he was eventually buried, that did not necessarily mean that he could not be allotted or own property in Busiro.
- [26] On the other hand, counsel for the 2nd 4th Plaintiffs submitted that the **Temutewo Bigomba** of the Musu clan whom the 1st and 2nd Defendants trace their interest in the suit land is fictitious. That he was a creation of a one **Hamu Mukasa** who was the appointed guardian of **Bernard Kanaala**, the grandson and heir of the late **Temutewo Bigomba** for purposes of fraudulently transacting in the suit land in favour of his relative **Nasanairi Kiraga**.
- [27] According to the 1st Plaintiff (PW1), upon the death of Temutewo Bigomba in 1922, his grandson Bernard Kanaala (son to Zakayo Kapere) was installed as his heir and a one Hamu Mukasa (deceased) was appointed his guardian in respect of the suit land since he was by then a minor aged 5 years old and that all the certificates of titles (including the suit land) were placed in his custody. That Hamu Mukasa, the appointed guardian, took advantage of Bernard Kanaala's being a minor and carried out fraudulent dealings on the land and changed ownership to Nasanairi Kiraga (from whom the 1st & 2nd Defendants trace their interest). That the Certificate of title F.C No. 26381, Busiro was forged and then the name of Temutewo Bigomba of Nkima clan was crossed and replaced with the name of Nasanairi Kiraga of Musu clan (P.Exh.4) without either a signature of the officer issuing it or endorsement of the Governor who represented the issuing authority.
- [28] It is the contention of the Plaintiffs that there is no way **Nasanairi Kiraga** would lawfully be on the F. Certificate of title without a Certificate of succession.

- [29] However, counsel for the 2nd Defendant submitted that in the instant case, Nasanairi Kiraga acquired the suit land trough allotment by Her Majesty's Government and not through inheritance succession and therefore, the issue of a Certificate of succession provided for under S.2 of the 2012 Land Succession law (P.Exh.7) did not apply. That indeed, as per the evidence of Mr. Robert Bogere (DW1) of the Administrator General's Office, there is no evidence that Nasanairi Kiraga acquired the suit land by succession or that any other person got the suit land through succession.
- [30] The above evidence of **DW**1 and the submission of counsel for the 2nd Defendant however appear to be in contrast with the pleadings and evidence of the 1st & 2nd Defendants which are to the effect that the original **Temutewo Bigomba** of Musu clan from whom they trace their interest having long died in 1912/13 without a child, his brother **Nasanairi Kiraga** was appointed as his customary heir. It appears to me the fact that the said **Nasanairi Kiraga** was appointed as heir in accordance to custom, that entitled him to succeed by way of inheritance the deceased's suit land rather than acquiring it through other forms.
- [31] **Ss.2 & 3 of the Land Succession law, 1912** (P.Exh.7) the law governing succession in Buganda at the time provided thus:
 - "2. When a Muganda dies having land in Buganda, there is no man who shall be able to do to that land anything at all except after he has obtained from the Lukiiko a certificate of Succession which says that he is entitled accordingly to law to have control of it."
 - "3. Certificate of succession can be given to the man who has had the land left to him by will, or, if there is no will, they shall be given according to the customs of succession in Buganda or they shall be given to a guardian, or another person on behalf of the person who is entitled according to law to have possession of the land."
- [32] The above clear provisions of the law are to the effect that there would be no inheritance of land without a Succession Certificate. In the instant case, the 1st and 2nd Defendants having based **Nasanari Kiraga's** acquisition of

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the suit land not through succession, they had the burden to prove to court in what form he acquired the land. It is the Defendants' case that he acquired the land by way of allotment from His Majesty's Government as per **P.Exh.4.**

- [33] **P.Exh.4** is a certificate of title for **MRV 16 Folio 10**, **F.C No.26381**. It is the Defendants' case that the suit land under **Final Certificate No.8848** originally allotted to **Temutewo Bigomba** by His Majesty Government was allotted to **Nasanairi Kiraga** under **F.C No.26381 dated 14/3/1931**.
- [34] The **P.Exh.4** had the name of the original allottee **Temutewo Bigomba** crossed and replaced with that of **Nasanairi Kiraga**. The explanation given by the Defendant is that the crossing of **Temutewo Bigomba's** name was authorised by the Governor of His Majesty Government. There is however no evidence to support such assertion. The document has neither the endorsement of the Governor, the land officer who purported to issue it nor the required seal of the land office. There is no explanation from the Defendants as to why **P.Exh.4** is lacking the endorsement of the issuing authority. I find this document null and void for lack of endorsement of the issuing authority and therefore it is of no evidential value. It did not confer to **Nasanairi Kiraga** any right over the land it purported to reflect as having been allotted to him.
- [35] In this case, whereas the Plaintiffs adduced evidence regarding the existence of **Temutewo Bigomba** who worked as a chief of the palace of Kabaka Mwanga II and died on 25/8/1922 as per **P.Exh.2**, the 1st and 2nd Defendants did not adduce any evidence regarding the existence of the **Temutewo Bigomba** of the Musu clan who died on 1912/13. No death certificate or any other evidence to prove that he once existed was adduced in evidence. As a result, I find it is the **Temutewo Bigomba** of the Nkima clan who died on 25/8/1922 that was the allottee of the suit land on 11/8/1911 for the 6 miles, 59.60 acres of land as per **P.Exh.1**.
- [36] In view of the foregoing, it follows that the 1st and 2nd issues are found in favour of the Plaintiffs. The Plaintiffs are the rightful owners of the suit land and the 1st Defendant's grandfather **Nasanairi Kiraga** fraudulently acquired the suit land at Busiro measuring 6 miles, 59.60 acres.



- Issue No. 3: Whether Temutewo Bigomba Kiraga, the 1st Defendant's husband lawfully acquired the 244 acres of land at Kitende.
- [37] It is the contention of counsel for the 1st Defendant that the 1st Defendant is a **bonafide transferee** without notice of any fraud or adverse/3rd party claims on all of the 244 acres of land at Kitende estate which she became the Registered proprietor on 18/1/2001 and on 10/5/2011.
- [38] In the first instance, it is trite law that the parties are bound by their pleadings O.6 r.7 CPR and no party can therefore be allowed to depart from its pleadings; Kitaka Peter & 12 Ors Vs Muhamood Thobani, HCCA No.20 of 2021, see also Struggle Ltd Vs Pan African Insurance Co. Ltd, (1990) ALR 46-47.
- [39] In the instant case, the 1st & 2nd Defendants did not in the first place set up a plea of bonafide transferee. It is also the law that the party putting forward the plea of bonafide purchaser/transferee for value must establish it; Nana Yawo Wusu & 2 Ors Vs Hydra Form Estates Ltd, Civil Appeal No.J4/62/2013 [2014] GNASC 150 and Daniel Ssempa Mbabali Vs W.K.Kidza & Anor, [1985] HCB 46.
- [40] In this case, the 1st Defendant instead led evidence that traced her interest in the suit property to the late **Temutewo Bigomba**, the original allottee of the suit property and **Nasanairi Kiraga** who has been found to have been fraudulently registered on F.C No.26381 as owner. In fact, as per **P.Exh.4** which the 1st Defendant relies on where **Nasanairi Kiraga** was purportedly registered as owner is no evidence of ownership. It is not a document of ownership since it had no endorsement and seal of the issuing authority. It follows therefore that the Certificate of succession **(P.Exh.9)** in favour of **Temutewo Bigomba Kiraga**, the 1st Defendant's husband which was based on property purportedly passed to **Nasanairi Kiraga** by virtue of F.C No. 26381 is void, if at all, it was also not fraudulently obtained.
- [41] In Halling Manzoor Vs Serwan Singh Baram, SCCA No.9/2001, it was held that a person cannot pass title that he does not have. As was also observed

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bý Moses Kazibwe J. in Bahirirwe Getrude Vs Tukore Niwagaba, HCCS No.32/2018 [2022] UGHCLD 38.

"It is the position of the law that one cannot pass a valid title to what he did lawfully own."

- [42] In the instant case, the evidence before me is that after the death of **Temutewo Bigomba**, the late **Nasanairi Kiraga** neither succeeded the deceased nor acquired the deceased's interest through the purported **F.Certificate No.26381** (P.Exh.4). On the face of it, without any expert aid, the F.Certificate appear fraudulent for lack of the necessary endorsements and seal of the issuing authority. It is a mere worthless piece of paper bearing the name of **Nasanairi Kiraga** that could not either vest or confer any title or rights over land. It follows therefore that the said **Nasanairi Kiraga** acquired no title in the suit property. None of his beneficiaries who include the 1st & 2nd Defendants would acquire any title from him for he had no title to pass to them. In the premises, it cannot be said that when the 1st Defendant's husband was seeking to be registered on the suit portion of land, had no knowledge of the invalidity of F.C No.26381 (**P.Exh.4**), the 1st Defendant is relying on.
- [43] Counsel for the Defendant argued that the 1st & 2nd Defendants are bonafide transferees for value without notice, that the 1st Defendant's husband acquired good and indefeasible title to the suit estate at Kitende. 2ndly, that once the certificate of succession has been issued, conferred land rights to the successor of the deceased.
- [44] However, as already observed, since the Defendants had the onus to establish the plea of being bonafide transferees, in this case, no evidence was adduced that they acquired their respective portions of the suit land for value for them to qualify as bonafide transferee for value. The available evidence is that they acquired the property by way of succession. The plea of bonafide transferee cannot apply to beneficiaries of a fraudulently acquired estate. Besides, a prudent search of the lands office to make inquiries as to the official records covering the land, the due diligence required of everybody who intends to acquire land or get registered on property, must have alerted the 1st Defendant's husband about the anomaly of **P.Exh.4** the 1st Defendant is relying on, that is, either its absence in the



lands office or its lack of the necessary endorsements and the seal of the issuing authority.

- [45] In conclusion, I find that no property passed from the late **Temutewo Bigomba**, the original allottee to **Nasanairi Kiraga** based on **F.C No.26381** and then to any of his beneficiaries for the said F.C has been found to had been a mere worthless piece of paper which could not confer any rights over land to him or any other person. It follows therefore that **Nasanairi Kiraga's** certificate of Succession purporting to succeed property comprised in the worthless F.C **No.26381** (P.Exh.4) constituted Succession of "Air" of which the 1st and 2nd Defendants are beneficiaries and would not convert it to "property".
- [46] In the premises, I find that after the death of **Temutewo Bigomba**, the original allottee of the suit land, **Temutewo Bigomba Kiraga**, the 1st Defendant's husband fraudulently obtained a certificate of succession and caused himself to be registered on the suit land.
- [47] The 1st Plaintiff's father Bernard Kanaala, the rightful beneficiary of the suit land upon becoming of age discovered the fraud committed and started to pursue justice in order to recover this land by applying for letters of administration of Temutewo Bigomba's estate, his grandfather who died in 1922 (P.Exh.11) and thereafter got registered thereon as the Administrator of his estate.
- [48] The 1st Defendant's husband in an attempt to further alienate the estate from its intended rightful beneficiaries, successfully sought for revocation of the letters of Administration granted to Bernard Kanaala for the estate of Temutewo Bigomba. As a result, the 3rd Defendant re-registered as proprietor Temutewo Bigomba "Kiraga" of Musu clan who was not related to Temutewo Bigomba of Nkima clan, the original allottee. The decree in P.Exh.15, the basis of re-registering Temutewo Bigomba "Kiraga" of Musu clan who was not related to Temutewo Bigomba of the Nkima clan, the original allottee is not a judgment in rem that determined the title to the property and the rights of the parties as against all persons but a judgment in personnam that only imposes personal liability; George William

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Katerega Vs Commissioner for Land Registration & 12 Ors, HCMA No.3413 and Saroji Gandesha Vs Transroad Ltd, SCCA No.13 of 2009.

- [49] It follows therefore from the above that **Mengo Civil Suit No. 138/1982**; **Temutewo Bigomba Vs Bernard Kanaala** which re-instated the name of **Temutewo Bigomba** (Musu clan) on the fraudulently obtained certificate of title for the suit portion of land did not confer any right over the suit land to the 1st Defendant.
- [50] In the premises, I find the 3rd issue in the negative. **Temutewo Bigomba Kiraga**, the 1st Defendant's husband fraudulently acquired the **244 acres** of land at Kitende.

Issue No.4: What remedies are available to the parties.

[51] In this suit, the Plaintiffs sought for a declaration that the suit land belongs to the estate of the late **Temutewo Bigomba** of E'nkima clan as the original grantee under the Colonial Government. As observed by Justice Madrama J (as he then was) in **Sikuku Agaitano Vs Uganda Baati, HCCS No.298 of 2012,**

"Declaratory orders can be sought whenever a party seeks to confirm a right. It is a remedy which in our law is provided for under 0.2 r.9 CPR."

That in the case of Ellis Vs Duke of Bedford (1899) 1Ch. 494, Lindley M.R at pages 514-515 held that an action can be brought merely to declare rights under a rule in *Pari materia* with our Order 2 rule 9 of the Civil Procedure Rules which provides thus;

"... actions can be brought merely to declare rights....
I am referring to Order XXV rule 5 which says
'No action shall be open to objection on the ground that
a merely declaratory judgment or order is sought thereby,
and the court may make binding declarations of right whether
any consequential relief is or could be claimed or not'."

Further that in **Guaranty** Trust Company of New York Vs Hannay and Company Ltd [1915] 2KB 536, Bankes L.J at page 572 held that a suit for declaratory orders should not be defeated merely because the plaintiff has no legal cause of action.

[52] Under the above authority, this court having found that the suit land belonged to **Temutewo Bigomba** of Nkima clan, the original allottee of the land and that it was fraudulently taken away from the intended beneficiaries by **Hamu Mukasa** and **Nasanairi Kiraga**, this court makes the sought declaratory orders even if it is not possible to seek and or order consequential reliefs:

a) The land comprised in Busiro containing 6 miles 59.60 acres which include the 244 at Kitende, Kawoto, Bwebajja, Lumuli, Kitovu, Kabulamuliro, Dundo and Mazzi belongs to the estate of the late Temutewo Bigomba of E'nkima clan as original grantee under the Colonial Government in 1911 and they would be entitled to enjoy the

property.

- b) General damages and or compensation for loss suffered and loss of the estate. The Plaintiffs suffered injury inform of mental anguish, inconvenience, humiliation and harassment as their predecessors and themselves pursued justice to recover the suit land since they had been deprived as its rightful beneficiaries since 1951 (as per P.Exh.11) to date. The Plaintiffs are entitled to damages in compensatory monetary terms that may put them in the position before the wrong. Relying on Guidelines for calculation compensation in Ddumba Nathan Vs Hajji Jaberi Kabiito & Anor, HCCS No.9/2015, counsel for the Plaintiffs submitted that in the present case, the Plaintiffs are entitled to Ugx 516,000,000. I find this claimed sum very fair and reasonable. I accordingly grant the 516,000,000/= of **Ugx** sum Plaintiffs damages/compensation for loss of the estate and loss suffered.
- c) Costs of the suit; The Plaintiffs being the successful parties, I ward them costs of the suit.

[53] In conclusion, judgment is given in favour of the Plaintiffs in the above terms.

Dated at Kampala this day of December, 2023.

Byaruhanga Jesse Rugyema JUDGE.