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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 25 OF 2017

ARTHUR SSAJJABI APPELLANT

VERSUS

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1. CATHERINE NAMUTEBI MUYIZZI
Administrator of the Estate of Samuel Muyizzi

2. BIKAALI CHRISTIAN FELLOWSHIP RESPONDENTS

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(An Appeal from the judgment and orders of the High Court of Uganda at Masaka before Hon. Justice V.F. Musoke-Kibuuka dated 29th November, 2014 in Civil Suit No. 039 of 2006)

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

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JUDGMENT OF JUSTICE KENNETH KAKURU, JA

This is an appeal arising from the decision of *Musoke-Kibuuka, J* in High Court Civil Suit No. 039 of 2006 delivered on the 29th day of November, 2014.

Brief background

25

Samuel Muyizza who is now deceased was the 1st respondent at the time this appeal was filed, upon his demise his name was substituted with that of his widow Catherine Namutebi Muyizzi as the administrator of the estate. Samuel Muyizza was the biological father of the appellant. In 1996, the late Muyizza by deed donated the suit land comprising LRV 3012, Folio 10, Block 425, Plot 20 at Kyazanga, now

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Lwengo District, measuring 120 acres to the 2nd respondent. The appellant who was

5 the pastor of the 2nd respondent was entrusted with the responsibility of holding and developing the land for the 2nd respondent. The appellant later ceased being the pastor of the 2nd respondent and in 1999, the late Muyizza again by deed transferred responsibility over the suit land to Pastor Bikaali John who took possession of the suit land and started using it. However, the late Muyizza remained the registered
10 proprietor. In 2006 the appellant introduced two foreign nationals to the late Muyizza as people who were willing to sponsor developmental programmes for the 2nd respondent on condition that they got proof that the land belonged entirely to the 2nd respondent.

The late Muyizza instructed the appellant to go to his advocates and instruct them to
15 draft a formal deed of donation of the land to the 2nd respondent in order to facilitate registration of the land into the names of the 2nd respondent. The appellant did not honour the father's instructions, he instead instructed his father's advocates to draft the deed of donation in his favour. He made the late Muyizza to sign the deed without reading through, he also made him to execute blank transfer forms
20 and subsequently registered the suit land into his names as proprietor. The late Muyizza sued the appellant seeking for a declaration that; the purported deed of donation made between him and the appellant on 15th May 2006 was invalid, an order cancelling the certificate of title of the appellant for the land comprised in LRV 3012, Folio 10, Block 425, Plot 20 at Kyazanga, now Lwengo District, general and
25 punitive damages and costs of the suit.

The learned trial Judge entered Judgment in favour of the respondents. The appellant being dissatisfied with the said decision filed this appeal on the following grounds:-

1. *The learned trial Judge grossly misdirected himself and hence erred in law and
30 in fact when he found and held that the deed of gift between the 1st respondent and appellant, dated 15th May, 2006 was invalid and of no effect, whatsoever.*

- 5 2. *The learned trial Judge erred in law and in fact when he misconstrued the evidential value and the bench marks for admissibility of evidence on donations thereby drawing misconceived and wrong conclusions.*
3. *The learned trial Judge grossly misdirected himself and hence erred in law and in fact for admitting and basing his decision on the isolated evidence of the*
10 *plaintiffs/respondents, which was extensively rebutted by the defendant/appellant in a substantial manner.*
4. *The learned trial Judge erred in law and in fact for totally misconceiving the crux and substance of the defence entirely, thereby biasing himself in the negligent/reckless manner and this leading him to wrong conclusion in the*
15 *result.*
5. *The learned trial Judge erred in law and in fact when he failed to properly evaluate evidence on record, thereby arriving at wrong conclusions.*
6. *The learned trial Judge erred in law and in fact when he did not only volunteer own issues but resolved them to the appellant's disadvantage thereby causing*
20 *him a serious miscarriage of justice.*
7. *The learned trial Judge's decision occasioned a grave miscarriage of justice to the appellant.*

Representations

25 At the hearing of this appeal Counsel for the appellant was absent nevertheless the appellant was in Court. The Court allowed the appellant to proceed with the appeal in person. The respondents were represented by learned Counsel *Mr. Michael Kagwa*. The parties then agreed to proceed by way of written submissions already on record.

Appellant's submissions

30 On ground1, it was submitted that, the deed of donation was executed freely and with a clear conscience between the appellant and the 1st respondent. The contents

5 of the deed were explicitly explained to the 1st respondent in english with a translation in Luganda. The late Muyizza signed it and the same was stamped by his advocates. It was contended that, the certificate of title and duly signed transfer forms were freely handed over to the appellant by the late Muyizza, they later jointly proceeded to the land office, paid the assessed stamp duty and the
10 registration was effected in the names of the appellant. It was argued that there was no contestation until much later when the late Muyizza was influenced to turn around and deny what he had done. Counsel argued that, the whole translation was valid as the late Muyizza's intention was to make a gift of the suit land to his son by way of deed of gift and as such the learned trial Judge's order of revocation was
15 misplaced and misconceived to the detriment of the appellant.

Grounds 2 and 5, the learned trial Judge is faulted for having failed to properly evaluate the evidence on record and misconstrued the evidential value and the bench marks for admissibility of evidence on donations. It was submitted that, the appellant adduced evidence which clearly indicated that the late Muyizza's intention
20 was to donate the suit land to him. The late Muyizza was cognizant of the transaction, his renunciations are an afterthought and ought to be ignored. It was argued that, the learned trial Judge misapplied the law when he based his decision on the lawyer's denial that the deed of donation was not signed in his office yet the same document had been prepared by him on instructions of the 1st respondent. It
25 was contended that the trial Judge ignored some evidence thereby occasioning a miscarriage of justice to the appellant.

In respect of ground 3, it was submitted that, the evidence on record specifically Exhibit D2 (the deed of donation) indicates that the donation was lawful and legal. There was no evidence imputing fraud on the appellant. It was argued that, the
30 learned trial Judge heavily relied on the evidence of the respondents in disregard of the appellant's evidence.



5 In regard to grounds 6 and 7, it was submitted that the learned trial Judge wrongly formulated his own issues and resolved them to the appellant's detriment thereby occasioning a miscarriage of justice. There was no issue raised as to the validity of the deed of donation but the trial Judge formulated it and resolved it illegally. Counsel relied on *Standard Chartered Bank (U) Ltd vs Grand Hotel (U) Ltd, Court of*
10 *Appeal Civil Appeal No. 13 of 1999.*

In respect of ground 4, it was contended that the learned trial Judge's decision was a full of bias and as such it occasioned a miscarriage of justice. Counsel asked Court to allow the appeal with costs. He also sought for an award of both general and punitive damages and interest.

15 **Respondents' reply**

In reply to ground 1, it was submitted that the learned trial Judge rightly found that the deed of donation between the late Muyizza and the appellant was invalid as it was procured through fraud, trickery and misrepresentation by the appellant. It was argued that, from the facts of record the appellant was aware the suit land had been
20 donated to the 2nd respondent through Pastor Bikaali John in 1999 after the appellant had ceased being the pastor of the 2nd respondent therefore the deed of donation executed in 2006 was invalid.

It was contended that, the appellant through fraud and misrepresentation tricked his father to sign the impugned deed of donation in 2006 in order to take over the
25 suit land which he had already donated to the 2nd respondent. The purpose of the 2006 deed of donation was to confirm to the foreign sponsors brought by the appellant that the suit land had been donated to the 2nd respondent and not to create a new donee. Any donation to an unintended donee is challengeable by the donor.



5 It was further submitted that, the appellant lied to Court when he stated that all the signatories to the deed signed it at chambers of Sebale-Lule advocates. The respondent testified in Court that, he signed deed of donation from his home and he did not read through it as he had an eye infection and was on treatment. He also stated that, he trusted his son and did not think he could do anything contrary to the
10 instructions he had given him. It was argued that the deed of donation was invalid and the learned trial Judge rightly found so.

In response to grounds 2 and 5, it was contended that, the learned trial Judge properly evaluated the evidence and arrived at the right conclusion that the suit land was donated to the 2nd respondent and not the appellant. The donation was
15 done way back in 1996 and the 2006 deed was to confirm the donation. It was argued that, the appellant did not suffer any miscarriage of justice as he was not the intended donee. It was further argued that, the appellant had earlier on been the pastor of the 2nd respondent to whom the suit land had been donated and as such he was aware that there was no land available for further donations. It was argued that
20 the appellant instead fraudulently instructed the father's advocates to indicate a different donee on the 2006 deed of donation which was wrong.

It was contended that, the learned trial Judge was right not to make any adverse inferences against the late Muyizza from the fact that he instructed the appellant to pay the surveyors or for signing the transfer forms. The late Muyizza was under a
25 mistaken impression that whatever he was doing was for the benefit of the 2nd respondent. The mistaken impression was a result of the appellant's fraudulent conduct and as such he cannot benefit from such an act of fraud.

In reply to ground 3, it was submitted that, Exhibit D2 was procured through fraud, tricks and misrepresentation and as such it was illegal and unlawful and the
30 appellant also lied that the deed was signed in Kampala whereas not. It was argued that the fact that no claim of fraud was reported to the police does not exonerate the

5 appellant from the fraud he committed. Counsel contended that the appellant's evidence was tainted with lies and inconsistencies and as such the learned trial Judge was right to ignore it.

10 In respect grounds 6 and 7, it was submitted that learned trial Judge did not formulate new issues as contended by the appellant. The issue at the trial was "To whom was did the first plaintiff donate the land ?". In order to resolve that issue the trial Judge had to determine the validity of the deed of donation since the appellant claimed to be the donee yet the donor disowned the donee therein. It was further submitted that in order to determine the issue of fraud, the learned trial Judge had to determine the validity of the deed of donation and the 1st respondent in his plaint
15 prayed that the said deed be declared invalid.

In reply to ground 4, it was contended that the appellant did not illustrate or attribute any bias on the learned trial Judge. It was submitted that the trial Judge was not biased and the appellant's allegation remain unsubstantiated.

20 In respect of the damages sought by the appellant, it was submitted that the appellant did not file a counterclaim at the trial Court and as such he is estopped from seeking for damages at this Court.

Counsel asked Court to dismiss the appeal with costs.

Resolution

25 We have read the record of appeal and the submissions by the parties to this appeal. We have also read the authorities cited and relied upon by both Counsel.

This Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. See: *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002* and *Uganda Breweries vs Uganda Railways Corporation, Supreme Court Civil Appeal No. 6 of 2001*



5 We shall therefore proceed to reappraise the evidence and come to our own conclusion as required by law.

Ground 1, the learned trial Judge is faulted for having found that the deed of gift between the late Muyizza and the appellant was invalid and he accordingly ordered for cancellation of the appellant's name from the Certificate of title vide LRV 3013 Folio 10, Plot 20 Block 425 at Kyazanga because the all transaction was tainted by fraud.

It is trite law that a certificate of title is conclusive evidence of the particulars contained in it and would entitle the registered proprietor to the estate it concerns. Such a registered proprietor is protected from any actions for ejectment save for exceptional circumstances, one of which is his or her fraud if that fraud deprived another person of his or her interest in the relevant property. See: *Section 59 and 15 176 (c) of the Registration of Titles Act, Cap. 230.*

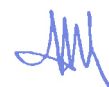
The authorities on fraud require that fraud is attributable to the transferee and that such fraud is proved strictly, that is proved to a standard heavier than on a balance of probabilities ordinarily required in civil cases. See: *Kampala Bottlers vs Damanico (U) Ltd, Supreme Court Civil Appeal No. 22 of 1992.* By the relevant plaint, the following particulars of fraud were alleged against the appellant:

- 25 "i) *instructing the lawyers to draft the deed in his names contrary to the directions of the 1st plaintiff.*
- ii) *Inducing the 1st defendant to sign the purported deed of donation without allowing him to read through or without explaining to him (its) contents.*
- iii) *Presenting a blank transfer form to the 1st plaintiff to sign purportedly in favour of the 2nd plaintiff whereas not.*

- 5 iv) *Causing the Commissioner for Land Registration to transfer the land into his names whereas as a member and a former pastor of the 2nd plaintiff he was fully aware of the 2nd plaintiff's interest in the land.*
- v) *Picking the certificate of title from the surveyor without the plaintiffs' consent."*

10 The learned trial Judge entered judgment in favour of the respondents finding that there was not the slightest doubt that the appellant secured registration of the suit property in his personal names through fraud. The learned trial Judge premised the fore going findings on the evidence adduced for the plaintiff particularly the testimony of PW1 Samuel Muyizzi and PW3 Joseph Luswata. PW1 was the 1st
15 plaintiff before he passed on. He testified in Court that the appellant was his biological son whom he had entrusted the process of ensuring a donation of the suit property to the 2nd respondent. He further testified that, the appellant had instead made the relevant donation to himself contrary to his directions given to him. The learned trial Judge was thoroughly impressed with the testimony of PW1, he stated
20 as follows at page 120 of the record;-

*"Court saw PW1 in the Court. It assessed him to be an intelligent, steady and truthful person though he was of advanced age. His testimony was very calm and totally consisted (sic). He was biological father of the defendant. He expressed remorseful inner pain that he had been forced by the defendant's
25 conduct to sue him in court of law. His evidence was believed by court to be entirely truthful. According to him he donated the suit property vide exhibit D2 in 1996 to Bikaali Christian Fellowship. He confirmed the donation in 1999 vide exhibit P3, after the defendant had ceased to be the pastor of that church. The plaintiff's instruction to the defendant was to inform his advocates to prepare a
30 formal deed of gift, inter vivos, to Bikaali Christian Fellowship. But instead, the defendant instanced the advocates to prepare the deed in favour of himself... "*



5 PW3 Joseph Luswata's evidence further enhanced the 2nd respondents' case. He testified that he was an advocate with the firm of advocates which prepared the deed of donation to the appellant and that he was well known to the 1st respondent and the appellant. PW3 testified that, the appellant went to his chambers asking him to prepare the relevant deed of donation in respect of the suit property. The
10 appellant also presented to him already signed transfer forms. PW3 testified that the appellant's instructions were at variance with his father's instructions which had been communicated to PW3 requesting that he prepares an agreement whereby the late Muyizza would donate land to their church. PW3 further testified that, the appellant presented GWAM church instead of the 2nd respondent church as the
15 church to which the suit property would be donated. This was clearly not the church which the late Muyizza intended to donate the suit property to but PW3 testified that he never bothered to cross check the information with his client.

It is our considered view that the evidence adduced for the respondents was sufficient to sustain the claim against the appellant and we find no reason to fault
20 the learned trial Judge for finding as he did. The evidence showed that the appellant had fraudulently transferred the suit property against the interests and instructions of the late Muyizza. The appellant's evidence was largely untrue as the learned trial Judge noted that the appellant's propensity to lie was so deep-rooted in him and could not be exhausted. PW3's evidence crucially established that the
25 appellant's allegations were untrue as far as he alleged that the late Muyizza and the appellant had gone to PW3's law firm to sign the deed of donation. PW3 established that the appellant had gone to the said law firm alone with blank transfer forms and instructions to sign a deed of donation to GWAM instead of the 2nd respondent. In the view of the late Muyizza and PW3's evidence, such conclusions were justified.
30 Accordingly, we uphold the learned trial Judge's findings that the appellant procured the donation of the suit property to himself fraudulently and to cancel his name from the relevant certificate of title.

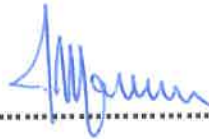


5 The above findings would dispose of all the grounds 2, 3, 4, 5, 6, and 7 of this appeal. In the result, we maintain the findings of the learned trial judge.

This appeal fails and is hereby dismissed with costs to the respondents in this Court and the Court below.

We so order.

10 Dated at Kampala this 27th day of Feb 2020.



.....
Kenneth Kakuru
JUSTICE OF APPEAL

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**THE REPUBLIC OF UGANDA,
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
 CIVIL APPEAL NO 25 OF 2017
 (ARISING FROM THE HIGH COURT AT MASAKA IN MASAKA HIGH
 COURT CIVIL SUIT NO 039 OF 2006)**

10 **ARTHUR SSAJJABI}APPELLANT**

VERSUS

- 1. CATHERINE NAMUTEBI MUYIZZI}**
(Administrator of the Estate of Samuel Muyizzi)
- 2. BAKAALI CHRISTIAN FELLOWSHIP}RESPONDENTS**

15 **Coram: Hon Mr Justice Kenneth Kakuru, JA**

Hon Mr Justice Geoffrey Kiryabwire JA

Hon Mr Justice Christopher Madrama, JA

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

20 I have read in draft the judgment of Hon Mr Justice Kenneth Kakuru, JA and I agree with the facts and analysis of the issues. I however, would defer in the result for the reasons stated herein below. I dissent from the conclusion that the appeal be dismissed with costs but would order that the appeal partly succeeds for the reasons given below.

25 The foundation of 2nd respondent’s claim is pleaded in paragraph 5 (a) of the Plaint as a gift *inter vivos* in 1996 to the 2nd respondent by Samuel Muyizzi (deceased), the biological father of the appellant. The estate of Samuel Muyizzi is now administered by the first respondent. The genesis is that the gift in issue as stated in the judgment of the High Court is said to



5 be of land described in the judgment and the plaint as LRV 2012 Folio 10, Block 425, Plot 20 at Kyazanga, measuring 120 acres. The plaint discloses in in paragraph 5 (b) of the Plaint that:

10 (b) However, in 1996, the 1st plaintiff donated the said land to the 2nd plaintiff church to which the defendant belongs to put thereon developments including a bible colleague (See Annexure "A")

The cause of action of the plaintiffs in the High Court is for cancellation of title of LRV 3013 Folio 10 Plot 20 Block 425 situated at Kyazanga. It is averred in paragraph 5 (a) of the Plaint that:

15 (a) Until around February 2006, the 1st Plaintiff was the registered proprietor of land comprised in LRV 3013 Folio 10 Plot 20 Block 425 situated at Kyazanga, Masaka.

20 The crux of the case is that the 1st Plaintiff is said to have donated the land to the second plaintiff who is now the second respondent to this appeal. The donation is stated to have been made *inter vivos* before a subsequent and fraudulent gift dated 2006, relied on by the appellant by which, the suit property was registered in the names of the appellant (Mr. Arthur Ssajjabi). The learned trial judge found that the subsequent "gift" that culminated in a transfer of the suit property to the appellant was procured fraudulently by the appellant and the court cancelled the registration of the appellant and 25 ordered that the property be registered instead in the names of the 2nd respondent whose claim arises from the first gift of 1996.

30 The appellant is a son of the deceased donor who is said to have donated the land to the 2nd respondent by gift deed. The suit in the High Court rested on the further proposition of fact and law that there was a transfer by way of a gift *inter vivos* that had been made to the 2nd respondent before the appellant transferred the property into his names from the deceased in whose names the property still remained after obtaining a



5 further gift of the same from his father the late Samuel Muyizzi. Proceeding from those premises, I have examined the gift deed relied on by the 2nd respondent. It is a document dated 31st of August, 1996 it is written as follows:

Agreement for donation of land

10 I Samuel Muyizzi (Kyengera) the owner of the land at Kyazanga, have donated all of the part of that land on the south side, minus one acre lengthwise, which is to be reserved for the construction of a roasted meat market, on the road to Mbarara.

15 I have donated this land to enable the construction of a Bible College and other things. I have only donated it for the purpose of executing God's work.

I have vested the responsibility for this land with Pastor Arthur Ssajjabi as the chairman.

I the donor of the land

20 (Signed by the donor)

The signature of the donor is witnessed by five witnesses inclusive of the appellant. The original document was written in Luganda and the above is a translation thereof by the Makerere University College of Humanities and Social Sciences, Centre for Language and Communication Services. The question is whether the deed of donation is sufficient to transfer property and amounts to a gift *inter vivos* of registered land. It should be emphasised that the gift was for only the purpose of doing "God's work." Did the donor retain residual proprietary interest to enforce the purpose of the gift? According to **Black's Law Dictionary 8th Edition**, an *inter vivos* transfer of property is a transfer of property made during the transferor's lifetime. Secondly, the term "gift" connotes the voluntary transfer of



5 property to another without compensation. Thirdly, the expression charitable gift means:

10 An inter vivos or testamentary donation to a non-profit organisation for the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental, or municipal purposes and other purposes the accomplishment of which is beneficial to the community.

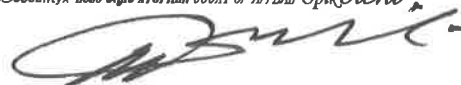
The term *inter vivos* is defined by **Black's Law Dictionary** to mean in Latin "between the living" of or relating to property conveyed not by will or in contemplation of an imminent death, but during the conveyor's lifetime.

15 The **Oxford Dictionary of law** further defines a gift to mean:

20 A gratuitous transfer or grant of property. A legally valid gift must normally be effected by deed, by physical delivery in the case of chattels, or by *donation mortis causa*; the donor must intend ownership to pass as a gift. However, an **imperfect gift** (i.e. one for which the legal formalities have not been observed) may be treated as valid in equity in certain circumstances. ... A gift by will takes effect only on the death of the testator.

25 The question is whether the absence of a transfer or certain words that connote an intention to transfer real estate, make the previous or purported gift, an imperfect gift which can be perfected in equity. Once a finding is reached that the first gift to the second respondent is a proper gift whether perfect or imperfect, then, the donor had no further power or proprietary right to dispose of the property again. Everything revolves on the interpretation of the gift of August 1996. Did it amount to a gift to the respondent? Was it a transfer of property to the respondent? Did the donor intent to transfer the property to the respondent? What did the donor mean by vesting the responsibility for the land with Pastor Arthur Ssajjabi

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5 as the chairman? There is clearly an implied trust vesting responsibility of
the property on the appellant to ensure *inter alia* the implementation of the
purpose of the gift. These purposes include the purpose to build a bible
college and to do God's work. There was obviously no formal conveyance
of the property to the second respondent. The second respondent as an
10 unlimited incorporated company was not even mentioned in the deed.

Halsbury's Laws of England; Fourth Edition Reissue Volume 20
paragraphs 1 and 2 *inter-alia* provided that:

15 **Kinds of gift inter vivos.** A gift inter vivos may be defined shortly as
the transfer of any property from one person to another gratuitously
while the donor is alive and not in expectation of death. It is an act
whereby something is voluntarily transferred from the true owner in
possession to another person with the full intention that the thing
shall not return to the donor. ...

20 2. Modes of making gifts. A gift inter vivos may be made in any of the
following three ways (1) by deed or other instrument in writing; (2) by
delivery in cases where the subject of the gift admits of delivery; and
(3) by declaration of trust, which is the equitable equivalent of a gift.
...

25 **Halsbury's laws of England** (supra) in paragraph 29 provides for deed or
instrument in writing as follows:

29. Land. In general a legal estate in land can be granted by deed
only, but where land is held in trust the grant of the beneficial interest
in it can be made by writing signed by the grantor.

30 I noted that the sections of law referred to in **Halsbury's laws of England**
(supra) that deal with the formalities required for a deed are statutory and
under the Law of Property Act 1925 of the United Kingdom. The equivalent



5 provisions can be found in the Registration of Titles Act cap 230 laws of
Uganda. However, in the absence of a clear intention to transfer legal estate
of registered property, the court can only consider the equities. It is clear
that there was no instrument of transfer of registered property by the
donor. Perhaps it can be concluded that there was a grant of property by
10 deed to be held in trust for a certain person not named in the deed of gift
but who is apparently known to Arthur Ssajjabi and other persons.

There are many imperfections in the deed of donation. The first
imperfection is that it refers to a gift of "all of the part of the land on the
Southside". What about the part of the land on the north side and other
15 sides? The proceedings in court disclose that the court was dealing with
registered land comprising 120 acres duly described. Yet that description is
not contained in the donation deed relied on by the 2nd respondent. There
is no measurement of the portion of the land intended to be transferred to
the second respondent mentioned in the deed in question. Secondly, the
20 name of the second respondent can only be presumed but is not
mentioned. If anybody was asked upon a literal reading of the deed of
donation; who is the beneficiary of the gift, the only answer is derived from
the writing that: *"I have donated this land to enable the construction of a
Bible College and other things. I have only donated it for the purpose of
25 executing God's work. I have vested the responsibility of this land with
Pastor Arthur Ssajjabi (the appellant) as the chairman"*. Evidence has to be
adduced to establish who the beneficiary is. The gift deed cannot on its
own lead to the conclusion that property was donated to the 2nd
respondent.

30 It has to be assumed that the donation was made to an institution,
organisation or association of whom the appellant is the Pastor and
chairman. A reading of the deed of donation does not disclose the name of
the organisation, association or entity which had been given a portion of

5 the land on the Southside. Literarily the land was donated for the purpose
of building a Bible College and other things and only for the purpose of
executing God's work. Who was supposed to execute God's work or build
the Bible College? The responsibility to carry out the wishes of the donor
was vested in the appellant.

10 What can be gleaned from the proceedings in High Court Civil Suit No 39
of 2006 is that the 1st plaintiff is the donor who together with Bikaali
Christian Fellowship filed a suit against the appellant for declaration that
the deed of donation between the first plaintiff and the defendant (who is
the appellant herein) purporting to be made in relation to the land
15 comprised in LRV 3013 Folio 10 to the defendant (the appellant herein) is
invalid and for cancellation of the defendant's name from the certificate of
title. The suit was further for a declaration that the land belongs to the
second plaintiff (the second respondent) in the above named Christian
Fellowship. The second plaintiff was described as an unlimited liability
20 company duly registered under the Companies Act. After describing the
land, the plaint discloses prima facie that the first plaintiff donated the land
to the church. Secondly, the defendant who is now the appellant was the
pastor thereof. The plaint further discloses that the property had not been
transferred until the alleged fraudulent transfer to the appellant.

25 The learned trial judge found that the donor had intended to execute a
formal deed of donation but the appellant instead had the deed executed
in his own favour hence the allegation of fraud. It is therefore clear from the
judgment that the learned trial judge held that the deceased never made a
formal transfer of the property to the second respondent. The learned trial
30 judge issued a declaration that the deed of gift between the plaintiff and
the defendant (the appellant) dated 15th May, 2006 is invalid. It followed
that the transfer of the property to the appellant to this appeal is also
invalid. I agree with the decision of my learned brother Justice Kenneth



5 Kakuru, JA that the conclusion of the learned trial judge in this respect
should be upheld. However, the learned trial judge made an order requiring
the Commissioner for Land Registration to register the suit property in the
names of the second respondent. To my mind the question for
determination is whether the property reverts to the second respondent in
10 light of the facts and circumstances in this appeal.

The interest in question, the subject matter of the suit, is referred to as
leasehold. The lease agreement is dated 28th June, 1968 issued under the
Public Lands Act between Uganda Land Commission as lessor and the late
Samuel Muyizzi as lessee. Paragraph 3 and 4 of the lease document
15 provides as follows:

(3) Not to use the said land for any purpose other than from raising
of cattle and for growing of food crops for the lessee's families and
their servants or employees.

20 (4) To stock manure and manage the said land according to the
methods described or approved by the Lessor and for such purposes
at all times to carry out all its instructions within any time limit
specified by it. (Which instructions will at the discretion of the lessor
or when requested by the lessee be in writing) and in particular...

25 Among other covenants in the lease, it is written that the lessee shall not,
without the prior written consent of the lessor, erect on the land any
permanent or semi-permanent farm buildings or structures (excluding
dwelling houses and domestic outbuildings) up to a total value in excess of
shillings 10,000/= . Obviously, if we go by the interest registered and
disclosed by the certificate of title, the covenants in the lease include the
30 covenant that the donor of the suit property could not and did not have
the capacity to; donate it for purposes of building a Bible College. The
conclusion flows from the premises that the donor purported to donate



5 leasehold interest. There are however no words that suggest that the property the subject matter of the written instrument of donation is leasehold interest. Secondly, as noted above, the extent and size of the land donated is not indicated. What was donated was the South side of the land. What does this measure up to in terms of area covered?

10 I further note that the land law after the promulgation of the 1995 Constitution created an imperfect situation which left the leases granted out of public land in an indeterminate state with a right of the lessees of the former Uganda Land Commission to convert them into freehold. That right is only a right to make the necessary application to convert the former

15 leasehold interest to freehold. What is the status of the land before conversion into freehold? The land was no longer vested in the Uganda Land Commission but in the District Land Boards to hold in trust for the owner. The status of the leasehold was transient until and unless converted.

The new system of land law was ushered in by Article 237 of the

20 Constitution of the Republic of Uganda which article vested land in the citizens. Yet previously land was vested in the Uganda Land Commission by virtue of the Public Lands Act, 1969 and the Land Reform Decree 1975. Article 237 (5) of the Constitution of the Republic of Uganda provides that any lease which was granted to a Ugandan citizen out of public land may

25 be converted into freehold in accordance with a law to be enacted by Parliament. The second respondent relied on an imperfect deed of donation made by Samuel Muyizzi (deceased) in 1996 after the enactment of the Constitution of the Republic of Uganda in October 1995 but before the enactment of the Land Act 1998. The clear intention of legislature is to

30 confer freehold title on the former lessees of Uganda Land Commission upon application to convert to freehold interest. It may therefore be argued that the donor had proprietary rights and the covenants in the lease do not apply. The problem with such an interpretation is that the certificate of title



5 only describes the interest or interests specified therein and nothing more
or less. It was leasehold subject to covenants and for a period of 44 years
with effect from 1966. The leasehold was mean to expire in the year 2010.
Could the estate of the deceased apply for the freehold title now? I would
hold that the estate has a right to obtain freehold upon application to the
10 District Land Board.

The second problem with the order to register the property in the names of
the second respondent arises from the deed of donation itself. The deed of
donation only applies to and donates land on the south side of the land.
The acreage of the South side of the land is indeterminate and needs to be
15 established. How many acres out of 120 acres is it?

Ground 7 of the Memorandum of Appeal avers that the learned trial judge's
decision occasioned a grave miscarriage of justice to the appellant.

While agreeing with the rest of the court on grounds 2, 3, 4, and 6 of the
appeal, I would partially allow the appeal on grounds 5 and 7. On ground 7
20 I agree with the appellant that the order to register the property in the
names of the second respondent occasioned a miscarriage of justice.

In my humble judgment, the order to register the property in the names of
the second respondent is without any foundation. Even if the administrator
of the estate of the deceased wanted to perfect the gift of 1996, it has to be
for the Southside of the suit property. Moreover, even on the Southside of
25 the suit property is expressly excluded 1 acre lengthwise presumably also
on the Southside of the suit property. There is no document which purports
to donate the entire 120 acres in the leasehold as indicated in the judgment
of the learned trial judge. There is also no description of the leasehold in
30 the deed that had been admitted in evidence dated 31st August, 1996. That
information only came from the evidence adduced at the trial. The very
same deed, vests the responsibility for the land on the appellant. If the

5 deed is held to be valid, it clearly only applies the terms written therein. The donor could not amend it neither can the second respondent so as to exclude the appellant. Under the deed the "responsibility of the land vested" in Arthur Ssajjabi.

10 In the premises, I would find that the subject matter of the suit can only be the Southside of the suit property and excludes 1 (one) acre lengthwise. Secondly, the rest of the property vests in the estate of Samuel Muyizzi to be administered as part of the property for the benefit of the lawful beneficiaries thereto. Thirdly, I agree that the transfer of the suit property to the appellant should be cancelled as directed by the trial judge. That part of
15 the appeal as challenges the cancelation of title ought to fail. How the responsibility of the land shall be vested in the appellant has to be determined between the parties and was not part of the suit.

I further agree that the learned trial judge misconstrued the evidence on record and arrived at an erroneous decision to transfer the property to the
20 second respondent. The evidence which the learned trial judge agreed with clearly shows that the instrument on which the respondents rely demonstrate that the responsibility of the land was vested in the appellant. In the premises ground 5 of the appeal is allowed.

25 In the final result, I would partly allow the appeal on grounds 5 and 7 of the appeal with one half of the taxed costs to the appellant.

Dated at Kampala the th 27 day of February, 2020



Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 25 OF 2017

(An appeal from the Judgment and orders of the High Court of Uganda at Masaka before Hon. Justice V.F Musoke Kibuuka dated 29th November 2014 in Civil Suit No. 39 of 2006)

ARTHUR SSAJJABI===== APPELLANT

VERSUS

- 1) CATHERINE NAMUTEBI MUYIZZI=====RESPONDENTS**
Administrator of the Estate of Samuel Muyizzi
- 2) BIKAALI CHRISTIAN FELLOWSHIP**

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with his Judgment and I have nothing more useful to add.

Dated at Kampala this.....^{27th}..... day of ^{FOL}.....2020.



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HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL