

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 486/1991

Cancellation of Certificate

Wulf

ADMINISTRATION GENERAL AND

AND 4 OTHERS :::::::::::::::::::::::::::::: PLAINTIFF

V E R S U S

1. NABBOSA ALIAS

2. FRORENCE NABBOSA :::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: THE HONOURABLE MR. JUSTICE M.K. KALANDA

J U D G M E N T

The 1st plaintiff in this case, is the Administrator General, who is suing in his capacity as the Administrator of the Estate of the late Joseph Ssetimba; while the second, third, fourth and fifth plaintiffs are the children of the late referred to Ssetimba. They jointly sue the defendant, Nabbosa Alias Frorence Nabbosa daughter of the deceased Ssetimba for recovery and possession of the land comprised in former Mailo Register Kibugu Block 14 Plot 697 as to 0.47 of an acre at Ndeeba Estate also known as Kibuye in the city of Kampala.

The defendant was duly served with the plaint, entered appearance, but never entered a W.S.D. After several times of fixing the case

and issuing summons to the defendant, she never responded; and the plaintiffs were granted leave to proceed ex-parte.

The plaintiffs case as testified to by the Administrator General; the registrar of titles and the mother of the 2nd to 5th plaintiffs is that; by the will of the late Yosefu Ssetimba dated 5th June, 1980 the said deceased person devised to the defendant part of his land comprised in former Mailo Register Block 14 Plot 97 as to 0.20 of an acre at Ndeeba (Kibuye) Estate in the City of Kampala. According to that will, the 1st plaintiff in his distribution list dated 31st July, 1987, gave the said land to the defendant - and a certificate of succession No. 14160 of 31st July, 1987 relating to that Plot 97 of 0.20 an acre was issued to the defendant; and was registered on 17th August, 1989 under instruction No. Kampala 125933.

Under the same will, the deceased devised another parcel of land comprised in former Mailo Register Kibuga Block 14 Plot 96 as to 0.82 of an acre at Ndeeba (Kibuye) Estate to the 2nd, 3rd, 4th and 5th plaintiffs upon which land their Mother PW.3 had erected a residential house during the

life time of the deceased husband. The defendant, it is testified to by PW.1 and PW.3, knowingly and with intent to defraud the 2nd, 3rd, 4th and 5th plaintiffs misled and caused some officials of the 1st plaintiff to alter or cancel the original allocation according to the will - without assigning any reason - and took part of the 2nd, 3rd, 4th and 5th plaintiffs land. PW.1 testified that one of the clerks in his office on the instructions of the defendant caused this alteration, which other officials acted on, unknowingly to sub-divide Block 14 Plot 96 belonging to 2nd, 3rd, 4th and 5th plaintiffs and that another certificate of succession was granted to the defendant. The defendant proceeded to the Lands Department; and caused to register part of Block 14 Plot 96 in her names thus depriving the plaintiffs part of their land. The said land was divided into plots 697 and 698 - contrary to the will of the deceased and were registered under instrument No. Kampala 126351 and Kampala 126352. All certificates of title mutation forms were exhibited in Court so was the will.

The plaintiffs jointly and severally contend therefore that the defendant was not entitled in law to obtain another piece of land under Plot 697

as to 0.47 of an acre - contrary to the terms and provisions of her father's will and also contrary to the original distribution. The plaintiff .. and PW.3 regarded the defendant's act as fraudulent and prayed that the sub division of Plot 96 devised to the 2nd 3rd, 4th and 5th plaintiffs be cancelled; and the land be restored to the plaintiffs 2,3,4 and 5 according the will. They also prayed for Judgment for an order - ordering the defendant within a specified period to surrender to the plaintiffs or to the Chief Registrar of titles the Duplicate Certificate of title relating to land comprised in former Mailo Register Kibuga Block 14 Plot 697 as to 0.47 of an acre at Ndeeba (Kibuye) Estate in the Kampal- City.

(b) an order for cancellation of defendants certificate of succession No. 14300. registered on 18th September, 1987 under instrument No. Kampala 126352 and the certificate of title relating to the said Block 14 Plot 697 on the grounds that they were wrongfully and/or fraudulently obtained and prayed for costs.

As I pointed out at the beginning of this Judgment, the defendant entered an appearance, but did not enter a written statement of defence and was served but never appeared and the case proceeded exparte.

I have had the opportunity to peruse the will of the deceased in which the land/lands in question were bequeathed. It is very clear from the will that Block 14 Plot 96, the deceased devised that piece of land where as it is stated, the Mother of plaintiffs 2 to 5 had a residential house - to those children ie plaintiffs 2, 3, 4 and 5. This was during the life time of the deceased; and at no single time did this change by either codicil. I have considered the evidence of P.W.1 the Administrator General, I am convinced that the changes made to sub divide Plot 96 into sub plots Nos. 697 and 698 were not in conformity with the will and were requested for by the defendant without any basis. They were therefore wrong. The divided plot 96, whereby PW.3 had a house was clearly in the will devised to the plaintiffs 2 - 5 and any change to have been made ought to have been made with the knowledge of the plaintiffs and giving sound reasons. There is also a distribution list annexure B to the will which in my considered opinion was tampered with to give credence to that plot 96 to be divided.. I enterely agree with the plaintiffs case that the defendant, was not by any colour of claim entitled to get a share from plot 96 - which was clearly in the will bequeathed to her

brothers and sisters plaintiffs 2 - 5. The defendants action was meant to deprive a piece of plot 96 from the rightful owners and the titles derived from plot 96 i.e plots 697 and 698 be cancelled and the original plot No. 96 as devised to plaintiffs 2 - 5 be restored.

Having come to the above conclusion, I do therefore order for the cancellation of the defendants of succession instrument No. 14300 registered on 18/9/1987 under ^{instrument} / No. Kampala 126352 and the certificates of title relating to the said Block 14 Plot 697 on the grounds that were wrongfully obtained and meant to deprive the rightful owners of the land. I do further order the defendant N₂bbosa to surrender to the Registrar of Titles the duplicate certificate of title relating to land comprised in former Mailo Register Kibuga Block 14 Plot 697 as to 0.47 of an acre at Ndeeba Kibuye Estate in the City of Kampala within 30 days; and that the original Block 14 Plot 96 as to 0.82 of an acre be restored to plaintiffs 2,3,4 and 5 in accordance to thier fathers will.

I do further direct that all other alternations, made which are not in conformity to the original distribution in accordance to the will be corrected and all other registrations that were made not in conformity to the will and original distributions be cancelled. Costs of the suit to the plaintiffs.



M.K. KALANDA

J U D G E

21st July, 1992

Mr. Kulumba - Kiyingi for Defendant.

Ruling read and signed in Chambers.



M.K. KALANDA

J U D G E

21st July, 1992