

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC NO. 62 OF 2018

JULIET NAFULA BWIRE (suing as personal Representative of
the Estate of **PAMPILIAN AKUMU MAGINA**)

PLAINTIFF

= VERSUS =

SOSPETER MICHAEL MUJANJA **1ST**

DEFENDANT

GRACE NABWIRE WABWIRE **2ND**

DEFENDANT

BONIFACE BARASA WANYAMA **3RD**

DEFENDANT

FAMILY BANK LIMITED **4TH**

DEFENDANT

J U D G M E N T

1. The judgment was due for delivery on 27th January 2026. However following my transfer from Busia to Iten Court w.e.f 15th January 2026, I had to prioritize the hearing of my part heard cases. That explains the delay in delivery of this judgment. The same is regretted.

2. **JULIET NAFULA BWIRE** (the Plaintiff herein and suing as the personal representative of the Estate of **PAMPILIAN AKUMU MAGINA**) filed this suit on 9th July 2018, later amended on 14th October 2020. He impleaded **SOSPETER MICHAEL MUJANJA, GRACE NABWIRE WABWIRE, BONIFACE BARASA WANYAMA** and **FAMILY BANK LIMITED** (the 1st, 2nd, 3rd and 4th Defendants respectively) over the land parcel **NO BUKHAYO/BUGENGI/6642** (suit land but sub-divided into land parcels **BUKHAYO/BUGENGI/12363, 12364, 12365, 12366, 12367** and **12368** with further mutation of the land parcel **NO BUKHAYO/BUGENGI/12367** to create land parcels **NO BUKHAYO/BUGENGI/12852** and **12853**).
3. The Plaintiff's case is that at all relevant times, the late **PAMPILIAN AKUMU MAGINA** was the registered proprietor of all that parcel of land comprising **BUKHAYO/BUGENGI/6642** currently valued at Kshs.20,000,000. That on 28th October 2015, the 1st Defendant registered himself as the proprietor of the said suit land without the consent and knowledge of the Estate of **PAMPILIAN AKUMU MAGINA** (hereafter the

deceased). That on various dates, the 1st Defendant fraudulently and by misrepresentation sub-divided the suit land into various portions to wit **BUKHAYO/BUGENGI/12363, 12364, 12365, 12366, 12367** and **12368**. He later sub-divided the land parcel **NO BUKHAYO/BUGENGI/12363** to create the land parcels **NO BUKHAYO/BUGENGI/12852** and **12853** which he then transferred to the 2nd and 3rd Defendants. The 2nd, 3rd and 4th Defendants, through negligence and failure to carry out due process, registered themselves and/or encumbered the land parcels **BUKHAYO/BUGENGI/12363, 12368, 12852** and **12853**.

4. The particulars of negligence, fraud and misrepresentation on the part of the Defendants have been set out in paragraphs 9(a) to (f) as follows:
 - a) Failing to carry out due diligence over ownership of the land by **AUGOSTINO NDEDA MUBWEKA**.
 - b) Knowingly causing to be registered as proprietor despite notice of irregularity by **AUGOSTINO NDEDA MUBWEKA** and **STAFFORD PETER BWIRE**.

- c) Transferring to third parties while well aware of impropriety of acquisition.
- d) Causing a charge to be registered on land parcel **BUKHAYO/BUGENGI/12363.**
- e) The 2nd and 3rd Defendants failing to carry out due diligence to determine the ownership of the 1st Defendant.
- f) The 4th Defendant allowing a facility to be charged by the 1st Defendant on property not regularly acquired.

Despite notice of intention to institute this suit the Defendants (the plaint has erroneously indicated that it was the Plaintiff) have declined to undo the illegal entries and hand over the vacant possession to the Estate of the deceased hence this suit.

5. The Plaintiff therefore seeks judgment against the Defendants vide her amended suit dated 14th October 2022 and seeks the following orders:

(aa) Entries made on the Land Register for BUKHAYO/BUGENGI/6642 (now closed on 13th June 2010 to 28th October 2015) be extinguished.

(ab) Sub-divisions made on L.R

BUKHAYO/BUGENGI/12363-12366 and further on BUKHAYO/BUGENGI/12367 creating BUKHAYO/BUGENGI/12852 and 12853 be revoked and eviction orders to issue.

(ac) All inhibitions or charges entered on the above cited parcels of land be revoked.

(b) Costs of the suit.

In support of her case, the Plaintiff and her brother **STAFFORD PETER BWIRE (PW2)** were the only witnesses. She filed her statement and of her witness **STAFFORD PETER BWIRE (PW2)** both dated 6th July 2018. She also filed her documents vide the list which is un-dated but filed on 9th July 2018.

6. In her statement, she states that the suit land was registered in the name of her late mother **PAMPILIAN AKUMU** the deceased from 12th February 1999 until her death on 29th November 2006. That the family did not carry out any succession proceedings but people started invading the suit land by excavating and planting crops. In an effort to protect the suit land, her brother **STAFFORD**

PETER BWIRE (PW2) was misadvised and registered the suit land in his name without due process. Thereafter, **AUGOSTINA NDEDA MUBWEKA** who is un-known to the Plaintiff's family also registered himself as the proprietor of the suit land without the knowledge of **STAFFORD PETER BWIRE (PW2)** and the heirs to the Estate of the deceased. On 28th October 2015, the 1st Defendant, also without due process, registered himself as the proprietor of the suit land.

7. On 9th November 2015, the suit land was sub-divided to create land parcels **NO BUKHAYO/BUGENGI/12363** to **12368**. The land parcel NO **BUKHAYO/BUGENGI/12367** was registered in the name of the 3rd Defendant on 16th November 2015 and on 7th April 2016, it was sub-divided to create the land parcels **NO BUKHAYO/BUGENGI/12852** and **12853**. The land parcel **NO BUKHAYO/BUGENGI/12853** was registered in the name of **GRACE NABWIRE WABWIRE** the 2nd Defendant. The land parcel **NO BUKHAYO/BUGENGI/12363** was charged to the 4th Defendant on 4th may 2016 for a loan of Kshs.4,000,000 while the land parcel **NO BUKHAYO/BUGENGI/12368** was registered in the name

of the 2nd Defendant. The land parcels **NO BUKHAYO/BUGENGI/12363, 12366** and **12364** are still registered in the name of the 1st Defendant.

8. In his statement, **STAFFORD PETER BWIRE (PW2)** states that his mother **PAMPHILIAN AKUMU MAGINA** (deceased) died on 29th November 2006. He then discovered that strangers had started invading the suit land by excavating stones therefrom and vandalizing the house. So he instructed one BEN a surveyor to assist him carry out succession so that he could file for an injunction. The said **BEN** did not follow due process but nonetheless managed to have his suit land registered in the name of the witness. He later discovered that one **AUGOSTINO NDEDA MUBWEKA** had registered the suit land in his name. He confirms that the registration of the suit land in his name was irregular and illegal.

9. The Plaintiff filed the following eleven (11) documents in support of her case:

- 1) Limited Grant of Letters of Administration Ad Litem issued to her on 5th February 2018 in respect to the Estate of **PAMPHILIAN AKUMU**

**MAGINA in BUSIA CHIEF MAGISTRATES
COURT SUCCESSION CAUSE NO 71 of 2017.**

- 2) Copy of the Register for the land parcel **NO BUKHAYO/BUGENGI/6642.**
- 3) Application for consent of the Land Control Board un-dated and for the transfer of the land parcel **NO BUKHAYO/BUGENGI/6642** from **AUGUSTINO NDEDA MUBWEKA** to **PAMPILIAN AKUMU MAGINA.**
- 4) Letter of consent to transfer the land parcel **NO BUKHAYO/BUGENGI/6642** from **AUGOSTINO NDEDA MUBWEKA.**
- 5) Certificate of search for the land parcel **NO BUKHAYO/BUGENGI/12363** showing the registered proprietor as **SOSPETER MICHAEL MUJANJA** and dated 14th June 2018.
- 6) Register for the land parcel **NO BUKHAYO/BUGENGI/12364.**
- 7) Register for the Land parcel **NO BUKHAYO/BUGENGI/12365.**
- 8) Register for the land parcel **NO BUKHAYO/BUGENGI/12366.**

- 9) Certificate of Official Search for the land parcels **NO BUKHAYO/BUGENGI/12367, 12852** and **12853.**
- 10) Register for the land parcel **NO BUKHAYO/BUGENGI/12368.**
- 11) Certificate of Official Search for the land parcel **NO BUKHAYO/BUGENGI/12368.**

The Plaintiff also filed a further list of documents dated 24th August 2020 being photographs of the Plaintiff's house on the suit land.

10. The 1st Defendant (**DW1**) filed a defence dated 2nd March 2022. He has pleaded that he obtained the title to the suit land having obtained the Land Control Board Consent. He denied all the allegations of negligence, fraud and misrepresentation which Plaintiff levelled against him adding that the sub-division of the suit land was legal and done by the registered proprietor. That the registration of the suit land into the Plaintiff's name was fraudulent as it would not have been so transferred when it was already in his name. He has pleaded those allegations of fraud as against the Plaintiff in paragraph 7 of his defence as follows:

- (a) Purporting to transfer into her names the land parcel NO BUKHAYO/BUGENGI/6642 without the consent of the 1st Defendant as the registered owner.**
- (b) Creating and/or occasioning to be created a separate Green Card for the land parcel NO BUKHAYO/BUGENGI/6642 with a view to obtaining title without consent and knowledge of the 1st Defendant.**
- (c) Obtaining title to the land parcel NO BUKHAYO/BUGENGI/6642 through concealment of material facts.**
- (d) Causing to be transferred to himself (sic) land parcel NO BUKHAYO/BUGENGI/6642 with full knowledge that such transfer was not legal or valid.**

The 1st Defendant therefore pleaded that the Plaintiffs suit be dismissed with costs.

11. The 1st Defendant filed two affidavits in support of his case. The first is dated 23rd March 2022 and the second is dated 23rd September 2022.

12. In his affidavit dated 23rd March 2022, he has deposed, inter alia, that he purchased the suit land from one **AUGOSTINE NDEDA** now deceased who signed transfer forms in his favour and appeared before the Land Control Board at Nambale where consent to transfer the suit land in his name was obtained. He then paid for Stamp Duty and obtained the title deed. He added that he does not know the Plaintiff nor **PAMPHILIAN AKUMU MAGINA** (deceased). Having obtained the title deed to the suit land, he sub-divided it to create land parcels **NO BUKHAYO/BUGENGI/12363, 12364, 12365** and **12366**. This suit is therefore without any basis and should be dismissed with costs.

13. In his affidavit dated 23rd September 2024, the 1st Defendant basically repeats the same averments contained in his affidavit dated 23rd March 2022. He denies having sold the suit land to the Plaintiff or the deceased.

14. The 1st Defendant filed a list of documents containing the following:

- 1) Transfer Form for the land parcel **NO BUKHAYO/BUGENGI/6642** from **AUGUSTINE NDEDA MUMBWEKA** to the 1st Defendant.

- 2) Letter of consent for the transfer of the land parcel **NO BUKHAYO/BUGENGI/6664** to the 1st Defendant.
- 3) Certificate of Search for the land parcel **NO BUKHAYO/BUGENG/6642** issued on 15th August 2014 in the name of **AUGUSTINE NDEDA MUMBWEKA**.
- 4) Application for consent to transfer land parcel **NO BUKHAYO/BUGENGI/6275** which gave rise to the land parcel **NO BUKHAYO/BUGENGI/6642**.
- 5) Receipt for payment of Stamp Duty.

The 2nd and 3rd Defendants did not file any defence and the record shows that on 11th August 2020, the Plaintiff filed a Notice of Entry of interlocutory judgment against them. They did not participate in the trial.

15. The 4th Defendant filed a defence dated 9th August 2018 in which it has pleaded, inter alia, that it is a stranger to the allegations of negligence, fraud and misrepresentation levelled against it and puts the Plaintiff to strict proof. It adds further that it advanced on the 1st Defendant's application, a facility for the sum of Kshs.4,000,000 which was secured by a legal charge over the title to the land

parcel **NO BUKHAYO/BUGENGI/12365** registered in his name. Prior to that, the 4th Defendant had conducted due diligence and complied with all the requirements of the law in the creation and registration of the legal charge over the suit land. The 4th Defendant has therefore acquired a valid legal interest over the suit land. It therefore pleads that the suit is misconceived, incompetent, bad in law, frivolous, vexatious and an abuse of the Court process.

16. The 4th Defendant's credit relationship officer based at their Kakamega Branch **GEOFFREY BAKARI MUYALE (DW2)**, filed a statement dated 30th May 2022 confirming that he is well aware of the facts giving rise to this matter. That the 4th Defendant granted a credit facility to one **MICHAEL OUMA OKOTH** for the sum of Kshs.4,000,000 guaranteed over a charge over the suit land in the name of the 1st Defendant as a personal guarantee in the said sum. The 1st Defendant executed both the charge and the deed of guarantee and indemnity over the land parcel **NO BUKHAYO/BUGENGI/12365**.
17. By virtue of the said charge, the 4th Defendant acquired a valid and legal interest over the said property which can

only be extinguished upon the 1st Defendant fulfilling his covenant and obligations. The Plaintiff has been at all times a stranger to the 4th Defendant which complied with all the necessary requirements to enable it realize the suit land as security in the event of default. The 1st Defendant ought to indemnify the 4th Defendant against all claims and / or particulars of negligence, fraud and misrepresentation levelled against it by the Plaintiff. For the above reasons, the 4th Defendant pleads that the Plaintiff is not entitled to any of the reliefs sought and her suit should be dismissed with costs.

18. And although the 4th Defendant filed a statement of it's other witness **VINCENT OCHIENG**, only **GEOFFREY BAKARI MUYALE (DW2)** testified on it's behalf.

19. The 4th Defendant filed a list of documents dated 10th May 2019 and sought to rely on the documents in schedule 1 thereof which are:

- 1) A copy of the certificate of search for the land parcel **NO BUKHAYO/BUGENGI/12365** in the name of the 1st Defendant.

- 2) A copy of the title deed for the land parcel **NO BUKHAYO/BUGENGI/12365** in the name of the 1st Defendant.
- 3) A copy of the letter dated 2nd April 2016 by which the 4th Defendant offered **MICHAEL OUMA OKOTH** a loan of Kshs.4,000,000 with 1st Defendant as the guarantor and the land parcel **NO BUKHAYO/BUGENGI/12365** as the security.
- 4) A copy of the legal charge over the land parcel **NO BUKHAYO/BUGENGI/12365**.
- 5) An affidavit of marriage between the 1st Defendant and **AGNES MURULE KHAKASA** dated 5th April 2016.

The hearing commenced on 27th February 2023 when the Plaintiff testified and called her witness **STAFFORD BWIRE (PW2)**. She also produced as her documentary evidence the documents filed herein. They also adopted as their evidence the contents of their statements which I have already summarized above.

20. The 2nd and 3rd Defendants did not participate in the trial.
21. The 1st Defendant also testified and produced as his evidence the list of documents filed herein. The 4th

Defendant's witness also testified and produced as it's documentary evidence the documents filed herein.

22. Submissions were thereafter filed both by **MR JUMBA** instructed by the firm of **ERICK JUMBA & COMPANY ADVOCATES** for the Plaintiff, the 1st Defendant who is acting in person having parted ways with his previous counsel **MR ASHIOYA** and by **MS KARANJA** instructed by the firm of **MUKELE MONI & COMPANY ADVOCATES** for the 4th Defendant.
23. I have considered the evidence by the Plaintiff, her witness and the 1st and 4th Defendants. I have also considered the submissions filed.
24. The Plaintiff's case is that at all material times, the land parcel **NO BUKHAYO/BUGENGI/6642** i.e. the suit land, belonged to her mother **PAMPILIAN AKUMU MAGINA** but the 1st Defendant fraudulently registered it in his name and thereafter sub-divided it into various portions which he transferred to the 2nd and 3rd Defendant including the land parcel **NO BUKHAYO/BUGENGI/12365** which was transferred to the 1st Defendant and used as security advanced in the sum of Kshs.4,000,000 to one **MICHAEL OUMA OKOTH**. The only issue for my determination in

this case is, in my view, whether infact **PAMPILIAN AKUMU MAGINA** was at all times the registered proprietor of the suit land as pleaded in paragraph 6 of the amended plaint. The 1st Defendant has pleaded in paragraph 4 of his defence that the above averment is not correct and has put the Plaintiff to strict proof thereof. Similarly, the 4th Defendant has in paragraph 3 of it's defence, pleaded a such.

25. The copy of register for the suit land shows that it was registered in the name of one **AUGUSTINO NDEDA MUBWEKA** on 12th February 1999. And on the same day, it was registered in the name of **PAMPILIAN AKUMU MAGINA**. A copy of the title deed has not been availed and it is not clear if that registration was in their joint names as joint tenants or as tenants in common. There is, however, an incomplete and un-dated application for the consent of the Land Control Board to transfer the suit land from the said **AUGUSTINO NDEDA MUBWEKA** to **PAMPILIAN AKUMU MAGINA**.

26. On the other hand, there is a Transfer of Land Form duly executed by the said **AUGUSTINO NDEDA MUBWEKA** transferring the suit land to the 1st Defendant together

with a letter of consent dated 4th June 2015 consenting to the transfer. The same is accompanied by a certificate of official search dated 19th June 2015 showing **AUGUSTINO NDEDA MUBWEKA** as the registered proprietor of the suit land as at 15th August 2014 and documents showing that the 1st Defendant paid the Stamp Duty for the transfer. The Plaintiff's counsel has submitted in paragraph 4(1) of his submissions that **PAMPILIAN AKUMU MAGINA** died on 29th November 2006.

27. As I have already stated above, the register to the suit land does not indicate whether the same was registered on 12th February 1999 in the name of **AUGUSTINO NDEDA MUBWEKA** and **PAMPILIAN AKUMU MAGINA** as joint tenants or as tenants in common as provided under **Section 91 (3) (a)** of the **Land Registration Act** which reads:

“An instrument made in favour of two or more persons and the registration giving effect to it shall show -

(a) Whether those persons are joint tenants or tenants in common.”

In the circumstances, this Court will abide by the Court of Appeal's decision in the case of **MWAKAZITONI JOSEPHINE -V- A.G CRIMINAL APPEAL NO 128 of 2009 [2015 KECA 407 KLR]** where it was held that:

“There is no indication as to whether the property is held on a tenancy-in-common or joint tenancy or tenancy in entirety. When a property is registered in more than one name, in the absence of a contrary entry in the register, the property is deemed to be held in joint tenancy and not tenancy-in-common or tenancy in entirety. A tenancy in common or tenancy in entirety means that the interest of each registered owner is determinable and severable; in a joint tenancy, the interest of each owner is indeterminable each owns all and nothing.”

Section 91(4) (a) (b) and (c) of the same **Act** provides as follows:

4: “If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently-

- (a) dispositions may be made only by all the joint tenants;
- (b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; or
- (c) each joint tenant may transfer their interest *inter vivos* to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void."

It follows, therefore that, since **PAMPHILIAN AKUMU MAGINA** the joint tenant to the suit land together with **AUGUSTINO NDEDA MUBWEKA** died on 29th November 2006 as per the Grant of Letters Ad Litem issued to the Plaintiff on 5th February 2018, the suit land could only revert to **AUGUSTINO NDEDA MUBWEKA**. Therefore, any transfer to **STAFFORD PETER BWIRE** was illegal, null and void and indeed he has acknowledged as much in his statement. And any interest which the late **PAMPHILIAN AKUMU MAGINA** had in the suit land ended on 29th November 2006. Therefore, it cannot be correct for the

Plaintiff to plead, as she has done in paragraphs 6 and 7 of her amended plaint dated 14th October 2020, that;

6: “At all relevant times, the late PAMPILIAN AKUMU MAGINA was the registered proprietor of all that parcel of land comprising BUKHAYO/BUGENGI/6642 currently valued at Kshs.20,000,000.”

7: “The Plaintiff avers on 28.10.2015 the 1st Defendant caused to be registered as proprietor of land parcel BUKHAYO/BUGENGI/6642 without due process and without consent and knowledge of the late PAMPILIAN AKUMU MAGINA.”

The truth of the matter, however, is that since the suit land is deemed to be a joint tenancy as already stated above, it was subject to the doctrine of *jus accrescendi*.

That means that following the demise of **PAMPILIAN AKUMU MAGINA**, the other co-owner **AUGUSTINO NDEDA MUBWEKA** acquired the sole ownership thereof.

28. The doctrine of *jus accrescendi*, is of common law origin.

In **GRAY & GRAY ELEMENTS OF LAND LAW 5TH**

EDITION at paragraphs 915 and 916, it is described as follows:

“It has been said that the right of survivorship (or *jus accrescendi*) is the grand and distinguishing incident of joint tenancy. On the death of one joint tenant, the entire co-owned estate ‘survives to’ the remaining joint tenant or tenants. Ultimately, in the manner of the medieval taunting, the last surviving tenant becomes the sole owner - the winner takes it all.”

And in the text **MEGARRY AND WADE, THE LAW OF REAL PROPERTY 16TH EDITION** pages 475 - 476, it is stated thus:

“On the death of the joint tenant, his interest in the land passes to the other joint tenant by the right of survivorship. This process continues until there is one survivor who holds the land as a sole-owner.”

Finally, the rule in joint tenancy has been describe by **P. L. ONALO** in **LAND LAW AND CONVEYANCING IN KENYA** at pages 19 to 20 thus:

“Under joint tenancy two or more persons are treated as one owner. As between themselves, they have separate rights. A joint tenancy is distinguished from a tenancy in common by the right of ownership under the principle of jus accrescendi i.e. the right of survivorship.

Jus accrescendi. When one of the joint tenants dies, the survivor becomes the sole owner of the whole interest or right in land. The rules of intestacy do not apply to the joint tenancy and at the same time he cannot dispose of his interest under a will. He thus passes nothing to his heirs. But when he becomes a sole owner, he can pass the whole to his heirs. A joint tenant can thus leave nothing or can have the whole. In the joint tenancy there is unity of title, of possession and time.”

The above texts have been cited with approval by Superior Courts in this Country including in the case of **DAVID W. GACHOGU & ANOTHER -V- THATHONI DEVELOPMENT COMPANY LTD & OTHERS C.A. CIVIL**

APPEAL NO E063 of 2023 [2026 KECA 306 KLR] which was delivered recently on 20th February 2026.

29. It follows, therefore, that after the demise of **PAMPHILIAN AKUMU MAGINA** on 29th November 2006, the suit land reverted to **AUGOSTINO NDEDA MUBWEKA** as the sole proprietor and he was at liberty to transfer it to any other person including to the 1st Defendant. The suit land did not form part of the Estate of **PAMPHILIAN AKUMU MAGINA**. Instead, **AUGUSTINO NDEDA MUBWEKA** acquired a proper title thereto and it matters not that **STAFFORD PETER BWIRE** tried to register it into his name in an attempt to protect it. What he did was in vain because since the suit land was registered under a joint tenancy, the doctrine of jus-accrendi (right of survivorship) came into play and the suit land was on 15th August 2014 registered in the name of **AUGUSTINO NDEDA MUBWEKA** who subsequently transferred it to the 1st Defendant on 28th October 2015 and the title was closed on 9th November 2015 to create the land parcel **NO BUKHAYO/BUGENTI/12363** to **12368** as shown on the register. Therefore, the 1st Defendant obtained a good title to the land parcel **NO BUKHAYO/BUGENGI/12365** which

he used as security to guarantee the facility of Kshs.4,000,000 which was advanced to **SOSPETER MICHAEL MUJANJA** by the 4th Defendant. It must be obvious therefore that the Plaintiff cannot be justified in pleading fraud, negligence or misrepresentation on the part of any of the Defendants in this case in the manner in which the suit land was transferred to the 1st Defendant. The only person who should have pleaded fraud, negligence or misrepresentation with respect to the transaction relating to the suit land would have been the said **AUGOSTINO NDEDA MUBWEKA** from 29th November 2006 when **PAMPILIAN AKUMU MAGINA** the other joint tenant passed away. However, the said **AUGOSTINO NDEDA MUBWEKA** who, after the demise of **PAMPILIAN AKUMU MAGINA**, remained as the sole proprietor of the suit land, did not complain about the transfer of the same to the 1st Defendant or indeed to any other person. Only he, or those acting under him, could complain that the title to the suit land had been transferred to the 1st Defendant or any other person by way of fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme as provided under **Section**

26(1) of the **Land Registration Act**. The interest of **PAMPILIAN AKUMU MAGINA** in the suit land was extinguished by operation of the law following her demise and as is now clear from the above precedents, the Plaintiff who is the Legal Administrator cannot now purport to protect her Estate because the suit land reverted to **AUGOSTINO NDEDA MUBWEKA**. It did not become part of the Estate of **PAMPILIAN AKUMU MAGINA**. The Plaintiff's suit is therefore for dismissal. 1st Defendant obtained a good title to the land parcel **NO BUKHAYO/BUGENGI/12365** being a sub-division of the suit land and the charge created thereon in favour of the 4th Defendant was lawful.

30. I also notice from the record that vide a Notice of Motion dated 2nd September 2021, one **WILFRIDA MUBWEKA MUBWEKA** the Administratrix to the Estate of **AUGOSTINO NDEDA MUBWEKA** who died on 25th February 2018 applied to be joined in these proceedings as an Interested Party. A consent order dated 29th September 2021 and signed by counsels for the Plaintiff, the 1st Defendant, the proposed Interested Party and the 4th Defendant was filed on 21st October 2021. The

Interested Party was to file her pleadings within 14 days but that appears not to have happened and the said Interested Party did not participate in the proceedings. Most probably because she too was, like the 1st Defendant, being represented by the firm of **ASHIOYA & COMPANY ADVOCATES** who had ceased acting for the 1st Defendant. However, in view of my findings above, it is obvious that the Interested Party's participation in these proceedings is really now water under the bridge because the interest of **AUGOSTINO NDEDA MUBWEKA** which she wanted to protect, is well protected by the law and precedents already cited above.

31. Ultimately therefore, and having considered all the evidence herein, I make the following disposal orders:

1) The Plaintiff's suit is dismissed.

2) Costs to the 1st and 4th Defendants.

BOAZ N. OLAO

JUDGE

9TH APRIL 2026

Judgment dated, signed and delivered on this 9th day of April 2026 by way of electronic mail to the Plaintiff and the 4th Defendant.

As counsel for the 1st Defendant ceased acting for him and since he conducted his case from **BUNGOMA G. K. PRISON** where he is serving a sentence, the Deputy Registrar to ensure that a copy of this judgment is served upon him at the said Prison.

Right of Appeal.

BOAZ N. OLAO

JUDGE

9TH APRIL 2026