

CIVIL APPEAL NO. 018 OF 2022

VERSUS

4. JOAN NANSUBUGA RESPONDENTS



JUDGMENT OF MWONDHA, JSC

(3) The learned Justices of the Court of Appeal erred in law in attributing DW1's alleged knowledge of Leonard Kizito subsequent actions over the Title for the suit land to the Appellant.

- (4) The learned Justices of the Court of Appeal erred in law when they held that the actions of the 2nd defendant (Leonard Kizito) to transfer the suit property were also the actions of the Appellant.
- (5) The learned Justices of the Court of Appeal erred in law in holding that the Letters of Administration were used as a vehicle by the second respondent Leonard Kizito to register the Appellant (through collusion).
- (6) The learned Justices of the Court of Appeal erred in law in holding that the appellant registration on title to the suit land having been effected on the suit land on the strength of the Letters of Administration he cannot enjoy the same protection as that of the registered Administrator of the estate.
- (7) The learned Justices of the Court of Appeal erred in holding that the first defendant as an administrator not yet registered as such on the title had no authority to sell and later transfer the land into the names of the Appellant.
- (8) The learned Justices of the Court of Appeal erred in misapplying the law on inconsistencies and contradictions in overly relying on the contents of Ex. P5 without due regard to other pieces of evidence to the contrary, hence arriving at a wrong decision that the sale transaction took place earlier or before the 1st defendant obtained the Letters of Administration.
- (9) The Justices of the Court of Appeal erred in law when they ordered cancellation of the Appellant's Title basing on DW1's laxity in making inquiries over the said land, even though doing so would not have revealed any fraud.

The appellant proposed that this court makes the following orders:-

- (a) Allow the appeal
- (b) the Court of Appeal judgment and orders be set aside and be substituted with an order declaring the Appellant as bonafide purchaser for value without notice of the suit land, dismisses the suit of the respondent against him.

Background.

The background of the appeal was as follows: -

The respondents are the children of the late Emmanuel Mubiru who died intestate in 1987. Prior to his death he executed a will which inter alia appointed the 1st respondent (Leonard Mubiru) heir and gave his land comprised in Busiro Block 396

Plot 37 at Bweya-Kajjansi on Entebbe Road to the 2nd, 3rd, and 4th respondents who were then minors unknown to the respondents (defendants), the 2nd respondent (2nd defendant) Leonard Kizito who is a younger brother of the late Emmanuel Mubiru stealthily applied and obtained Letters of Administration in respect of the same estate in 1987.

Leonard Kizito used the said Letters of Administration to dispose of the above plot to the appellant in 1990. In 2005 when the respondents (2nd, 3rd, and 4th) attained majority age and wanted to formally register the land in their names, they discovered from the land registry that the title was already in the appellant's names following a transfer executed by the 2nd respondent (2nd defendant). They immediately lodged a caveat.

In 2008 the respondents filed a Suit No. 064 of 2008 in the Land Division of the High Court against Leonard Kizito (2nd defendant). They sought inter alia a declaration that the respondents in this appeal are the lawful owners of the suit land, cancellation of the Letters of Administration obtained by Leonard Kizito, cancellation of the sale and transfer of the suit land to the appellant by Leonard Kizito, and sought for damages and costs of the suit.

The 2nd, 3rd, and 4th respondents originally instituted the suit as donees of the Powers of Attorney of the 2nd defendant in the suit (Leonard Kizito). An application to be joined as parties was filed and it was granted. The suit continued with them as joint plaintiffs. In all transactions the appellant/1st defendant was represented by one Musisi Banalya Paul who executed the transfer documents on behalf of the appellant without any document and or Powers of Attorney.

The High Court delivered a judgment on the 9th December 2015, in which the trial Judge declared that the registration and transfer of the above land by Mr. Leonard Kizito from the names of Emmanuel Mubiru was fraudulent. The trial court at the same time declared that the appellant was a bonafide purchaser without knowledge of the fraud. Aggrieved by the above decision the respondents filed an appeal in the Court of Appeal Civil Appeal No. 078 of 2016. The appeal was determined in favour of the respondents on 5th August 2022.

The appellant was dissatisfied with the decision and orders of the Court of Appeal hence this appeal.

Representation

At the hearing of the appeal, Mr. Benard Mutyaba and Mr. Alex Kamukama represented the appellant. Mr. Kigenyi Emmanuel represented the respondents.

Appellant's submissions

Grounds 1, 2, 3 and 4 were submitted on jointly. Grounds 5, 6 and 7 were submitted on together and grounds 8 and 9 were separately submitted on.

Grounds 1, 2, 3 & 4

Counsel for the appellant faulted the Court of Appeal on the ground that it made errors in its analysis of the evidence on record which lead them to a wrong conclusion that the appellant was not a bonafide purchaser for value without notice of defect on the title.

Counsel submitted that the Court of Appeal imputed the actions of DW2 (Leonard Kizito) in transferring the title to the suit land to be those of the appellant. Counsel referred to the Record of Appeal page 971-972, which was the lead judgment of Madrama, JA (as he then was). Counsel submitted that the judgment did not point to the evidential nexus between the 2nd and 1st defendants and there was no principle of law articulated that could lead to such an assumption.

Counsel argued that it was incumbent upon the plaintiff to prove the allegations of fraud as against the registered proprietor. He relied on S. 101, 102, 103, and 106 of the Evidence Act. He also relied on **Yakobo M.N Senkungu & Others v Crescensio Mukasa Civil Appeal No. 17 of 2014**. Counsel submitted that the Court of Appeal appeared to have placed a heavier burden on the appellant/defendant to prove his innocence in the acquisition rather than on the respondents/plaintiffs responsibility.

Counsel submitted that the law on the defence of a bonafide purchaser is well settled. He cited S. 176 of the Registration of Titles Act which provides: - "For the purposes of section 174, knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject matter of the bequest in the same condition as if the act had not been done."

He also relied on the case of **Kampala Bottlers Ltd v Damanico (U) Ltd SCCA No. 22 of 1992**, the principle is that fraud is attributed to the transferee. It is attributed to the purchaser either directly or by necessary implication in order for his registration to be cancelled. The Court of Appeal imputed the 2nd defendant's actions and attributed them on the appellant without supporting evidence of knowledge of fraud by the appellant. The respondents faulted the 2nd defendant for fraud whose particulars were pleaded and particularized in paragraph 4 of the amended plaint pages 108-109 Volume 1 of the Record of Appeal and they were against the 2nd defendant. Counsel however argued that the particulars of fraud only applied to 2nd defendant not the appellant. There was no evidence of connivance between the 2nd defendant and the appellant. He pointed out that the particulars of fraud against the appellant were at page 9 of his submissions.

Counsel submitted that the bulk of particulars of fraud were denied and do not meet the legal muster for proof of fraud. Counsel argued that the fraud was not attributable to the appellant. He relied on the case of **Sejjaka Nalima v Rebecca Musoke Supreme Court Civil Appeal No. 12 of 1985** (unreported)

Counsel faulted the Court of Appeal Justices for relying on Exp5 an affidavit deposed by Musisi Paul Banalya, where Banalya stated that the appellant was in possession of the suit land since 1985.

Counsel argued that Exp5 was unreliable since it bore no number of application, no name of parties in the suit it was meant to be adduced. There was no mention of the particulars of the land under Exp5 for which the appellant's agent was being faulted.

Further counsel faulted the Court of Appeal for relying on the affidavit evidence in Exp5 to reach its findings of fraud against the appellant because it was unreliable. Counsel submitted that evidence was not considered as a whole as it left out other evidence which was not considered. Counsel argued that PW5's evidence consisted of an alleged over hearing of a discussion between PW5 and the appellant's agent. Counsel submitted and prayed that grounds 1, 2, 3 and 4 be allowed.

Grounds 5, 6 and 7

Counsel submitted that the above 3 grounds related to the Appellate Court's error in reaching the conclusion that the 2nd defendant colluded with the appellant in using

the Letters of Administration as a vehicle to register the 1st defendant on the title to the suit land. Counsel argued that the learned Justices misapplied the law on the effect of Letters of Administration before they are registered on the Certificate of Title. That a purchaser who acquires land from a grantee of Letters of Administration not yet entered on the register cannot acquire good title.

Counsel submitted that there was no evidence in the trial court pointing to any collusion between the appellant and the 2nd defendant to obtain the Letters of Administration to the Estate. Counsel argued that it was an error for Court of Appeal to hold that an Administrator not registered on the title had no authority to sell or to transfer into the names of a third party. That this error contradicted S.180 of the Succession Act which provides:- "The Executor or Administrator as the case may be of a deceased person is his or her legal representative for all the purposes and all the property of the deceased person vests in his or her as such." Counsel further argued that this effectively meant that Letters of Administration will only have effect in respect of registered land when the holder has been registered on to the Certificate of Title pursuant to S.134 of the Record of Appeal. Counsel submitted that this ground would be allowed.

Ground 8



Counsel faulted the learned Justices for misapplying the law on contradictions and inconsistencies and only relying on ExP5 without due regard to other evidence. Counsel contended that the law on inconsistencies and contradictions was stated in the **SCCA Criminal No 27 of 1989, Sarapio Tinkamanyirwe vs Uganda and Twinomugisha Alex & Others v. Uganda SCCA. No 35 of 2002**. He submitted that Courts are enjoined to ignore minor inconsistencies which do not go to the crux of the entire case inter alia; Counsel argued that the Court of Appeal ought not to have relied on the affidavit of the agent of the appellant as the trial Court did not cross examine the deponent.

Ground 9

Counsel submitted that the learned Justices of the Court of Appeal cancelled the Certificate of Title basing on the laxity of DW1. Counsel argued that the trial Court which had the opportunity to see the witness testify held, "*... despite the laxity of DW1 in the purchase transaction, there are no competing claims of ownership or*

encumbrances of occupation on the suit land for which notice would have been provided by a search in the land registry or consultation of the neighborhood...” Counsel supported the trial Court finding that laxity on the part of the appellant is not equal to fraud.

Counsel further submitted that the appellant was resident abroad and wanted to buy land in his Country like many other Ugandans in the diaspora relying on the good will of players at home to get the transaction right among others. Counsel prayed that this Court allows this ground.

Respondents’ submissions.

Counsel for the respondents submitted on grounds 1, 2, 3, and 9 together, grounds 4, 5, 6 and 7 together and ground 8 separately.


Counsel submitted that the appellant exhibited willful blindness in the transaction through his agent Banalya Musisi Paul and failed to satisfy himself that the sale by Leonard Kizito was by the consent of the beneficiaries. His agent Banalya (DW2) never ascertained whether they were any creditors or beneficiaries interested in the suit property as was rightly observed by the learned Justices of the Court of Appeal at Page 696 line 15 of Volume 3 of the Record of Appeal.

The respondents’ counsel submitted that the appellant revealed that there was no independent investigations conducted by him concerning the land he was purchasing. See page 450 para 1450 Vol. 2) of the Record of Appeal. No neighbour was consulted about the land. Counsel argued that the suit land having been registered land, the appellant was duty bound to ascertain the freeness of the land from any claims in order to benefit from the defence of bonafide purchaser for value without notice. Instead he relied on Leonard Kizito the alleged administrator. Counsel pointed out that the learned Justices of the Court of Appeal observed that the appellant never signed any agreement. DW1 signed the agreement on behalf of the appellant. The appellant according to the Record did not know the family of the deceased /respondents parents. He only came to know the family when the suit was filed. See Page 963 paragraph 15 – 35 Volume 3 of the Record of Appeal. Counsel further submitted that the Appellant at page 449 paragraph 15 Volume 2 of the Record of Appeal admitted that he never carried out a search before purchasing the suit land. See also paragraph 1425 Volume 2 of the Record of Appeal. The appellant

testified that after payment for the plot, he handed over the signed transfer form and title to Leonard Kizito who handled the transfer on his behalf. The title was in the names of Emmanuel Mubiru but the appellant never bothered to find out whether Emmanuel Mubiru had children, wives or not, he never looked for Emmanuel Mubiru. Counsel affirmed that the appellant bought the suit land when it was not in the names of the seller Leonard Kizito who was the purported Administrator of the estate of Emmanuel Mubiru.

Counsel submitted that the appellant stealthily avoided any opportunity to know the facts of the land especially its ownership for fear of disclosing the truth. And this amounted to willful blindness. The fear was not innocent from the above.

Counsel relied on **Vivo Energy (U) Ltd vs Lydia Kisitu SCCA No. 07 of 2015** at page 10, with approval of **Sir John Bagaire v. Arnest Matovu CACA No. 07 of 1996**, it was held: *"Lands are not vegetables which bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only of the land but also of the owner before purchase."*

Counsel submitted that the evidence of PW5 Christine Talutambudde Namyenga at Page 442 para 1245 (Volume 2 of Record of Appeal was not shaken in cross examination. 

Counsel contended that failure by the appellant to make inquiries was due to appellant's reluctance of knowing the truth in case he received negative results. Counsel relied on **David Sejjaka Nalima v Rebecca Musoke Court of Appeal Civil Appeal No. 12 of 1985** at page 26 para 2 which held inter alia, "if it be shown that (a purchaser's) suspicions were aroused and that he abstained from making inquiries for fear of learning the truth the case is very different and fraud may be properly ascribed to him"

Counsel further argued that in the case of **Sir John Bagaire v. Arnest Matovu** (supra) the requirement to conduct due diligence include but not limited to registry searches, boundary opening, physical inspection of the property, involvement of local authorities inquiries from beneficiaries if the land is a family property. Counsel finally submitted that further inquiry before the appellant purchased the suit land he would have discovered that the Original Certificate of Title for the suit land

was with the first respondent heir of Emmanuel Mubiru. He submitted that these grounds would fail.

Ground 4, 5, 6 and 7.

Counsel supported the learned Justices finding that the actions of the 2nd Defendant (Leonard Kizito) to transfer the suit property were also the actions of the appellant.

Counsel submitted that learned Justices of the Court of Appeal noted at Page 964 at lines 5 – 20 Vol 3 of the Record of Appeal that the evidence was clear that the property was purchased on behalf of the appellant and two others by DW1. DW1 only considered the Letters of Administration of Leonard Kizito before they were registered on the Certificate of Title as administrator and therefore legal representative of the Estate of Emmanuel Mubiru. The suit land was intended for a project and was being financed by the appellant who was registered as the proprietor on the Certificate of Title of the suit land. This was an illegality. There was no written agreement regarding the sale. Counsel argued that a diligent free of fraud would not pay for such sale. Counsel submitted that the evidence on Record of Appeal at pages 438 para 1120 Volume 2 and the testimony of PW4 and PW5 at page 444 para 5 Volume 2 showed that the residence of DW1, Musisi Paul Banalya, the appellant's agent lived a kilometer away from the family of the late Emmanuel Mubiru. Further counsel submitted that at page 450 paragraph 1450 Volume 2 of Record of Appeal showed that, the appellant's agent DW1 did not inquire from the family members or neighbors about the land. Counsel submitted that DW1 therefore knew the family of the late Emmanuel Mubiru and he was privy to information since his knowledge would defeat his determination to acquire the land. Counsel contended that his lack of inquiring into the status of the land was not innocent apparently but must be attributed to DW1 who was the agent of the appellant. Both the appellant and DW1 his agent wanted the land for their business. Further Counsel submitted that the act of the agent (DW1) of the appellant, whether reckless or negligent binds the appellant (master or principal), which this Court must rely on to nullify the transaction. According to the evidence on record there was neither signature nor mark of the appellant alleged to have acquired the suit land. It was DW1's signature his agent.

Counsel submitted that the appellant and his agent ought to have exercised due diligence prior to any transaction as seen at page 378 para 3 Volume 3 of Record of

named anywhere in the transaction. Counsel further submitted that the appellant stated that they signed the transfer on behalf of Israel Lwanga see page 448 paragraph 1410 Volume 2 Record of Appeal). Counsel reiterated that all the above show that the sale was marred with fraud to deprive the respondents of their land.

Counsel further submitted that DW2 at page 460 paragraph 1765 Volume 2 of Record of Appeal admitted when he stated "we made no agreement with him...I only signed the transfer form for him." The transfer form was signed by Banalya on behalf of Israel Lwanga. According to page 450 paragraph 1465 Volume 2 Record of Appeal. Counsel pointed out further that page 451 paragraph (1) of Volume 1 of Record of Appeal shows that the transfer form was dated 31.7.1990 before the registration of the seller's names which was done on 2/08/1990.

Counsel re-affirmed that the signing by Banalya DW1 on the transfer form as Israel Lwanga as the owner was an act of fraudulent misrepresentation and it contravened S. 146 of the Registration of Titles Act which authorizes delegation by Powers of Attorney in land matters. Counsel relied on the **Fredrick J.K Zaabwe v Orient Bank & 5 others SCCA No. 4 of 2006**, this Court held; *"the conduct of a party calculated to receive whether by a single act or combination or by suppression of truth is dishonest and amounts to fraud."* Counsel asserted that the conduct of DW1, the appellant and Leonard Kizito fell in the ambit of fraud.

Counsel supported the Court of Appeal decision that the Letters of Administration were used as a vehicle by the 2nd defendant (Leonard Kizito) to register the appellant through collusion. Counsel argued that the evidence on record clearly showed that the names of the 2nd respondent (Leonard Kizito) were registered on the title (moreover Special Certificate of Title) on 2/8/1990 when the appellant's name was registered on 30/8/1990. So the learned Justices rightly observed that the appellant bought the property and had the signed transfer forms in his favour before the suit land was registered in the names of the seller. And there were no Powers of Attorney since the registration was done by agreement.

Counsel further argued that failure by the appellant to inquire where the Original Title was and the circumstances that led to DW2 to acquire the Special Certificate of Title point to no innocence of the appellant for lack of notice of any claims.

Appeal quote “DW1 admitted that he never carried out a search in the land registry he never inquired from the only visible neighbor to the suit land. He never carried out any independent investigation but entirely relied on what the 2nd defendant told him that Emmanuel Mubiru was dead and he was the Administrator of his Estate. He denied even consulting the LC Chairman of the area before purchasing of the suit land...” The learned Judge concluded that with that kind laxity on the part of the DW1 in this transaction, I am inclined to believe his evidence that he never consulted the LC1 Chairman. No consultation of LC1 Chairman is more consistent with his lax conduct in the transaction.”

Counsel relied on **David Sejjaka Nalima V Rebecca Musoke (Supra)** page 30 where this Court referred to Real Property 3rd Edn by Megarry and Wade page 129 and observed; “if a purchaser employs an agent such as a solicitor, any actual or constructive notice which the agent receives is imputed to the purchaser. The basis of the doctrine is that a man who empowers an agent to act for him is not allowed to plead ignorance of his agent’s dealings...”

Counsel further argued that the transaction between the appellant and 2nd defendant (Leonard Kizito) was tainted with fraud and illegalities because it was not documented.


Counsel pointed to Exhibit PE6 the land form 6 (Consent to transfer) showed that the purchase price was Shs 1.5m whereas at page 451 Volume 2, the purchase price was stated to be Shs. 8,000,000/=. Leonard Kizito was not the proprietor registered on the land which was being transferred.

Counsel submitted that the Justices of the Court of Appeal observed that, the appellant was only concerned with whether Leonard Kizito had the authority to sell, and yet the suit land had been registered in the names of Emmanuel Mubiru. He never found out whether Leonard Kizito was a beneficiary or trustee, he never inquired about the family of the deceased. And yet the defence case depended on the authority of Letters of Administration (Which had been registered on the title) (page 965 page 20 Vol. 3 of Record of Appeal.

Counsel submitted that Israel Lwanga named on the title as proprietor never signed any document including the transfer form. The evidence on record showed that it was DW1 who without Powers of Attorney signed a transfer and yet he was not

Counsel submitted that if he had bothered to inquire he would have found out that the Original Title was with the heir to Emmanuel Mubiru the 1st respondent. And this title had been adduced in court see page 407 line 210 Volume 2 of the Record of Appeal.

Counsel also submitted further that the evidence shows that the Letters of Administration were used as a vehicle to transfer the property. The Justices of the Court of Appeal at page 970 Volume 3 quoted the trial Judge's observation at page 383 line 15 Volume 2 of Record of Appeal; "it must be noted that among all the property of the deceased, it is only the suit land that the 2nd respondent transferred into his names. He processed the Special Certificate of Title and hastily sold and signed transfer form on 31/7/1990 before he was even registered on the Certificate of Title and yet there was no pressing need for money by the estate. The 2nd 3rd and 4th plaintiffs were vulnerable children hence the need to protect their rights particularly by ensuring that all decisions taken in respect to the suit land were in their best interest as the beneficiaries thereof." Counsel argued that any decision taken to deny the respondents of their right to property is null and void.


Counsel supported the finding of the Court of Appeal that registration of the appellant on the suit land effected on the strength of the Letters of Administration and therefore could not enjoy the same protection as that of the registered administrator. 

Counsel argued that this finding was consequential to the observation that the Letters of Administration were not registered before the sale of the suit land to the appellant. Counsel submitted that the Justices of the Court of Appeal observed that the judgment of the trial court, the subject matter of the appeal clearly showed that there was fraud and fraudulent breach of trust in that, the learned Judge found the (trustee) (legal representative) dishonest. At page 382 line 5 Volume 2 the learned Justices quoted; "my analysis shows that the actions of the 2nd defendant as administrator of Emmanuel Mubiru's estate in respect of the suit land were tainted with dishonesty and indeed more to his benefit than the benefit of the 2nd, 3rd, and 4th plaintiffs or the interest of the suit land to the 1st defendant testify to this." Counsel submitted that having rendered the Letters of Administration invalid he could not pass good title.

Counsel supported the learned Justices finding that as an administrator not yet registered as such on the title had no authority to sell and later transfer the land onto the names of the appellant.

Counsel argued that this ground was misconstrued since S. 25 of the Succession Act provides that, all property in the intestate estate devolves upon personal representative of the deceased upon trust for those persons entitled to the property under the Act. The respondents were the beneficiaries. Counsel submitted that the learned Justices among others stated; it's expressly provided that a person who has Letters of Administration or probate may apply to be registered as proprietor under S. 134 of the Registration of Titles Act, the law provides in mandatory terms that an administrator upon application shall be entered on the title as the proprietor. Section 180 of the Succession Act has to be read in harmony with S. 134 of the Registration of Titles Act. Therefore it is only upon registration that the holder of probate on Letters of Administration is recognized in law as the proprietor of registered land. Therefore Leonard Kizito had no authority and powers to deal in the estate before any registration as proprietor or administrator thereon. Counsel prayed that this ground would fail too.

Ground 8

Counsel supported the Justices of the Court of Appeal finding that the sale transaction took place before or earlier than the 1st defendant obtained Letters of Administration. 

Counsel submitted that the affidavit of Paul Musisi Banalya DW1 which was admitted as ExP5 indicated that he was the 1st respondent to Misc Application No. 064 of 2008 and that he was already in possession of the suit land which he took over in 1985.

Counsel argued that this was a serious contradiction because the same DW1 testified that the transaction happened in 1990. Counsel further submitted that by implication the facts in the affidavit meant that the Letters of Administration granted to Leonard Kizito on 15th October 1987 under Misc Cause No. 113 of 1987 followed acquisition of the suit land by the appellant in 1985. Counsel pointed out that there was no sufficient material to explain the anomaly which cast doubt on the entire transaction of DW1 on behalf of the appellant.

Counsel prayed that the transfer of land to the appellant and Certificate of Title be cancelled under S. 77 of the Registration of Titles Act which provides; “a Certificate of Title entry, removal of encumbrance or cancellation in the register book procured or made by fraud, shall be void as against all parties or privies to the fraud.”

Counsel relied on the definition of fraud in the case of **Fredrick J.K Zaabwe v Orient Bank & 5 others** (supra)

Counsel prayed that this court gives judgment in favour of the respondents and give orders as follows: -

- a) The appeal is dismissed with costs of this court and the courts below.
- b) The judgment and orders of the Court of Appeal be upheld

Submissions in rejoinder

Counsel for the appellant filed submissions in rejoinder which I have considered.

Consideration of the appeal

This is a second appeal. The duty of a second appellate court was long settled in various decisions of this court. It is trite law that as a second appellate court, we are not expected to re-evaluate the evidence on record and it is sufficient to decide whether the first appellate court in approaching its task applied or failed to apply such principles as it ought to have applied. See **Kifamunte Henry v Uganda SCCA No. 10 of 1997** and **Pandya v R [1957] E.A 336**.

It is also trite law that, “where it is shown that they did not evaluate or re-evaluate the evidence or where they are (lower courts) proved to be manifestly wrong on a find of fact the court is obliged to do so and to ensure that justice is properly and timely served” see **Tito Buhingiro v Uganda SCCA No. 8 of 2014**.

S. 7 of the Judicature Act provides: - “For purposes of hearing and determining of an appeal, the Supreme Court shall have all powers, authority and jurisdiction vested under any written law in the court in exercise of the original jurisdiction of which the appeal originally originated.”

Rule 30 (1) of this Court Rules provides: - “Where the Court of Appeal has revoked, affirmed or varied a decision of the High Court acting in its original jurisdiction the court may decide matters of law or mixed law and fact but shall not have discretion to take additional evidence.”

In determining this appeal I shall bear in mind the above principles.

The appellant raised nine grounds of appeal as reproduced in this judgment.

Ground 1


The appellant faulted the learned Justices of the Court of Appeal for holding that the appellant was not a bonafide purchaser for value without notice thereby erring in law. Counsel for the appellant submitted that the learned Justices imputed the actions of DW2 to be actions of the appellant. Further that the Justices did not point to any evidential nexus between DW 1 and DW2. Counsel further submitted that there was no principle of law articulated that could lead to that assumption. On the other hand, counsel for the respondents submitted that the appellant deliberately denied himself of every opportunity to know the facts of the case and particularly the ownership of the suit land he purported to buy. The record showed that the appellant admitted not to have made any search (see Page 449 paragraph 1, Volume 2 of the Record of Appeal. The appellant tried to distance himself from the actions of DW2 by stating that, it was DW1 who handled the transfer on his behalf. The record showed that DW1 had the authority from the appellant and obviously, the actions of DW1 bound him (appellant). The appellant told the trial Court that, the Certificate of Title which DW2 had, was in the names of Emmanuel Mubiru and which was an eye opener, which served as constructive notice to compel the appellant inquire as to who Emmanuel Mubiru was and whether he had children or close relative. The appellant stated according to the Record of Appeal that he never bothered to look for Emmanuel Mubiru, he was merely told that he died. So the appellant did not know whether Emmanuel Mubiru had children or wives.

I have carefully read the Record of Appeal and considered the submissions of both Counsel and the authorities relied on. I have to state that the principle of bonafide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property particularly land. The definition of bonafide purchaser for value without notice is “that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest”. Bonafide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black’s Law Dictionary 9th Edn Page 199)

A bonafide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller's title. See (page 1355 Black Law Dictionary 9th Edn.

It is trite law that a person who relies on the defence of bonafide purchaser for value without notice under section 181 of Registration of Titles Act has the burden to prove he or she acted in good faith.

The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice cover both actual and constructive notice of fraud. In the case of **Jones v. Smith [1841] 1 Hare 43** the Chancery Court held: "*a purchaser has constructive notice of fraud if he had actual notice, that there was some incumbrance and a proper inquiry would have revealed what it was (but if) abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made ... then the defence cannot be available to him or her*" See **Yakobo M. N Senkungu & Others v. Cresencio Mukasa Civil Appeal No 17 of 2014**.

I accept the authority relied on by Counsel for the respondents which held "Lands are not vegetables which are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only on land but also of the owner before purchase." (See **Vivo Energy (U) Ltd v. Lydia Kisitu SCCA No 07 of 2015** at Page 10 which cited with approval **Sir John Bagaire v. Arnest Matovu CA No 07 of 1996**) 


There is overwhelming evidence on record that DW1 was an agent of the appellant. The appellant stated clearly that he handed over the transfer form and the title he saw that, it was not in the sellers names to Leonard Kizito to handle the transactions as the Administrator of the Estate. This was registered land which ought to have prompted him not to be satisfied by just Letters of Administration.

It is a principle of the Law of Agents that, "A person who performs an act through another is equivalent to the performance of the act of a principal himself ... In this all the acts of the agent are considered as those performed by the principal. In the instant case it was the appellant financing the transaction and there is overwhelming evidence that DW1 was his agent, needless to say that there was no dispute about DW1 (Banalya) being the agent of the appellant.

So obviously the appellant was the principal. There is no evidence on record showing that the appellant denied that he never authorized DW1 or DW2 actions. There was no evidence that he distanced himself from their actions. So the learned Justices of the Court of Appeal cannot be faulted. But most importantly the appellant had both actual and constructive notice as already pointed out in this judgment.

Before I take leave of this ground, I am compelled to say that the Latin maxim which state *Vigilantibus et non dormientibus jura subveniunt* which means Law will help only those who are vigilant with their rights and not one who sleeps. Those who are careless with their rights cannot be assisted by law. See (Website www.lawcommunity.in)

Also in the Indian case of **Riajendora Singh v. Sanuta Singh [1973] 2 SCC 705, Supreme Court of India** held that; “applying the maxim *Vigilantibus et non dormientibus jura subveniunt* means the laws came for the rescue of those who are vigilant not sleepy.”

I concur with the above decision much as it is a persuasive authority, it reinforces the principle of bonafide considering the evidence on record in respect of the appellant’s failure to carry out due diligence. Therefore the Court of Appeal Justices cannot be faulted. The appellant was not a bonafide purchaser for value without notice. This ground would fail. 

Ground 2

Counsel for the appellant faulted the learned Justices of the Court of Appeal for holding that the actions of DW2 Leonard Kizito were actions of the appellant.

While on the other hand learned Counsel for the respondents supported the Court of Appeal finding.

I have read carefully the Record of Appeal, I have considered both counsel submissions and the authorities relied on. The evidence on record shows clearly that the appellant admitted that he never carried out a search before purchasing the suit land. The appellant when he paid the purchase price for the suit land he handed over the signed transfer form (moreover signed by DW1) to Leonard Kizito (DW2) plus the Certificate of Title who handled the transfer on his behalf. The above shows that whatever Leonard Kizito did had been authorized by the appellant, so the appellant

cannot turn round and deny the actions of DW2. Also considering what I discussed on ground one this ground has no merit and it would fail.

Ground 3

Counsel for the appellant faulted the Justices of the Court of Appeal for finding that the actions of DW1's knowledge of DW2 subsequent actions on the title were that of the appellant.

It is on record that DW1 (Banalya) and Leonard Kizito were working on behalf of the appellant with his authority and knowledge. The appellant neglected to carry out his own independent search on the land he was purchasing and relied entirely on the representations of DW1 and DW2. Even where he had constructive notice that the title of the land he was buying was not in the names of the purported vendor DW2 he never cared but just paid the money. Lack of diligence on the appellant's part is clearly indicated, at page 448 of the Record of Appeal Volume 2 the last paragraph from second last sentence he said in his evidence. *"I never knew the family of Emmanuel Mubiru, but that name was on the Certificate of Title... I only knew about Mubiru's family when this suit came up."* Then at Page 449 paragraph 1425 Volume 2 of the Record of Appeal he stated; *"after I signed the transfer Leonard Kizito (DW2) is the one who handled the transfer,* and the appellant categorically stated that Leonard told him that Emmanuel Mubiru was dead and that DW2 never told him that, he was the son of Emmanuel Mubiru. He stated *"I never bothered to find out whether Emmanuel had children"* and he admitted his lack of vigilance in pursuing his rights.

I am unable to fault the learned Justices of the Court of Appeal. This ground would fail too.

Ground 4

The learned Counsel for the appellant faulted the learned Justices for holding that the actions of the 2nd defendant (Leonard Kizito) to transfer the suit property were also the actions of appellant.

I have already discussed the substance of this ground in resolving grounds 1, 2, and 3 of this appeal. The appellant was the principal in the transaction and he financed the same and he had authorized Leonard (DW2) and Banalya (DW1) to handle the process so he was the one doing it as already discussed. I accept the submission of

Counsel for the respondent and the case relied to the effect that, *"if a purchaser employs such agent as solicitor, any actual or constructive notice which the agent receives is imputed to the purchaser. The basis of the doctrine is that a man who empowers an agent to act for him is not allowed to plead ignorance of his agents dealings ..."* See **David Sajjaka Nalima v. Rebecca Musoke (Supra) Page 3 and Real Property 3rd Edn by Magarry & Wade.**

I find no merit in this ground it would fail too.

Ground 5

Counsel for the appellant faulted the learned Justices of the Court of Appeal for holding that the Letters of Administration were used as a vehicle by the 2nd respondent (DW2) to register the appellant through collusion. Counsel argued that there was no evidence on record to point to collusion while on the other hand counsel for the respondents supported the finding of the Court of Appeal.

I read carefully the Record of Appeal and it is clear that it could not have been by accident that despite the constructive and actual notice as discussed earlier in this judgment that the appellant failed to inquire why it was the Special Certificate of Title DW 2 showed instead of the Duplicate Certificate of Title. It could not have been by accident that he neglected to find out who Emmanuel Mubiru was and whether the vendor DW2 was a child of Emmanuel Mubiru inter alia. The Duplicate Certificate of Title was admitted in evidence and was on record as seen at page 407 line 210 of Volume 2 of the Record of Appeal. It was Exp3 (photocopy) and was in the names of Emmanuel Mubiru who was registered on 25th Sept. 1975.

There is overwhelming evidence that the Letters of Administration were used as vehicle to transfer the Title into the appellant's name. The trial court which heard the case in its original jurisdiction had this to say, inter alia, *"...Leonard Kizito processed the Special Certificate of Title hastily, sold and signed the transfer form on 31/7/1990 before he was registered on the Certificate of Title and the appellant was entered on Title on 2/8/1990, and yet there no pressing need for money by the estate. The 2nd, 3rd and 4th plaintiffs were vulnerable children hence the need to protect their rights."*

It is trite law that in order for someone to collude with someone, it is not necessary to have a meeting and agree, but the actions show. The principle of common

intention is in spot to the facts of this case and hence applicable. S. 20 of the Penal Code Act. In the case of **Simbwa v Uganda, SCCR Appeal No. 23 of 2012**, it was held; **“In order to have the doctrine of common intention, it must be shown that the accused was seen with the actual perpetrator of the crime with a common intention to pursue a specific unlawful purpose, which led to the commission of the offence...unlawful common intention does not imply a pre-arranged plan. Common intention may be inferred from the presence of the accused person, their actions and the omission of any of them to disassociate himself from the assault.”**

The evidence on record is consistent or in tandem to the doctrine as above stated. The doctrine in effect is that, “when two or more persons form a common intention to act together and an offence is foreseeable outcome of that act, each of them is deemed to have committed that offence.

This ground would fail.


Ground 6

Counsel for the appellant faulted the learned Justices of the Court of Appeal for holding that the appellant’s registration on title of the suit land on the strength of Letters of Administration, the appellant could not enjoy the same protection as that of the registered administrator. Counsel argued that this contradicted S. 180 and 192 of the Succession Act which have the effect of vesting the deceased property in the Administrator upon the death of the deceased. Counsel relied on **Marion Nanteza and Others v. Nasani Rwamunono, Court of Appeal Civil Appeal No 28 of 2013** (unreported) where it was held that a person that had validly received Letters of Administration will still be legally empowered to deal with the deceased estate even before he or she is registered as proprietor. While Counsel for the respondent supported the Court of Appeal finding.

S. 180 of the Succession Act provides; **The executor or administrator as the case may be of the deceased person is his or her legal representative for all purposes and all the property of the deceased person vests in him or her as such.**

S. 192 provides; **Letters of Administration entitle the administrator to all rights belonging to the intestate as effectually as if the administrator had been granted at the month after his or her death.**

S. 134(1) of the Registration of Titles Act provides: - **Upon the receipt of an office copy of the probate of any will or of any Letters of Administration or of any order by which it appears that any person has been appointed the executor or administrator of any deceased person, the registrar shall, on an application of the executor or administrator to be registered as proprietor in respect of any land, lease or mortgage therein described, enter in the Register Book and on the duplicate instrument, if any, when produced for any purpose, a memorandum notifying the appointment of the executor or administrator and the day of the death of the proprietor when the day can be ascertained, and upon that entry being made that executor or administrator shall become the transferee and be deemed to be the proprietor of such land, lease or mortgage, or of such part of it as then remains unadministered, and shall hold it subject to the equities upon which the deceased held it, but for the purpose of any dealings therewith the executor or administrator shall be deemed to be the absolute proprietor thereof.**

I have pointed out in this judgment that the provisions 180, 192, 25 and 2(a) of the Succession Act and 134 of the Registration of Titles Act have to read together not in isolation of each other to know the intention of the legislature. So we have to be mindful of the object of the Constitution in establishing a law for the administration and management of the deceased persons who die intestate. Article 247 of the Constitution says it all. 

The intention of the Succession Act made under Article 247 (b) of the Constitution is “to ensure that the interests of all beneficiaries are adequately protected”. S. 134 of the Registration of Titles Act is instructive and emphatic. It provides for succession upon death inter alia... **“the registrar shall, on an application of the executor or administrator to be registered as proprietor ... and upon that entry being made that executor or administrator shall become the transferee and be deemed to be the proprietor.”** The authority counsel for the appellant relied on cannot be applicable. The evidence on record is clear that Leonard Kizito had not been entered as proprietor when the transfer was executed. Besides the transfer was tainted with fraud.

The evidence on record shows that there was clear fraud, breach of trust and the trial Judge found that Leonard Kizito, the purported legal representative who the learned

Judge referred to as trustee was dishonest. At page 382 line 5 Volume 2 of the Record of Appeal, the Judge of the High Court (trial Court) stated; *"My analysis shows that the actions of the 2nd defendant in respect to the suit land were tainted with dishonesty and intended more for his own benefit than for the benefit of the 2nd, 3rd and 4th plaintiffs or the interest of the estate. His conduct before, during and after transfer of the suit land into the names of the 1st defendant (appellant) testify to this..."* The learned Judge rejected counsel for the 2nd defendant's reliance on S. 270 of the Succession Act, the learned Judge said; *"My strong view however is that powers must be exercised diligently, in the interest of the estate and for the benefit of the beneficiaries in whose trust the administrator holds the deceased property."* She relied on the case of **Nabanoba Desiranta & another v Kayiwa Joseph & another Land Division Civil Suit No. 497 of 2005.**

For purposes of this appeal, I shall reproduce the following holding in the above case, "Secondly transfer into the executor or administrator's name does not mean that the land devolves upon the personal estate of the executor or administrator, such that he/she can do whatever he wishes with the land without recourse or care to the interest of other beneficiaries. His or her duty is to hold the land in trust for the beneficiaries..."

I have to point out that a Legal Representative or Executor of a deceased person's estate property devolves to him or her upon trust for the beneficiaries and those entitled under the law. He or she is a representative in right of the deceased person and not in his or her own personal right. It therefore follows that a personal representative to give a good title as transferee he or she must have acted in accordance with the law. In **Silver Byaruhanga v Fr. Emmanuel Ruvugwaho & Rudeja SCCA No. 9 of 2014**; it was held inter alia that; "the administrator gets registered as such to exercise power to administer the estate of the deceased person not for his own but upon trust for the estate beneficiaries". Citing Halsbury Laws of England paragraph 281 in the case of **Jonah Senteza Kanyerezi & another v Chief Registrar in Misc Application No. 919 of 1997** while interpreting S. 143 then which is S. 134 now, the court said that the legal representative is duty bound to consult or make the beneficiaries know in order for him to give good title.

The trial Judge at page 387 Record of Appeal the last paragraph which stretched to page 388 stated that **"all in all I find that the 2nd defendant acquired the suit land**


fraudulently and mismanaged the estate. He also never filed an inventory since he obtained the Letters of Administration and he never distributed the deceased property to the beneficiaries. The Letters of Administration shall accordingly be cancelled. Issue no. 2 is answered in the affirmative. The issue no. 2 was, “whether the 2nd defendant acquired the suit land fraudulently”.

In all honesty and considering the evidence on record as a whole, there is no way the argument of counsel for the appellant, that, the decision of the Court of Appeal contradicted the provisions of S. 180 and S. 192 can succeed. The Court of Appeal cannot be faulted.

This ground would fail.

Ground 7

Counsel for the appellant faulted the learned Justices of the Court of Appeal for holding that the 2nd defendant as an administrator not registered as such on title had no authority to sell and later transfer the land into the names of the appellant. Counsel argued that the evidence showed that the suit land was transferred from Emmanuel Mubiru, then transferred to Leonard Kizito and then the appellant.

Counsel for the respondents supported the learned Justices of the Court of Appeal finding. Counsel for the respondent argued that S. 25 of the Succession Act is to the effect that all property in the intestate estate devolves upon personal representative of the deceased estate upon trust for the persons entitled to the property under the Act. And in this case in my view the beneficiaries included the respondents in this appeal. 

I have discussed partly this ground in resolution of ground 6 but for emphasis I would state that the learned Justices of the Court of Appeal stated correctly that; *it's expressly provided that a person who has Letters of Administration or probate may apply to be registered as proprietor under S. 134 of the Registration of Titles Act. The provision provides specifically and in mandatory terms that, an administrator or executor upon application shall be entered on the title as proprietor. Section 180 of the Succession Act has to be read together with S. 134 of the Registration of Titles Act.*

As such it's imperative that it is only upon application to be registered that a holder of the Letters of Administration or probate is recognized by the law as a proprietor

and is a transferee as such. This in my view means that without being entered on the register as proprietor as such you cannot give good title or be a transferee.

It goes without saying that when Leonard Kizito signed the transfer forms on 30th /7/1990 he had no authority and power to deal in the estate property to sale and transfer as such.


This ground would fail.

Ground 8

Counsel for the appellant faulted the learned Justices of the Court of Appeal for misapplying the law on contradictions and inconsistencies. And their overly reliance on Exp5 without due regard to other evidence on record contrary to the fact that the Letters of Administration were obtained long after the sale to the appellant.

Counsel further submitted that the learned Justices overlooked the evidence of transfer and the memorial on the relevant Certificate of Title.

Counsel for the respondents supported the finding of the Court of Appeal Justices that the transaction took place before or earlier than the 2nd defendant obtained the Letters of Administration.

The affidavit of Banalya Paul DW1 which was Exp5 was admitted in evidence and it showed that he was the 1st respondent in Misc Application No. 064 of 2008 and that he was already in the suit land which he took over in 1985. 

Counsel for the respondents argued that this was a serious contradiction as the same deponent DW1 stated that the transaction took place in 1990. Counsel submitted that from those facts the implication is that the Letters of Administration which DW2 purported to get in 1987 under Misc Cause No. 113 of 1987 followed acquisition of the suit land by the appellant in 1985.

I have considered the submissions of both counsel and read carefully the Record of Appeal. Both the affidavit Exp5 and DW1's testimony were on oath and there was no explanation given why there was such sharp contradiction. The effect of contradictions is that, they depict untruthfulness on what is being testified about. With those grave contradictions DW1 testimony could not be swept under the carpet as counsel for the appellant wanted this court to do.

The law on contradictions and inconsistencies was long settled in various decisions of this court as follows: - *“grave inconsistencies if not satisfactory explained will usually result in the evidence being rejected. Grave inconsistencies or contradictions is the one that goes to the root of the case.”* See **Mujuwe Joshua v Uganda HCT 4 CR CM. 0033 of 2011.**

The inconsistencies or contradictions on when the appellant bought the land cast a lot of doubt on the date of purchase. The only inference I would draw is that the appellant and the other players DW1 and DW2 could have stealthily transacted in this land before the death of Emmanuel Mubiru since there was no explanation to justify the grave contradiction.

From the analysis of the evidence on record, the assumption that the parties involved were merely regularizing an already flawed process is inevitable. And the truth of the matter is that DW2 dealt in the property of the estate before he obtained the Letters of Administration. This gives an explanation as to why he never applied to be entered as proprietor to enable him be a transferee. I find no merit in this ground and it would fail.

Ground 9

Counsel for the appellant faulted the Justices of the Court of Appeal for ordering cancellation of Certificate of Title on the basis of DW1's laxity to make inquiries over the suit land.

Counsel for the appellant argued that, there were no encumbrances on the land and therefore a search in the land registry would not have revealed anything. Counsel also argued that lack of making inquiries by the agent of the appellant was not proof for fraud. Counsel also argued that Leonard Kizito DW2 who transferred the land had Letters of Administration of the deceased's estate.

Counsel for the respondents supported the finding of the learned Justices of the Court of Appeal. Counsel submitted that the appellant stealthily avoided any opportunity to know the truth surrounding the suit land. That the appellant himself admitted failure to carry out any investigations in the registry or otherwise. Further that this was a serious omission and there is no way he can benefit from his own wrong.

The Certificate of Title was ordered to be cancelled correctly by the Court of Appeal and laxity is an additional reason for cancellation. The evidence on record as discussed in this judgment shows that the title had been obtained by fraud. Accordingly under S. 77 of the Registration of Titles Act, the title was procured by fraud and it is void against all parties or privies to the fraud. I cannot fault the learned Justices of the Court of Appeal for having ordered cancellation of the title. The learned Justices of the Court of Appeal correctly did so.

Ground 9 fails.

All grounds of the appeal have failed for lack of merit.

In the result, the appeal is dismissed in the following terms: -

- 1) Appeal dismissed.
- 2) Judgment and orders of the Court of Appeal upheld.
- 3) Costs of this Court and the Courts below awarded to the respondents.

Decision of Court: -

All members of the Coram concurred with the decision in the lead judgment of Mwendha, JSC. The decision is that since the appeal failed on all the nine grounds, the appeal is dismissed in the terms and orders proposed therein.

Costs of this Court and the Courts below awarded to the respondents.

Dated at Kampala this28th.....day of February.....2024.

..........

Mwendha

Justice of the Supreme Court

5
THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 018 OF 2022

10 [CORAM: MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE,
MUSOKE, MUSOTA, JJSC.]

BETWEEN

15 ISRAEL LWANGA:.....APPELLANT

AND

1. LEONARD MUBIRU

2. JULIAN NAMUBIRU

3. LYDIA NAMUTEBI

20 4. JOAN NANSUBUGA:.....RESPONDENTS

(Appeal from the decision of the Court of Appeal (Madrama, Mulyagonja and Mugenyi, JJA) in Civil Appeal No. 78 of 2016 dated 5th August, 2022)

25 **Representation**

The Appellant was represented by Counsel Bernard Mutyaba and Alex Kamukama while the Respondents were represented by Counsel Kigenyi Emmanuel.

Case summary:

30 **Section 134 RTA (Cap 230)** - It is only upon registration on the certificate of title that a holder of Letters of Administration is considered a proprietor of the land. Consequently, where the property being dealt with is land registered under the RTA, the power granted to an Administrator by the Succession Act, to dispose of the property

5 of the deceased, can only be exercised upon the Administrator being registered on the certificate of title.

Land law - fraud - The omission or failure to exercise due diligence by a purchaser or their agent can be regarded as 'willful blindness' and thus a form of fraud.

10 **Land transactions – knowledge of the existence of a trust/unregistered interest** – mere knowledge that an unregistered interest/trust exists is not enough to impute fraud on a purchaser. But where the purchaser has knowledge that the trust is being broken or that the owner of the unregistered interest is being
15 improperly deprived of it by the transfer of property to him, the purchaser loses the protection offered to a bonafide purchaser for value without notice.

Agency in land transactions – where a purchaser employs an agent to act on their behalf and the agent becomes aware of the
20 fraudulent conduct of a vendor in his dealing with the property, knowledge of fraud by the agent is imputed on the purchaser.

Bonafide Purchaser - The onus of establishing a plea of bonafide purchaser lies on the person who sets it up.

25 **JUDGMENT OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC.**

Facts

The facts of this appeal as accepted by the lower court are that, the Appellant purchased land comprised in Block 396 Plot 37 at Kajjansi, Bweya, Busiro (hereinafter referred to as the suit land). The
30 seller was a one Leonard Kizito.

The 2nd – 4th Respondents are children of the late Emmanuel Mubiru who was the registered proprietor of the land, prior to Leonard Kizito becoming a registered proprietor in the capacity of Administrator of the estate of deceased Emmauel Mubiru Emmanuel Mubiru
35 died testate in 1987. The 1st Respondent is a paternal uncle to the 2nd -4th Respondents and a young brother of the deceased proprietor.

Before his demise, Emmanuel Mubiru, in his will bequeathed the suit land to the 2nd-4th Respondents who were minors at the time.

10 In 2005, when the 2nd, 3rd and 4th Respondents had attained majority age and attempted to register the suit land in their names, they found that Leonard Kizito had registered himself as proprietor of the suit land in 1990 and had subsequently transferred it to the Appellant. They lodged a caveat on the suit land and instituted High Court Civil Suit No. 64 of 2008 against the Appellant and Kizito Leonard for a cancellation of the transfer on the premise that the
15 person who had sold the land (Leonard Kizito) was fraudulent. The Respondents also sought a declaration that Leonard Kizito had unlawfully obtained a grant of Letters of Administration for the estate of the deceased proprietor. The Respondents also sought for an order of general damages.

20

The learned trial Judge found in favour of the Appellant, that he was a *bonafide* purchaser for value without notice. The Judge held that despite the Appellant's laxity in the purchase transaction, evidenced by his failure to carry out a valuation or survey of the land,
25 lack of consultation with the Local Council 1 chairman and the failure to conduct a search in the land registry before purchase of the land, there were no competing claims of ownership or encumbrances or occupation of the suit land for which notice would have been provided by a search in the land registry or consultation of the
30 neighbours.

Furthermore, the learned trial Judge held that the Appellant purchased the suit land from Leonard Kizito who had power to sell by virtue of being the Administrator of the estate of the deceased. The Judge also held that fraud had not been proved against the Appellant
35 to the required standard, and therefore, he was a bona fide purchaser for value without notice of any defect in title.

The Respondents being dissatisfied with the Judgment and orders of the learned trial Judge appealed to the Court of Appeal. The Court of

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5 Appeal overturned the decision of the Trial Judge and found in favour of the Respondents. The court held that the Appellant was not a *bonafide* purchaser for value without notice.

Being dissatisfied with the Court of Appeal decision, the Appellant lodged an appeal in this Court on the following grounds:

- 10 **1. That the learned Justices erred in law in holding that the appellant was not a bonafide purchaser of the suit property for value without notice of defect in title on account that title to the suit property. (sic)**
- 15 **2. That the learned Justices erred in law in holding that the actions of Leonard Kizito (the Administrator of the estate of the late Emmanuel Mubiru) were those of the appellant.**
- 3. That the learned Justices erred in law in attributing DW1's alleged knowledge of Leonard Kizito's subsequent actions over the title for the suit land to the appellant.**
- 20 **4. That the learned Justices erred in law when they held that the action of the 2nd defendant (Leonard Kizito) to transfer the suit property were also the actions of the appellant.**
- 5. That the learned Justices erred in law in holding that the letters of administration were used as a vehicle by the 2nd respondent (Leonard Kizito) to register the 1st respondent (appellant) through collusion.**
- 25 **6. That the learned Justices erred in law in holding that the appellant's registration on the title to the suit land having been effected on the strength of letters of administration, he cannot enjoy the same protection as that of the registered Administrator of the estate.**
- 30 **7. That the learned Justices erred in law in holding that the 1st (sic) defendant as Administrator not yet registered as such on the title had no authority to sell and later on transfer the and**
- 35 **into the names of the appellant.**

5 **8. That the learned Justices misapplied the law on**
inconsistencies/contradictions in overly relying on the
contents of exhibits P5, without due regard to other pieces of
evidence, to the contrary, hence arriving at a wrong decision
10 **that the sale transaction took place earlier before the 1st**
defendant obtained letters of administration.

9. That the learned Justices erred in law when they ordered for
the cancellation of the appellant's title basing on DW1's laxity
in making inquiries over the same even when doing so would
not have revealed any fraud.

15 **Prayers:**

The Appellant prayed that this Court makes the following orders:

i. The appeal be allowed.

20 **ii. The appellate Justices' judgment and orders be set aside and**
be substituted with an order declaring the appellant as a
bonafide purchaser of the suit property and dismissing the
suit by the respondents against him.

iii. The respondents pay the costs of this appeal and those in the
Court below.

Court's consideration

25 **Grounds 1,2,3,4 and 9**

The parties' respective submissions will be reproduced within the Court's consideration of the grounds of appeal.

30 Grounds 1,2,3,4 and 9 will be dealt with together because they all rotate around the question: *whether the Appellant is a bonafide purchaser for value without notice of the defects in the seller's (Leonard Kizito) title and thus acquired an indefeasible title to the suit property.*

In **David Sajjaaka Nalima vs. Rebeca Musoke**¹ this Court stated that it is well settled that the onus of establishing the plea of a

¹ SCCA No.12 of 1985

5 *bonafide* purchaser lies on the person who sets it up. The Court in that case went to say that, it is not enough to simply state that one is a *bonafide* purchaser by proving purchase for value and leaving it to the plaintiff to prove **notice** if he can.

10 It follows from the above authority that for the plea of *bonafide* purchaser to succeed one must not only prove purchase for value but also lack of **notice** – actual or constructive – of fraud at the time of purchase.

Section 136 of the **Registration of Titles Act (RTA)** protects a registered proprietor against notice of trusts as follows:

15 **Purchaser from registered proprietor not to be affected by notice.**

20 **Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land, lease or mortgage shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which that proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice actual or constructive**
25 **of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.** (My emphasis)

30 The relevant part of the above provision for resolving the appeal before this Court is to the effect that, except in the case of fraud, no person proposing to take a transfer from the proprietor of any registered land shall be affected by notice of any trust. Furthermore, the knowledge that any such trust is in existence shall not **of itself** be imputed as fraud. Further still, the purchaser is not required to
35 inquire or ascertain the circumstances in which the proprietor or any previous proprietor thereof was registered. The concluding words of the provision are critical in giving meaning to the Section - the

5 knowledge that any such trust or unregistered interest is in existence
"shall not of itself be imputed as fraud."

10 The Section *inter alia* deals with cases in which a person purchases property from a registered proprietor who holds the said property as a trustee and the purchaser is aware that the vendor is but only a trustee.

15 In the event that the trustee is being fraudulent (to the detriment of the beneficiaries), the fact that the purchaser has knowledge that the property is subject to a trustee-beneficiary relationship does not of itself impute the fraud of the vendor on the purchaser - knowledge of a trust is not 'of itself to be imputed as fraud'. Dishonesty must not be assumed **merely** by reason of knowledge that a trust is in existence. But it is noted that the concluding words do not say that **knowledge** of a fraud is not to be imputed as fraud." What the provision demands is that for the rights of the purchaser to be
20 affected by the vendor's fraud, some other factors other than/in addition to knowledge must exist or surround the purchase, which factors would imply dishonesty on the part of the purchaser.

25 In **Locher vs. Howlett**², Richmond J interpreted a New Zealand provision which is in *pari materia* with **Section 136** of the **RTA** as follows:

30 *It may be considered as the settled construction of this enactment that a purchaser is not affected by knowledge of the mere existence of a trust or unregistered interest, but that he is affected by knowledge that the trust is being broken, or that the owner of the unregistered interest is being improperly deprived of it by the transfer under which the purchaser himself is taking.* (My emphasis)

Looking at some of the jurisprudence back home, the courts' holdings have not been different from the interpretation given above.

In **John Katarikawe v W. Katwiremu & Ors**³ it was held that:

² (1894) 13 NZLR at 584.

³ (1977) H.C.B 187.

5 *If a person procures registration to defeat an existing unregistered interest on the part of another person of which he is proved to have knowledge, then such a person is guilty of fraud.*

The above position was followed by this Court in the decision of **David Sajjaaka Nalima vs. Rebecca Musoke (supra)**. While interpreting
10 Section 145 of the RTA enacted in 1963 (which is now Section 136 of the RTA, Cap 230), the Court stated that:

“... the object of this Section and indeed the entire Act is to save persons dealing with registered proprietors from the trouble and expense of going behind the register in order to satisfy themselves of
15 its validity, and thus simplify and expedite the process of title. But the Section cannot be called in aid in cases of fraud. The Section stipulates that mere knowledge of unregistered interest cannot of itself be imputed as fraud. Therefore ... where this knowledge is supported by other circumstances, it may amount to fraud. (My emphasis)

20 From the above jurisprudence, the first question which this Court must answer is: *did the Appellant know that Leonard Kizito, the vendor was holding the property as a trustee?*

It is trite that Letters of Administration grant the Administrator of an estate a legal title to the property of a dead person in trust for the
25 beneficiaries. This principle is captured in **Section 25** of the **Succession Act** which provides that:

All property in an estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.

30 The Appellant testified that he purchased the property from Leonard Kizito because although the land was not at the time registered in Kizito's name, Kizito had Letters of Administration. I therefore answer the question in the affirmative – the Appellant had notice that the seller was a trustee.

35 And the next question must be: *are there circumstances which would imply dishonesty on the Appellant's part as a purchaser which take him out of the ambit of a bonafide purchaser?*

5 I take judicial notice of the fact that when buying land in Uganda, a prudent purchaser or their agent is expected, before buying the land, to make a physical visit to the suit land as well as engage the community and Local Council Committee members. Thus, a prudent would-be purchaser who is shown a title to land where the vendor is
10 but an Administrator/executor of an estate of a deceased person would make inquiries beyond the title. I doubt whether the framers of the Act and specifically **Section 136 (supra)** ever intended to encourage lack of prudence. Lands are not vegetables that are bought from unknown sellers. "Lands are very valuable properties and
15 buyers are expected to make thorough investigations not only of the land but also of the seller before purchase".⁴

The Appellant's agent (DW1- Banalya Paul Musisi) testified as follows:

20 *"Before I bought the land I did not bother to look for Emmnauel Mubiru. Leonard Kizito told me that Emmanuel Mubiru was dead. He did not tell me that he was a son of Emmanuel Mubiru.*

I never did any independent investigation concerning the land apart from what Leonard Kizito told me. I never asked any neighbours about the land."

25 And during cross-examination Banalya Paul Musisi testified that by the time he signed the transfer forms, the suit land was not in the names of the seller- Leonard Kizito. The name on the certificate of title was Emmanuel Mubiru (the deceased proprietor).

30 Furthermore, at page 442 of the Record of Appeal is the testimony of PW5, Norah Namyanya Talutambudde, who testified that she was, at the time, the treasurer of the Local Council 1 of Bweya, Kajjansi (where the suit land is located). The witness testified that in the early 1990s, there was a gentleman who asked her husband in her
35 presence whether the suit land was on sale, whereupon her husband informed him that it belongs to the deceased. Later on, she saw the

⁴ Per G. Okello J. A. (as he then was) in the case of John Bagaire Vs Ausi Matovu (C.A. 7 of 1996)

5 land being graded but did not know who acquired it. She also testified that from the Local Council records, the Committee never made or participated in the sale of the said land. Although the Appellant challenged PW 5's credibility, PW5 brought a Voter's card to show that she was a resident of the area where the suit land is
10 located. And as already indicated, the Appellant's agent himself testified that he never made any inquiries from the authorities. In regard to this particular detail, the testimony of each witness is at par with the other.

15 I find, just like the Trial Judge did, that the Appellant did not exercise due diligence before buying the suit land. And indeed, the Court of Appeal also made a similar finding.

Failure or neglect to exercise due diligence by a purchaser or their agent can be regarded as 'willful blindness'. And in **Vivo Energy (U) Ltd (formerly Shell (u) Ltd vs. Lydia Kisitu**,⁵ Tumwesigye, JSC
20 cited with approval the case of *Pyramid Building Society (in Liquidation) vs. Scorpion Hotels (1997) VIC, CA* where it was stated that, "*willful blindness may amount to fraud.*"

Fraud has been defined in a plethora of cases. **Kerr** ⁶ states that civil courts of justice have always avoided hampering themselves by
25 defining or laying down as a general proposition what constitutes fraud. Fraud is infinite in variety with the ever dynamic operations of mankind. Thus, Kerr defined fraud in the contemplation of a civil court of justice to include all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence,
30 justly reposed, and are injurious to another, or by which an undue or unconscientiously advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or
35 inequitable means, of what he is entitled to. [See also: **Fredrick JK**

⁵ SCCA No.7 of 2015.

⁶Kerr on the Law of Fraud and Mistake, 5th edition, part 1 page 1.

5 **Zaabwe vs. Orient Bank and 5 Others⁷ and Kampala Bottlers Ltd vs. Damanico (U) Ltd⁸**

It must be pointed out that notice of fraud can be either actual or constructive in nature. It is constructive notice which is often difficult to sight in land transactions.

10 Fraud is a question of fact and law.⁹ The trial court made a finding that Leonard Kizito's application for letters of administration was fraudulent. The finding was not appealed against. Whether or not the fraud can be imputed on the Appellant is a fact-specific question. I will therefore, in answering the question poised above consider the
15 evidence on record that the Court of Appeal considered and evaluated before reaching its conclusion. I will make reference to all the facts and circumstances of the transaction through which the Appellant obtained registration on the title of the suit land.

The facts on record show that the Appellant/his agent did not carry
20 out due diligence before purchasing the suit land. The Appellant's agent had knowledge that the title was in another person's name and not the seller. This would naturally have led the Appellant's agent to inquire more about the seller's authority to sell the land but he ignored to do so. The omission to make necessary inquiries can be
25 viewed as willful blindness and thus a form of fraud. The consequences of the omission in the case before us lends credence to the importance of exercising due diligence in transactions involving estates of deceased persons to ensure that all relevant parties and potential beneficiaries are aware of dealings in the property.

30 I am therefore in agreement with the Court of Appeal's conclusion that, the Appellant's agent is deemed to have had notice that the property belonged to the estate of the deceased. The willful blindness of the agent is visited on the Appellant.

⁷ SCCA No. 141 of 2006.

⁸ SCCA No. 22 of 1992.

⁹ Yakobo M.N.Senkungu vs. Cresensio Mukasa, Supreme Court Civil Appeal No. 17 of 2014.

- 5 Therefore, it is no defence for the Appellant to argue in ground 9 of the appeal that learned Justices erred in law when they ordered for the cancellation of the appellant's title basing on DW1's laxity in making inquiries over the land even when doing so would not have revealed any fraud.
- 10 In **Fredrick J K Zaabwe vs. Orient Bank and 5 Ors (supra)**, this Court recognized that constructive notice/knowledge of fraud of an agent can be imputed on the actual purchaser and that knowledge can impeach the title of that purchaser such that he can no longer be a bona fide purchaser.
- 15 And in **David Sejjaka Nalima vs. Rebecca Musoke (supra)** this Court held that: *where a purchaser employs an agent, to act on his behalf, the notice he receives, actual or constructive, is imputed on the purchaser.*

20 I must also state that my understanding of **Section 136** of the **RTA** is that it affords protection to a purchaser who buys from a registered proprietor. And as already noted in this judgment, the Appellant bought the suit land from a person who was yet to be registered on the certificate of title as proprietor.

25 Arising from the above, I hold that the Appellant is not a *bonafide* purchaser for value without notice deserving the protection of **Section 176** of the **RTA** which prohibits ejectment of a registered proprietor.

Therefore, Grounds 1, 2, 3, 4 and 9 of the appeal fail.

30

Grounds 5,6,7 and 8

35 The essence of grounds 5, 6, 7 and 8 fault the Court of Appeal Justices for misapplying the law on Letters of Administration. The Appellant argued under grounds 5, 6 and 7 that the learned Justices reached a wrong conclusion by finding that a purchaser who acquires

5 land from a grantee of Letters of Administration not yet entered on the register cannot acquire good title.

DW1 (Banalya Paul Musisi) - who was the Appellant's agent in the purchase of the suit land - testified that, *although Leonard Kizito was not the registered proprietor, he bought land from him because he was*
10 *satisfied that he had powers to sell. This is because he had documents of Letters of Administration.*

It is also on record that Kizito signed the transfer form before he was registered on the Certificate of Title

15 The Succession Act gives wide powers to an Administrator of the estate of a deceased intestate. Under Section 25 the property devolves upon the Administrator¹⁰ who according to Section 180 is the legal representative of the deceased for all purposes.¹¹ And under Section 192, it is provided that letters of administration entitle the Administrator to all rights belonging to the intestate as if the
20 administration has been granted at the moment after his or her death.¹²

However, the powers granted by the Succession Act must, where the property in issue is registered land, be read together with the provisions of the law enacted to **specifically** regulate registered land
25 to wit the Registration of Titles Act.

Section 134 of the **RTA** provides in part as follows:

30 **... the registrar shall, on an application of the ... Administrator to be registered as proprietor in respect of any land ... enter in the Register Book and on the duplicate instrument ... a memorandum notifying the appointment of the ... Administrator .. and upon that entry**

¹⁰ All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.

¹¹ The executor or Administrator, as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such.

¹² Letters of administration entitle the Administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death. Letters of administration entitle the Administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.

5 being made that ... Administrator shall become the transferee and be deemed to be the proprietor of such land ... for the purpose of any dealings therewith the Administrator shall be deemed to be the absolute proprietor thereof.

10 **Section 134 (supra)** is very clear that it is only upon registration that a holder of Letters of Administration is considered a proprietor of the land. Consequently, where the property being dealt with is land registered under the RTA, the power granted to an Administrator by the Succession Act, to dispose of the property of the deceased, can
15 only be exercised upon the Administrator being registered on the certificate of title.

The Appellant's agent clearly testified that he bought the land on the strength of Letters of Administration.

The starting point is at the time of sale, was the person who sold to
20 the Appellant registered on the certificate of title of the suit land?

The Respondents in their reply to the Appellant's Written Statement of Defence of being a bonafide purchaser averred at paragraph 6 (a) that:

25 *"He (Appellant) rushed to buy the suit land even before the 2nd Defendant (Leonard Kizito) was registered as the proprietor."*

At the time when the Appellant bought the suit land, the Appellant's seller (Leonard Kizito) was not yet registered on the Certificate of Title. The Certificate of Title was still in the names of Emmanuel Mubiru.

30 Furthermore, DW1 (the Appellant's agent) testified during cross-examination that he never bothered to find out whether Emmanuel Mubiru had children or wives. He never did any independent investigation concerning the land apart from what Leonard Kizito told him.

35 From the Record, the facts show that at the time of sale, the vendor had no registered interest. The legal implications of this is that the Registration of Titles Act which follows the Torrens system and

5 protects a purchaser who buys from a registered proprietor and not an unregistered one, offers no protection to the Appellant.

On this aspect, I am in agreement with the holding of the Court of Appeal that:

10 *“the registration of the Appellant subsequent to having purchased the property much earlier on the strength of Letters of Administration cannot enjoy the same protection as that of a registered Administrator of the estate ...”*

15 Related to the arguments submitted under grounds 5, 6 and 7, the Appellant under ground 8, faulted the learned Justices of Appeal for misapplying the law on contradictions regarding exhibit P5 without considering other evidence on record and came to a wrong conclusion that the sale took place before the seller acquired Letters of Administration.

20 Exhibit P5 is the affidavit of DW1-the Appellant’s agent who purchased the land on behalf of the Appellant. Dw1 averred in the affidavit that he took possession of the suit land in 1985. The other documents on Record such as the transfer form and the certificate of title indicate that the sale took place sometime in 1990 long after the Letters of Administration had been issued in 1987. The Appellant
25 therefore contended that the averment in the affidavit (exhibit P5) that possession took place in 1985 should have been considered as a minor contradiction which did not go to the root of the case. He supported his submission with the cases of **Sarapio Tinkamalirwe vs. Uganda**¹³ and **Twinomugisha Alex & Others vs. Uganda**¹⁴. Both
30 of these authorities highlight the principle that any minor inconsistencies in the evidence which do not go to the root of the case can be ignored.

35 First and foremost, I am alive to the role of a second appellate court in the evaluation of evidence. On a second appeal, this Court is not expected to re-evaluate the evidence as the first appellate court except where it is clear that the first appellate has failed to do so. (See

¹³ SCCA No.27 of 1989.

¹⁴ SCCA No.35 of 2002.

L-T-E

- 5 for example: **Milly Masembe vs. Sugar Corporation and another**¹⁵; **Mpungu and Sons Transporters Ltd vs. AG & another**¹⁶.)

Did the first appellate court fail in its duty?

The Court of Appeal in considering the evidence contained in exhibit P5 stated as follows:

- 10 *“From the testimonies and documents, some conclusions can be made. The first is that Leonard Kizito was not the registered proprietor of the suit property by the time of their transaction leading to the transfer of the property to Israel Lwanga. Evidence on record shows that Leonard Kizito was registered on 2nd August 1990 as Administrator of the*
15 *estate of the late Emmanuel Mubiru by virtue of Letters of Administration granted in Administration Cause No. 113 of 1987. Israel Lwanga was registered on 10th August 1990. Clearly, the registration was meant for purposes of transferring the property to Israel Lwanga as this would be consistent with the affidavit evidence*
20 *of DW I that the transaction happened way back in 1985. Even if the transaction happened later contrary to the affidavit of DW I in exhibit P5 referred to above, it is clear that it happened before registration of Leonard Kizito on the title as Administrator of the estate of the deceased.” (My emphasis)*

- 25 It is clear from the Court of Appeal’s findings above that the evidence contained in exhibit P5 was not considered in isolation of other evidence on the Record. Before reaching its conclusions, the Court considered the implication of the transaction from two time frames. The first time frame was the year 1985 averred in exhibit P5 and the
30 second was 1990 appearing in other documentary evidence on the Record. For either time frames, the Court of Appeal came to the conclusion that the transfer of the suit land to the Appellant occurred before the seller Leonard Kizito was ever registered on the title as proprietor.

- 35 Be that as it may, I note that an affidavit is evidence and once it is admitted in court, it forms part of the Record. The evidence in exhibit

¹⁵SCCA NO.1 of 2000 (Judgment of Mulenga JSC).

¹⁶ SCCA No.17 of 2001.

5 P5 was never challenged in the trial court or the Court of Appeal. Indeed, the Appellant on page 14 of his written submissions at paragraph 4.4 states that the Respondents did not seek clarity on the averments made in the affidavit and the deponent was never cross-examined. However, the Appellant now raises issues in respect of
10 exhibit P5 for the first time on a second appeal and yet **Rule 98 (a)** of the **Supreme Court Rules** prohibits the raising of a new ground or argument on appeal save with leave of the Court. The Rule provides:

At the hearing of an appeal—

15 **no party shall, without the leave of the court, argue that the decision of the Court of Appeal should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the**
20 **Court of Appeal on any ground not relied on by that court or specified in a notice given under rule 88 of these Rules.**

Nevertheless, I have held above that the Appellant bought from an Administrator who was not registered on the certificate of title as proprietor as required by **Section 134** of the **RTA** which makes his registration void.

25 **In the circumstances, I hold that grounds 5 ,6 ,7 and 8 also fail.**

Conclusion and orders

Since all the grounds of appeal fail, I would dismiss the appeal and uphold the judgment of the Court of Appeal as well as the orders.

30 Dated at Kampala this day of 2024.

..... *Lillian Tibatemwa-Ekirikubinza*
35 **PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
(CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE;
MUSOKE; MUSOTA; JJSC)

CIVIL APPEAL NO. 018 OF 2022

ISRAEL LWANGA.....APPELLANT

VERSUS

- 1. LEONARD MUBIRU**
- 2. JULIAN NAMUBIRU**
- 3. LYDIA NAMUTEBI**
- 4. JOAN NANSUBUGA..... RESPONDENTS**


(An appeal against the decision of the Court of Appeal in Civil Appeal No. 78 of 2016 dated 5th August 2022, before Hon. Justices Madrama, Mulyagonja and Mugenyi, JJA)

JUDGMENT OF TUHAISE, JSC.

I have had the benefit of reading in draft the Judgment prepared by Hon. Lady Justice Faith Mwondha, JSC.

I agree with her decision and conclusions that this appeal be dismissed with the orders made therein.

Dated at Kampala, this ...rd23..... day of...^{February}.....2024.

.....

Percy Night Tuhaise
Justice of the Supreme Court

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 018 OF 2022**

ISRAEL LWANGA:.....APPELLANT

VERSUS

1. LEONARD MUBIRU

2. JULIAN NAMUBIRU

3. LYDIA NAMUTEBI

4. JOAN NANSUBUGA:.....RESPONDENTS

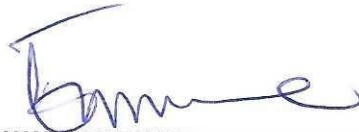
(Appeal from the decision of the Court of Appeal (Madrama, Mulyagonja and Mugenyi, JJA) in Civil Appeal No. 78 of 2016 dated 5th August, 2022)

**CORAM: HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. LADY JUSTICE PROF. LILLIAN TIBATEMWA –
EKIRIKUBINZA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC**

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the advantage of reading the respective judgments of my learned sisters Mwondha and Prof. Tibatemwa-Ekirikubinza, JJSC. For the reasons given by Prof. Tibatemwa-Ekirikubinza, JSC, I concur with the conclusion, in each judgment, that the appeal be dismissed with costs to the respondents, here and in the Courts below.

Dated at Kampala this23rd..... day of.....February.....2024.



Elizabeth Musoke

Justice of the Supreme Court

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 018 OF 2022

*(Coram: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Musoke,
Musota, JJSC)*

ISRAEL LWANGA ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. LEONARD MUBIRU
2. JULIAN NAMUBIRU ::::::::::::::::::::::::::: RESPONDENTS
3. LYDIA NAMUTEBI
4. JOAN NANSUBUGA

*(Appeal from the decision of the Court of Appeal (Madrama, Mulyagonja and
Mugenyi, JJA) in Civil Appeal No. 78 o 2016 dated 5th August 2022)*

JUDGMENT OF STEPHEN MUSOTA, JSC

I have had the benefit of reading in draft the well-reasoned judgment of my learned sister Mwondha, JSC and I agree with her reasoning and the orders proposed.

I shall add my voice on her analysis.

Whereas the Appellant faults the learned appellate Justices for holding that the Appellant was not a *bonafide* purchaser for value without notice. The evidence on record is that the Appellant admitted not to have made any search prior to the purchase of the suit land from Leonard Kizito. Further, the certificate of title, the

basis of which the Appellant purchased the suit land was in the names of Emmanuel Mubiru, the brother to the 1st Respondent, and yet the Appellant found no reason to inquire into the ownership of the land he was yet to purchase. The doctrine of *bonafide* purchaser for value is a legal defence. Therefore the party putting up such a defence has the burden of proving it. See **David Sejjaka vs Nalima Musoke Supreme Court (Civil Appeal No. 12 of 1985)**. In my view, the Appellant did not discharge this duty.

Leonard Mubiru sold the land to the Appellant by virtue of Letters of Administration granted in Administration Cause No 113 of 1987 by the Chief Magistrates Court of Mengo on the 15th October 1987. Section 134(1) of the Registration of Titles Act provides as follows;

“134. Succession on death.

(1) Upon the receipt of an office copy of the probate of any will or of any letters of administration or of any order by which it appears that any person has been appointed the executor or administrator of any deceased person, the registrar shall, on an application of the executor or administrator to be registered as proprietor in respect of any land, lease or mortgage therein described, enter in the Register Book and on the duplicate instrument, if any, when produced for any purpose, a memorandum notifying the appointment of the executor or administrator and the day of the death of the proprietor when the day can be ascertained, and upon that entry being made that executor or administrator shall become the transferee and

be deemed to be the proprietor of such land, lease or mortgage, or of such part of it as then remains unadministered, and shall hold it subject to the equities upon which the deceased held it, but for the purpose of any dealings therewith the executor or administrator shall be deemed to be the absolute proprietor thereof."

It follows therefore that a holder of Letters of Administration can deal with the property or sale the same after being registered as registered proprietor of the land. If this were not the intention of Section 134(1) of the RTA, then there would be no need for an administrator to apply to be registered as proprietor on the certificate of title. A grant of Letters of Administration would be sufficient for an administrator sell the deceased's property.

I agree with the findings of the learned Justices of Appeal when they held that;

"The law provides in mandatory terms that the administrator upon application shall be entered on the title as the proprietor. However, the title of the administrator or executor only relates back to the date of death of the deceased upon registration. In other words, section 180 of the Succession Act has to be read in harmony with section 134 of the Registration of Titles Act. It is only upon registration that the holder of probate or letters of administration is recognised in law as the proprietor of registered Land. In other words, if such a person is not registered, the notice to the world remains that the property

belongs to the deceased by the names registered in the register of titles. The conclusion therefore is that it was not sufficient assurance of title to deal with an administrator of the estate of the deceased on the ground that it is the name of the deceased which is registered. Administration is subject to trusts and possibly creditors may be interested in the same property. The registration of Israel Lwanga subsequent to having purchased the property much earlier on the strength of letters of administration cannot enjoy the same protection as that of a registered administrator of the estate."

I agree with the above finding and find no reason to fault the decision of the Court of Appeal. I would therefore agree with the decision of Mwondha, JSC that this Appeal be dismissed with costs in this court and the court below. I would uphold the judgment and orders of the Court of Appeal in Civil Appeal No. 78 of 2016.

I so order

Dated this 23rd day of February 2024



Stephen Musota
JUSTICE OF THE SUPREME COURT