THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0160 OF 2013

VINCENT KAFUREEKA:: APPELLANT

VERSUS

JOHN KATOROBO:: RESPONDENT

(An appeal from the decision of the High Court of Uganda at Mbarara before Bashaija, J., dated the 20th day of June, 2013 in Civil Appeal No. 0051 of 2011, itself arising from the decision of the Chief Magistrate's Court of Mbarara at Mbarara in Civil Suit No. 0034 of 1994 dated the 23rd day of August, 2011.)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.
HON. MR. JUSTICE STEPHEN MUSOTA, JA.
HON. MR. JUSTICE REMMY KASULE, AG. JA.

JUDGMENT OF ELIZABETH MUSOKE, JA.

This appeal is from the decision of the High Court (Bashaija, J.), which in exercise of its jurisdiction as a first appellate Court, allowed the respondent's appeal against the decision of the trial Chief Magistrate therefore setting it aside. The High Court also made an order that "the Respondent (appellant herein)'s Certificates of title to the suit land be rectified to exclude the portion of the Appellant (respondent herein) (sic)". The High Court further awarded costs of the appeal and in the court below to the respondent herein.

Background

The dispute in this matter dates back to 1994 when the appellant instituted a suit against the respondent. At the centre of the suit was a piece of land located in Kabingo Nshenyi, Kikagati, Mbarara District. The facts as far as can be ascertained from the material on the record are that:

At the time of the institution of the suit in the trial Court, the appellant was the registered proprietor of two adjacent pieces of land, namely Plots 8 approximately 255 hectares and Plot 10 approximately 80 hectares. The two

plots were comprised in Isingiro Block 90, and the land was situated at Kabingo, Mbarara District.

On the other hand, the respondent owned a piece of land neighbouring the appellant's Plot 8. The respondent's interest was unregistered. However, there are two documents supporting the respondent's interest, Exhibit. D1 a sale agreement and Exhibit. D2 an English translation. The said documents show that the respondent bought his interest from one Erisham Geofrey Karegyeya on the 10th August, 1978. The agreement also sets out the boundaries of the land.

The dispute between the parties arose, when the respondent allegedly went over the common boundary into the appellant's land, occupied the same and thereafter fenced it off. He then occupied and utilized the said piece of land illegally. This illegally occupied piece of land is the suit land. The appellant did not reveal how big the suit land is.

By a plaint dated the 12th day of May, 1994, the appellant instituted a suit claiming that the respondent had trespassed on the suit land. In his Written Statement of Defence filed on the 10th day of August, 2004, the respondent denied having trespassed on the suit land contending that the suit land was not part of the appellant's land. In the alternative that if the suit land is within the appellant's land, it must have been included therein fraudulently.

As stated earlier, following the conclusion of the trial, the learned trial Chief Magistrate allowed the appellant's claims. The respondent appealed to the High Court and was successful. The appellant now appeals to this Court against the decision of the High Court on grounds which are set forth in his amended memorandum of appeal as follows:

> "1. **The Learned Judge erred in law when he failed to re-evaluate the evidence.**
>
> 2. **The Learned Judge erred in law when he held that the Appellant acquired the suit land fraudulently."**

The respondent opposed the appeal.

Representation

When the appeal last came up for hearing, Mr. Obed Mwebesa, learned counsel, appeared for the appellant; while Mr. Paul Muhimbura and Mr. Chris Bakiza, both learned counsel, jointly appeared for the respondent. The parties adopted their already filed written submissions with the permission of this Court. I have considered those submissions in arriving at my decision herein.

Appellant's case

Ground 1

Mr. Mwebesa for the appellant faulted the learned first appellant Judge for failing in his duty as a first appellate Court to make a proper evaluation of the evidence as whole, which rendered his decision erroneous. Counsel stressed the duty of a first appellate Court while relying on **Kemirembe Sarah vs. National Housing & Construction Company Limited, Court of Appeal Civil Appeal No. 0083 of 2010** wherein the Court referred to **Fredrick Zaabwe vs. Orient Bank Supreme Court Civil Appeal No. 004 of 2005 for** the legal proposition that:

> **"The duty of this Court as a first appellate Court is well settled. It is to evaluate all the evidence which was adduced before the trial Court and to arrive at its own conclusions as to whether the finding of the trial Court can be supported."**

Counsel further stressed the duty of a second appellate Court as stated in **Kifamunte Henry vs. Uganda Criminal Appeal No. 0010 of 1997** that:

> **"On Second Appeal the Court of Appeal is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those findings, though it may think it possible or even probable, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law."**

Counsel dwelt on the learned first appellate Judge's handling of the reevaluation of the evidence on record in reference to Exhibit. P.4., which was written after the institution of the relevant suit. It is a document wherein

the respondent allegedly admitted to having trespassed onto the appellant's land. In the same document the respondent had expressed his wish to settle the matter amicably by removing the fence which he had erected to cover the appellant's land, and also to pay the costs of the suit.

It was further submitted that the learned first appellate Judge had rightly adjudged that the respondent had admitted liability in Ex. P4, and that he had also rightly observed that judgment on admission by the trial Court should have been entered in the appellant's favour pursuant to that Ex. P4. Counsel contended that the foregoing findings precluded the learned first appellate Judge from reaching a contradictory finding that the appellant acted fraudulently. Counsel submitted that the issue of fraud could not arise from the relevant pleadings which were related to trespass. According to counsel, such a conclusion must have been reached without taking into account the aspect of evidence represented by Ex. P4.

Counsel contended that had the learned first appellate Judge taken into account the evidence expounded above, he would have been guided to the right decision, namely to uphold the findings of the learned trial Chief Magistrate that the respondent had admitted liability to the appellant's claim.

He prayed this Court to allow this ground.

Ground 2

In this ground, counsel submitted that it was erroneous for the learned first appellate Judge to attribute fraud to the appellant. He advanced the following arguments in support of the submissions:

Firstly, that no fraud was proved against the appellant by the respondent. Counsel contended that although the respondent had pleaded in his written statement of defence that the appellant had acquired the suit property fraudulently, his attempts of proving fraud fell short of the requisite standards. No ingredient of fraud attributed to the appellant was proven.

It was further contended for the appellant that since he was the registered proprietor of the suit land, **Section 59** of the **Registration of Titles Act, Cap. 230,** provided that his certificate of title is conclusive evidence of ownership of the same. As such, his title could only be defeated by successful

attributing fraud to him. In that regard, the legal proposition from the case of **Kampala Bottlers Limited vs. Damanico, Supreme Court Civil Appeal No. 22 of 1992** per **Wambuzi, C.J** is that fraud must be proved strictly, the burden being heavier than the balance of probabilities generally applied in civil matters.

Counsel further relied on **Dr. Adeodanta Kekitiinwa & 3 Others vs. Edward Haudo Wakida, Court of Appeal Civil Appeal No. 003 of 1997** for the legal proposition that fraud cannot be presumed. It had to be proved strictly, the burden being heavier than on a balance of probabilities and fraud must reside in the transferee.

Counsel submitted that the evidence of DW3 Kalegyeya Geoffrey, who had sold land to the appellant, part of which was the suit land, clearly established that the appellant's title was lawfully acquired. This was corroborated by Exhibit. P2, the agreement of sale of land between DW3 and the appellant.

Secondly, counsel advanced the argument that the appellant's title could not have been fraudulently acquired since the respondent had testified at page 61 that he was not even aware that the appellant held a title. Counsel contended that: *"...how can a person who is not aware that there is a title say that the same was fraudulently obtained? One would have expected the respondent to properly explain the manner in respect of which the appellant obtained title and explain how he did it wrongfully or fraudulently."*

Thirdly, counsel argued in the alternative that the issue on fraud was never before the first appellate Judge for determination. The only issue was whether the respondent had trespassed on the appellant's land. There was no counterclaim in regard to fraud by the respondent, and therefore there was no basis for the learned first appellate Judge to make such a determination.

Fourthly, counsel faulted the learned first appellate Judge for attributing fraud to the appellant in the absence of sufficient supporting evidence. Counsel contended that the finding that the appellant had obtained registration over the suit property, when the respondent, who had at the time been shown physical boundaries by DW3 and was in possession of the same land was not supported by evidence on record. Furthermore, the

finding that the appellant included the respondent's land in his certificate of title was also unsupported by the evidence on the record. In view of the above submissions, counsel submitted that this Court had to allow ground 2 of the appeal.

Overall, counsel urged this Court to allow the appeal on all grounds, set aside the judgment and orders of the first appellate Court and substitute the same with the judgment and orders of the trial Court with costs to the appellant in this Court and those of the Courts below.

Respondent's case

Mr. Muhimbura for the respondent opposed the appeal, and supported the findings of the learned first appellate Judge. Counsel's submissions on the relevant grounds are indicated below.

Ground 1

Counsel submitted that the learned first appellate Judge had extensively evaluated the evidence on record and reached the following correct conclusions.

Firstly, the learned first appellate Judge had revaluated the evidence at pages 135-140 of the record, and reached the correct finding that there was no survey report indicating the exact boundaries of the appellant's land. No official from the relevant land office was called as a witness to confirm or deny the boundaries.

Secondly, the learned first appellate Judge had reevaluated the evidence and made a finding that the trial Court had relied heavily on the evidence of the certificates of title without looking at the root of the titles.

Thirdly, with respect to Exhibit. P4, the alleged admission, counsel submitted that the learned first appellate Judge had considered it and found it not useful in conclusively resolving the dispute.

Fourthly, even if Exhibit. P4 was given the importance attributed to it by the appellant, without the evidence of boundary opening report or a Government survey to establish the extent of the appellant's land, the evidential value of Exhibit. P4 would remain so low in comparison to the value of the testimony

of DW3 Karegyeya Geoffrey, the original owner of the suit land who sold part of his land, first to the respondent and the remainder to the appellant.

It was submitted for the respondent that on the whole the learned first appellate Judge made no error in the revaluation of evidence to require this Court's interference with his decision. Counsel prayed to this Court to dismiss ground 1 of the appeal.

Ground 2

Counsel supported the learned first appellate Judge's finding that the appellant acquired the suit land fraudulently. Counsel contended that there was no error in law in the learned first appellate Judge's findings as regards fraud. He supported the following reasoning in the analysis of the learned first appellate Judge:

Firstly, that it was not disputed that both the appellant and the respondent purchased their portions of land from DW3 Karegyeya Geoffrey.

Secondly, that DW3 had 80 hectares of land which he held on lease obtained from the Uganda Land Commission in 1975. DW3 had subsequently sold a portion of his land to the respondent in 1978, and had planted boundaries to separate the sold portion from the unsold portion. Later in 1982, DW3 sold the remaining portion in the land to the appellant per Exhibit. P1.

Counsel submitted that DW3 intended to sell to the appellant, only the portion of his land which he had not yet sold to the respondent. This was because although the sale agreement between the appellant and DW3 indicated that the latter had sold 80 hectares, at that time no survey had been conducted to establish the true size of the relevant land.

Counsel contended that therefore when DW3 signed transfer forms in respect to all the 80 acres of land, he did so in error, and never intended to sell to the appellant the portion of the land he had already sold to the respondent.

It was further contended that by the appellant surveying the entire land, including the portion that had already been sold to the respondent with clear boundaries, he was guilty of dishonest dealing in land, and his dishonesty was intended to deprive the respondent of his unregistered interest in the

land. Counsel cited **Kampala District Land Board & Another vs. Venansio Babweyaka & 3 others, SCCA No.2 OF 2007** for the legal proposition that, *"when you get registered on title with intent to defeat unregistered interest, the registration is deemed fraudulent. A certificate of title obtained by fraud is defeasible and liable to be cancelled in accordance with SS. 64 and 176 of the Registration of Titles Act."*

Counsel further contended that there being no evidence adduced on behalf of the appellant to prove that DW3 owned another piece of land which he sold to the respondent, it was not unreasonable to conclude, as the learned first appellate Judge did that the appellant had acted fraudulently when he included the respondent's land in his title. Counsel therefore asked this Court to dismiss ground 2 of the appeal as well.

All in all, counsel for the respondent asked this Court to be pleased to dismiss the appeal with costs to the respondent in this Court and the lower Courts.

Resolution of the Appeal

I have carefully studied the Court record, considered the submissions of counsel for either side, the law applicable, the authorities cited, and those not cited which are relevant to the determination of this appeal.

This is a second appeal, and the principles on second appeals are as follows:

On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court of Appeal shall have power to appraise the inferences of fact drawn by the trial court. **Rule 32 (2)** of the **Judicature (Court of Appeal Rules) Directions. S.I 13-10.**

On second appeal it is sufficient to decide whether the first appellate Court on approaching its task, applied or failed to apply such principles: **P.R. Pandya vs. R. (1957) E.A** cited with approval in the **Kifamunte Henry case (supra)**.

The second appellate Court must decide whether the first appellate Court carried out its duty to review the evidence of the case and to reconsider the materials before the trial judge. The second appellate Court must also decide whether the first appellate Court thereafter made up its own mind not

disregarding the judgment appealed from but carefully weighing and considering it.

I will apply those principles herein.

Ground 1

The submissions on this ground revolved around Exhibit. P4, which is a document purportedly endorsed by all the parties to the suit. For ease of reference, Exhibit. P4 which is titled "Settlement of Claim" is reproduced below:

"

IN THE CHIEF MAGISTRATE'S COURT OF MBARARA
CIVIL CASE NO. MMB. 34 OF 1994
VICENT KAFUREKA :::::::::::::::::::::::::: PLAINTIFF

VERSUS

YOWANA KATOROBO :::::::::::::::::::::::: DEFENDANT

SETTLEMENT OF CLAIM:

I YOWANA KATOROBO being the defendant in the above suit do hereby admit liability for my wrong of having gone beyond my common boundary with the plaintiff and fenced part of the plaintiff's land as correctly stated in paragraph 5 of the plaint.

I do hereby further wish to settle the matter amicably with the plaintiff by agreeing and binding myself to remove my said fence from the plaintiff's land within a period of 2 weeks from the date thereof and pay all the plaintiff's costs so far incurred in the suit to Shs. 185,000/=

DATED THIS.....DAY OF.....1994

....signed...

YOWANA KATOROBO-DEFENDANT

I consent to the settlement.

...signed...

DRAWN & FILED BY:
KATEMBEKO & COMPANY
ADVOCATES
P.O. BOX 917

MBARARA"

The appellant and the respondent remain divided on the legal implications of the above document, as they have been since the trial. In the first appellate Court, the implication of Exhibit. P4 was considered in the resolution of Ground 1 of the appeal therein which was framed as follows:

> "1. **The learned Chief Magistrate erred in fact and law to hold that the Appellant had admitted liability and offered to settle out of court vide a document dated 20th May, 1994 whereas the evidence showed otherwise."**

The decision of the first appellate Court on that ground may be summarized as follows:

The Court made a finding that the respondent had admitted liability under Exhibit. P4, and offered to settle the dispute out of court. The Court noted that on account of Exhibit. P4, judgment on admission should have been entered for the appellant in terms of the agreement (sic) under **Order 8 rule 6** of the **Civil Procedure Rules, S.I 71-1**.

The said Court also rejected the allegations by the respondent that he was hoodwinked by misrepresentation on the part of the appellant into concluding the arrangement in Exhibit. P4. The Court made a finding that the said allegations were not substantiated. The respondent did not appeal against the said finding.

Having said that, in this Court, the appellant contended that having made a finding that Exhibit. P4 was an admission of liability, the learned trial Judge was precluded from reaching any adverse conclusion against the appellant. On the other hand, the respondent contended that the evidential value of Exhibit. P4 should be weighed in conjunction with other evidence, such as that of DW3 Karegyeya Geoffrey. In other words that Exhibit. P4 was not conclusive in determining the dispute.

In law, an admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned. **See: Section 16 of the Evidence Act, Cap. 6.**

Suffice to say, a party to any proceedings may make an admission which may be relied upon by the Court. **See: Section 17 (1) of the Evidence Act, Cap. 6.**

However, admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereafter contained. **See: Section 28 of the Evidence Act, Cap. 6.**

Estoppels arise when one person has, by his or her declaration, act or omission, **intentionally caused or permitted another person to believe a thing to be true and to act upon that belief**, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing. **See: Section 114 of the Evidence Act, Cap. 6.**

From the above provision, there must be two ingredients for an estoppel to be said to exist; first there must have been a representation made by one person to the other which causes the second person to believe in its truth; secondly, the person to whom the representation is made must have acted on the representation.

In the instant case, before Exhibit. P4 could be considered as a conclusive admission, it must have had an element of estoppel. To my mind, it was necessary that in addition to the purported admission being made, the appellant must have acted to his detriment arising from its being made. This was not the case. It will be noted that despite the existence of the document in question, the parties went ahead to contest the suit which the said document purported to affect. To my mind, estoppel would only have arisen if the appellant had withdrawn the relevant suit in the trial Court. As he did not, Exhibit. P4, although an admission, was not conclusive to determining the dispute in the courts below.

It is not true, as alleged by the appellant that the learned first appellate Judge ignored Exhibit. P4 while reasoning to reach his decision. In my view, he did not do so, but instead he considered that the said document could not conclusively determine the dispute between the parties. He then

proceeded to evaluate other relevant evidence. I have no reason to fault his conclusions.

Ground 1 of the appeal, must therefore fail.

Ground 2

In his submissions, counsel for the appellant contended that the learned first appellate Judge wrongly attributed fraud to the appellant in light of two reasons which I have considered below.

Firstly, it was argued for the appellant that the relevant suit having been founded on trespass, it was improper for the learned first appellate Judge to concern himself with issues of fraud, especially given the fact that the respondent had not counterclaimed in regard to fraud in his amended Written Statement of Defence.

In his submissions, counsel for the respondent never specifically addressed the above argument raised by the appellant. He focused on addressing the substance of the learned first appellate Judge's findings on fraud.

I do not accept the submissions by counsel for the appellant that the issue of fraud did not arise in this matter. In my view, it arose when the respondent pleaded in paragraph 4 of his Amended Written Statement of Defence at page 26 of the record as follows:

> "4. **The defendant further contends that his lands of the defendant do not extend to the land of the defendant and if they so do then the plaintiff must have obtained the titles by fraud (sic).**
>
> **PARTICULARS OF FRAUD.**
>
> **(a) Surveying the land secretly if the survey took place.**
>
> **(b) Registration of land with intent to defeat the customary interest of the defendant.**
>
> **(c) Registration of land without inspection by the relevant authorities.**
>
> **(d) Forging signatures to documents.**
>
> **(e) Purporting to obtain land transfer without a transferor."**

As is apparent, the respondent pleaded fraud and put it in issue. Whether or not it was sufficiently proved to be attributable to the appellant is another question altogether. In **Kampala Bottlers Ltd vs. Damanico (U) Ltd, Supreme Court Civil Appeal No. 22 of 1992,** the appellant (original plaintiff) brought a suit against the respondent (original defendant) seeking an order of eviction and general damages in trespass. The original defendant therein pleaded fraud as follows:

> **"It is submitted that the certificate of title annexed to the plaint was obtained by fraud as since 1990 the City Council of Kampala never sat to give further extension of the lease to the plaintiff."**

The Supreme Court deemed that to be an instance where fraud had been sufficiently pleaded. Similarly, in the instant case, the averments by the respondent in the relevant pleadings are sufficient, and in my view, raised the issue of fraud in the dispute between the appellant and the respondent.

Having said that, it is necessary to determine whether the respondent sufficiently proved the fraud which he had pleaded. The appellant contends that he did not. The respondent contends that the fraud was sufficiently pleaded.

The learned first appellate Judge accepted the respondent's allegations that the appellant had obtained registration over the suit property fraudulently. The true extent of his reasoning is covered in his judgment at pages 135 to 144 of the record. At pages 142 to 143, the learned first appellate Judge stated:

> **"...Similarly, at the time the Respondent applied and obtained the certificate of title for the entire 80 hectares based on the lease offer which DW3 had previously got from ULC, the Appellant was already in occupation and utilized the portion of the suit land he had bought in 1978. It would follow that the Respondent was; or ought to have been aware of the subsisting interest of the Appellant in the land when he applied for and (sic) registration for the entire 80 hectares. The respondent could not feign ignorance of this fact in view of the evidence that DW3 showed him the physical boundaries of the Appellant's land in 1982 when the Respondent bought his part.**
>
> **The Respondent was thus put on notice, and his subsequent registration was subject to the Appellant (sic) equities in the land, albeit**

unregistered, which were not extinguished by the Respondent obtaining of the lease. It is trite law that procuring registration of title in order to defeat the unregistered interest amounts to fraud. See Section 176 (c) RTA (supra); Horizon Coaches Ltd vs. Edward Rurangaranga & Anor, S.C.Civ.Appeal No. 14 of 2009; Kampala District Land Board v. National Housing & Construction Corporation (2005) 2 EA 69.

Fraud is more so when it is attributable to the transferee, as was in this case. The Respondent proceeded to obtain registration of title to land which included land of the Appellant, in spite of the Appellant's occupation and having been shown the physical boundaries by DW3, that separated the Appellant's land from the Respondent's land. This renders the Respondent's title impeachable on ground of fraud under the terms of Section 176 (c) of RTA (supra). See Kampala Bottlers (U) Ltd. V Damanico (supra)"

The appellant contends in this appeal that there was no evidence to support the findings of the learned first appellate Judge. I have therefore had to reconsider all the relevant evidence so as to resolve, as a second appellate Court, whether the first appellate Court carried out or did not carry out its duty to review the evidence and reconsider the materials that were put before the trial Court.

The appellant, while testifying as PW1 stated that the respondent had trespassed on both plots 8 and 10 of his land. He also testified at page 52 of the record as follows:

"They found that the Defendant had trespassed on both of my plots of land. They made a report to the effect. The area that which (sic) the Defendant had trespassed was indicated on the map, which the surveyors drew. The boundaries were opened by one Mugasha and a report was submitted to the principal staff surveyor."

The appellant alluded to a survey report which showed the extent of the suit property. The said report would have been crucial in determining firstly, where the boundaries of the appellant's land lay; and secondly, whether or not the respondent had trespassed thereon. The report was not tendered in evidence as counsel for the appellant then, abandoned its tendering in evidence for reasons best known to him.

I have also considered the evidence adduced for the respondent as the defendant in the relevant suit. The respondent testifying as DW1 stated that he bought his land part of which is the suit property from one Kalegyeya in 1978. The portion he bought was not the entire holding of Kalegyeya who retained part of his land. When he bought the land in question the respondent planted trees, built houses thereon and fenced it off.

Then there was the evidence of DW3 Kalegyeya Geoffrey which I have found pertinent to reproduce at some length. DW3 was the previous owner of the land part of which is the suit property, and had sold part of the land to both the appellant and the respondent.

DW3 testifed at page 64 of the record that:

> **"I know Katorobo. I also know Kafureka. I have ever delt (sic) with both of them. I sold land to Katorobo. It was on the 10/8/1978. The land is situated in Nsenyi in Kagati (sic) by then in Mbarara District. It is now in Isingiro District.**
>
> **An agreement was made. (Witness shown EDI) this is the agreement I made with Katorobo when I sold to him land. It provides that on 10/8/1978 I sold my land to Katorobo. The agreement states where the land I sold is situated. It is Nyabunagaka Ruborogota Kikagati, Mbarara. It indicates the boundaries of the land. On one side it boarders (sic) with river Kagera the other side it borders with me. The land I had not sold. The other side it borders with Katorobo he had got it from Kiryomunju the last side it was also bordering me. We planted "Emiyenje" trees as boundary marks.**
>
> **When I sold to Katorobo the part that had remained I later sold to Kafureka. It was around 1982. The land I sold to Kafureka did not have a title. I had applied for a lease from the District for my entire land including the land I sold to Katorobo. I had received a lease offer i.e for the entire land.**
>
> **When I sold the land to Kafureka I showed him the boundaries. I showed him where he was to stop. There were even Emiyenje trees acting as boundary marks. They were 4 years old. I made an agreement with Kafureka (Witness shown EP2) I know this document.**
>
> **It is the agreement I made with Kafureka. I had not got a title for the land I sold to Kafureka. After one year Kafureka come to me with a document and requested me to sign the document. I signed on a land**

title. I have never gone back to the land. Before I sold to Katorobo I had lived on the land for 6 years. When I sold to Kafureka I had lived on the land for 10 years. If we go to the land I can show you where I sold to Kafureka and Katorobo."

In cross examination at page 65 of the record, DW3 acknowledged that he had signed a transfer form over his entire interest spanning 80 hectares to the appellant.

In reexamination, he clarified that he meant for the transfer form to only cover the portion of land he had sold to Kafureeka, and not his entire interest.

In my view, after perusing the evidence on record, I find that DW3 was truthful. Not only was his evidence not watered down during cross examination but his testimony also appeared plausible in light of all the evidence on record.

DW3's testimony showed that he owned approximately 80 hectares of land, and that he had sold portions of the same land to the appellant as well as the respondent. The appellant acknowledged in his testimony that the respondent was his neighbour. For that reason, it is not unreasonable to say that the respondent's land lay within the registered property of the appellant. Given that the respondent acquired his unregistered interest earlier than the appellant obtained his registered interest, and in view of the fact that the said competing interests all lay on the relevant Plot 8, it is not unreasonable to say that the appellant was at all times aware that the respondent owned the said interest. This was the basis of the learned first appellate Judge's attributing of fraud on the appellant.

In other words, it can be reasonably concluded that in proceeding to procure registration of all the 80 hectares, originally held by DW3, and on part of which the respondent had an unregistered interest, while having notice that the respondent was occupying part of the said land, the appellant acted fraudulently. Not only is the fraud attributable to the appellant directly, but also by necessary implication.

Once it has been established that there was some competent evidence to support a finding of fact, it is not open, on second appeal to go into the

sufficiency of that evidence or the reasonableness of the finding. **See: R. Mohamed All Hasham vs. R (1941) 8 E.A.C.A. 93** cited with approval in **Kifamunte case (supra).**

On second appeal the Court of Appeal can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law: **R. vs. Hassan bin Said (1942) 9 E.A.C.A. 62** cited with approval in **Kifamunte case (supra).**

As explained in the above analysis, there was sufficient evidence to support the first appellate Court's finding of fact that the appellant herein fraudulently included the appellant's land in his certificate of title. This Court will therefore not interfere with the said findings.

Ground 2 of the appeal must therefore fail.

In view of the above findings, the appeal would fail on all the grounds and I would, therefore dismiss it. I would uphold the Judgment and orders of the first appellate Court. The appellant shall pay the costs of this appeal and those of the Courts below.

As Hon. Justice Stephen Musota, JA and Hon. Justice Remmy Kasule, Ag. JA agree; this appeal is dismissed for the reasons stated in this judgment. The appellant shall pay to the respondent the costs of this appeal and those of the Courts below.

Dated at Kampala this 20th day of July 2020.

.....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPEAL NO. 0160 OF 2013

(Arising from Mbarara HCCA No. 0051 of 2013)

VINCENT KAFUREEKA :: APPELLANT

VERSUS

JOHN KATOROBO :: RESPONDENT

CORAM:

HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment of my learned sister Hon. Justice Elizabeth Musoke, JA. I agree with her reasons and finding that this appeal should fail on all grounds. I will uphold the judgment and orders of the first appellate court. The appellant shall pay the costs of this appeal and the courts below.

Dated at Kampala this 30th day of July 2020

.....

Stephen Musota

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

In the Court of Appeal of Uganda

At Kampala

Civil Appeal No. 0160 of 2013

(An appeal from the decision of the High Court of Uganda at Mbarara before Bashaija, J., dated 20th June, 2013 in Civil Appeal No. 0051 of 2011, itself arising from the decision of the Chief Magistrate's Court of Mbarara at Mbarara in Civil Suit No. 0034 of 1994 dated 23rd August, 2011)

Vincent Kafureeka :: Appellant

Versus

John Katorobo ::Respondent

Coram: Hon. Justice Elizabeth Musoke, JA
Hon. Justice Stephen Musota, JA
Hon. Justice Remmy Kasule, Ag. JA

Judgement of Hon. Justice Remmy Kasule, Ag. JA

I have had the benefit of reading the draft Judgment of Honourable Justice Elizabeth Musoke, JA.

I agree with the decision that the appeal be dismissed for want of merit and that the Judgment and orders of the High Court as the first appellate Court be upheld, with the appellant paying the costs of this appeal and those of the Courts below.

Dated at Kampala this 20th Day of July 2020

Remmy Kasule
Ag. Justice of Appeal