

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO. 05 OF 2011**

**1. PHILIP DDUMBA**

**2. DAVID LUZIGE ..... APPELLANTS**

**VERSUS**

**DAVID ARTHUR BAGAMBE ..... RESPONDENT**

*(An appeal from the judgment and orders of the High Court of Uganda (Land Division)  
by Hon. Mr. Justice Joseph Murangira, J in High Court Civil Suit No. 162 of 2006, dated  
26<sup>th</sup> November, 2012)*

**CORAM:     Hon. Mr. Justice Kenneth Kakuru, JA**  
**Hon. Mr. Justice Stephen Musota, JA**  
**Hon. Mr. Justice Monica K. Mugenyi, JA**

**JUDGMENT OF HON. JUSTICE KENNETH KAKURU, JA**

This is an Appeal from the decision of *Hon. Joseph Mulangira, J* in Kampala High Court Civil Suit No. 162 of 2006, dated 26<sup>th</sup> November, 2012.

**Brief background**

The respondent bought the suit land from one Solome Kaweesa who was at the time the Administratrix of the Estate of the Late Charles Makumbi. No registered encumbrances existed on the Land Title at the time of the purchase. The 1<sup>st</sup> and 2<sup>nd</sup> appellants lodged a caveat on the title immediately after the payment of the purchase price. As a result of the caveat, the respondent was unable to procure registration of the certificate of title as the owner after the purchase. The caveat was later vacated by the Chief Registrar of titles (1<sup>st</sup> defendant at the High Court) and the respondent was then registered as the proprietor of the suit land. He subsequently effected a sub division of the suit land into plots 8-127 and registered those plots in

his names. However the sub-divisions were not reflected on the original and duplicate titles.

Upon application by the appellants, the Chief Registrar of titles reinstated the caveat and reinstated Solome Kaweesa as the registered owner. By consent of the appellants and Solome Kaweesa, her letters of administration were revoked and granted to the appellants who were thereafter registered as proprietors of the suit property.

Being aggrieved by the decision of the Chief Registrar of titles, the respondent instituted a suit at the High Court from which this appeal arose. The learned trial Judge found in his favour of the respondent and declared him a *bonafide*-purchaser for value without notice of fraud. He ordered for reinstatement of his name on the register and cancellation of the appellants' Certificate of Title, as well as a permanent injunction against the appellants.

The appellants being dissatisfied with the decision and orders of the learned trial Judge appealed to this Court on the following grounds;-

1. *The learned trial Judge erred in law and fact by failing to resolve the preliminary points of law raised at the commencement of the trial in his final judgment.*
2. *The learned trial Judge erred in law and fact in finding, based on the reasoning that since the 1<sup>st</sup>, 2<sup>nd</sup> appellants and the 4<sup>th</sup> defendant did not testify, whatever was said by the respondent about them was not controverted and was taken to be admitted by them and prejudicial to their defenses.*
3. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in coming to the conclusion in respect of Issue No.1 that evidence of the court orders in Administration Cause No.588 of 2006 and the letter of 25<sup>th</sup> May 2005 in ground 2, exhibits 21 and 26 and non-compliance with Section 91 of the Land Act by the Registrar settled issues 2, 4 and 5.*





4. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in answering the 2<sup>nd</sup> issue in favor of the respondent on the ground of the legal position held by the respondent in the suit property.*
5. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence especially of fraud and sharp practice while determining issues Nos. 3 and 4, by relying solely on the evidence of Court orders of 26<sup>th</sup> and 28<sup>th</sup> September 2005, High Court Administration Cause No.588 of 2006 and the notice to caveator dated 25<sup>th</sup> May 2005 and generally failed to properly consider the appellants' arguments regarding these issues and the propriety of the notice of 25<sup>th</sup> May 2005.*
6. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in finding that the transfer of the suit property in the respondent's names was valid/lawful based 4<sup>th</sup> defendant's valid power of sale.*
7. *The learned trial Judge erred in law and fact and misconstrued the parties' admission that 4<sup>th</sup> defendant's act of sale to the respondent of the suit land was valid to extend to the registration of the respondent as the owner of the suit property thereby coming to the wrong conclusion that the transfer of the suit property and registration thereof in the names of the respondent was valid.*
8. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in finding that the holding that the acts of the 4<sup>th</sup> defendant prior to the annulment of her letters were valid disposed of the first issue of whether the respondent had a cause of action against the appellants and their involvement and actions dispossessed the respondent of the suit property and were unlawful.*
9. *The learned trial Judge erred in law and fact in shifting the burden of proof to the appellants.*
10. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in holding that in respect of Issue No.8 the respondent did not commit illegalities in respect of the sale transaction and that there was no sufficient*

evidence to support the claim that the cancellation of the respondent's registration was based on illegalities.

11. The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in considering the issue of low transfer fees for the suit property when the issue before him was understatement of stamp duty for purposes of transfer, thereby coming to the wrong conclusion that if less transfer fees were paid based on a low valuation figure of the suit property the Registrar could have counter-claimed the balance on behalf of government.
12. The learned trial Judge erred in law and fact in implying that an illegality ought to be specifically pleaded.
13. The learned trial Judge erred in law and fact and failed to properly evaluate evidence in upholding illegal transactions.
14. The learned trial Judge erred in law and fact and failed to properly evaluate evidence in answering Issue No.9 in the negative.
15. The learned trial Judge erred in law and fact in finding that the appellants colluded with the 1<sup>st</sup> and 4<sup>th</sup> defendants to defeat the interests of the respondent and in failing to find that collusion, unlike fraud, even if proved, is not sufficient to defeat a registered interest in land.
16. The learned trial Judge erred in law and fact in failing to find that a plaintiff cannot found a cause of action on the principle of bonafide purchaser.
17. The learned trial Judge erred in law and fact in treating the pleadings of 4<sup>th</sup> defendant and the submissions based on them as evidence and preferring them to evidence adduced by the appellants and failed to properly evaluate the evidence and consider the appellant's submissions on Issue No.6.
18. The learned trial Judge erred in law and fact in holding that the Appellants should have responded to 4<sup>th</sup> defendant's pleadings and called 1<sup>st</sup> and 4<sup>th</sup> defendants as witnesses and in drawing adverse inference from the appellant's failure to do so.



19. *The learned trial Judge erred in law and fact and failed to properly evaluate the evidence in determining the suit in favor of the respondent and making the orders, reinstating the respondent's name on the Certificate of Title to the suit property, deregistering the appellants and evicting them permanently from the suit property and making the award of Shs.20 million against them for general damages.*
20. *The learned trial Judge erred in law and fact in failing to determine Issue No.7.*
21. *The learned trial Judge generally misconstrued and/or failed to properly evaluate and consider the evidence, the skeleton arguments, the final submissions and reply of the appellants to the respondent's final submissions and to apply the law and the authorities cited by the appellants in determining the issues.*
22. *The learned trial Judge erred in law and fact in;*
- a. Considering the final submissions of the respondent and the 4<sup>th</sup> defendant which were filed out of time without leave.*
  - b. Not properly considering the skeleton arguments of the appellants which were adopted in their final submissions.*

### **Representation**

At the hearing of this appeal Mr. Nesta Byamugisha learned Counsel appeared for the appellants. Mr. Godfrey Mafabi, Mr. David Kagwa, Ms. Lillian Natukunda, learned Counsel appeared for the respondent.

Counsel for the appellants filed written submissions while the Counsel for the respondent proceeded by way of oral arguments. It is on the basis of the record, written submissions and the oral arguments that this appeal has been determined.

### **Appellants' submissions**

Counsel for the appellants, argued grounds 1, 6 and 7, together. He submitted that, the trial Judge reserved the consideration of the submission on the preliminary



objections in his final judgment after hearing all the evidence. He argued that, among the preliminary objections was that the respondent lacked a cause of action. He contended that, the respondent founded his action on an illegal purchase of the suit land as evidenced in the sale agreement. The sale agreement indicated that the suit property was purchased at Ug. Shs. 96 million but the respondent, for the purpose of stamp duty, filed an application for consent to transfer believing the consideration to be Ug. Shs. 40 Million.

Counsel pointed out that, the respondent could not in law found his cause of action on being a *bonafide* purchaser. He argued that, not being a registered proprietor of the suit land, the respondent could not base his cause of action or claim on that principle as a *bonafide* purchaser. He contended that, the respondent was a mere purchaser and not the proprietor of the suit land.

Counsel further, contended that, the respondent's application for removal of a caveat was contrary to Section 140 (2) of the Registration of Titles Act (RTA). Counsel disputed the initial registration of the respondent as the owner for reasons of illegality, fraud, lack of capacity to cause removal of the caveat and impropriety of the Notice to Show cause.

He argued that notwithstanding Ms. Solome Kaweesa's Letters of Administration, the registration of the respondent was tainted with fraud. He contended that, the respondent procured registration by fraud in order to defeat the unregistered interest of the beneficiaries.

In respect of grounds 2, 8, 16 and 17, Counsel argued that the learned trial Judge erred in holding that by failure of the 1<sup>st</sup> defendant (Chief Registrar of titles) and the 4<sup>th</sup> defendant (Solome Kaweesi) to rebut evidence by the respondent amounted to an admission. Counsel submitted that Court should have admitted and relied on testimony of Deo Bitaguma (DW2) on behalf of the Estate of the late Charles Makumbi. He submitted that, facts whether the respondent became the owner of the



suit land upon his initial registration, the existence of collusion with of the Ms. Solome Kaweesi to lodge a caveat and the consent decree between the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein and the 1<sup>st</sup> and 2<sup>nd</sup> appellants and Solome Kaweesi were not issues to be considered by Court. Counsel contended that issues as to the validity of the Caveat lodged by the appellants did not require evidence.

On grounds 4, 5 and 18, Counsel contended that the respondent had the burden to prove his case on its strength and not the weakness of the appellants. He argued that in so doing, the learned trial Judge committed some errors: firstly, he shifted the burden of proof of the respondent's case to the appellants by requiring them to call Ms. Solome Kaweesa (4<sup>th</sup> defendant) as a witness, secondly that, a party/witness cannot be cross-examined on pleadings as the learned trial judge seemed to suggest but on evidence adduced by the party/witness. Thirdly, that pleadings are not evidence and fourthly that, the appellants were not defending Ms. Solome Kaweesa's case.

In respect of grounds 9, 10, 11 and 12, Counsel argued that a transaction based on the understating of the value of the suit land was illegal. He submitted that the learned trial Judge upholding such an illegality was against public policy.

In respect of ground 13, Counsel submitted that the respondent should have taken all reasonable steps to mitigate his losses in light of the agreement of sale which specifically provided a remedy in the event he failed to be registered on the title on grounds of any encumbrance or dispute, as the failure indeed occurred as anticipated. He relied on ***Business Skills Ltd vs Centenary Rural Development Bank Ltd, HCCS No.224 of 2003***, which decision adopted the decision in ***African High Land Produce Ltd v Kisoro [2001]1 EA 1***, where the principle of mitigation is that: *"In law certain factors must be considered before damages can be awarded. One of these factors is the role of the injured party following the breach of the contract: he is expected to do what he can to look after his own interest. The injured party, lawyers*

*would say, must mitigate the loss. The duty arises immediately a plaintiff realizes that an interest of his has been injured or a breach of a contract or a tort has occurred. He is then bound to act as best as he can, not only in his own interest but also in those of the defendant."*(sic)

Counsel thus noted that, the respondent caused his own cost if any by failing to mitigate his own losses.

Counsel abandoned ground 14

In respect of grounds 15, 18 and 19, Counsel argued that, the trial judge did not consider the 1<sup>st</sup> and 2<sup>nd</sup> appellants' submission on why the respondent was not a *bonafide* purchaser. Court solely relied on evidence of the 4<sup>th</sup> defendant to come to this conclusion.

In respect of ground 20, Counsel submitted that the learned trial Judge did not properly consider or allude to the above submissions and as such he erred when he ruled in favour of the respondent.

In respect of ground 21, Counsel submitted that the learned trial Judge should not have admitted illegal submissions on the basis that the Respondents had delayed to file in time.

### **Respondent's submissions**

Counsel for the respondent opposed the appeal and supported the decision of the learned trial Judge. In respect of grounds 1, 6 and 7, he submitted that the learned trial Judge properly disposed of the preliminary points of law during trial. He contended that the appellants were hiding behind the omission to appeal against the Court's ruling on the preliminary objections within time to justify consideration of the same by this court without the necessary leave to appeal out of time.

Counsel submitted further that it was an admitted fact that Ms. Salome Kaweesa was the administratrix of the estate of the late Charles Mukumbi until 2006. He argued



that this was an agreed fact and that Ms. Solome Kaweesa rightly had the powers to sale the suit land to the respondent.

In regard to undervaluation of the property for purposes of stamp duty, learned Counsel submitted that stamp duty was assessed by the government valuer and not the respondent.

In regard to fraud, Counsel argued that the position of the law is that fraud must be particularly pleaded and specifically proved as per Order 6 rule 3 of the Civil Procedure Rules.

Furthermore, learned Counsel for the respondent submitted that the Commissioner wrongly de-registered the respondent as proprietor of the suit land pursuant to the High Court orders which were merely for extension of the caveat. Counsel argued that the Commissioner does not have the powers to cancel a registered interest under Section 91 of the Land Act basing on Section 140 (2) of the RTA if there was no will or settlement before a caveat was lodged.

Counsel further argued that a conveyance to a purchaser for value in good faith is not invalidated merely because the probate or letters of administration under which the personal representatives acted are subsequently revoked. He submitted that the respondent was not party to the suit before the Chief Magistrate Court neither was the revocation of the letters of Administration that were issued to Ms. Solome Kaweesa of any legal effect to the respondent's interest in the suit land which ceased to be part of the estate of the late Charles Makumbi upon the sale to and registration of the respondent.

In respect of grounds 2, 4, 8, 16 and 17, Counsel argued that the 1<sup>st</sup> defendant Chief Registrar of titles and 4<sup>th</sup> defendant Ms. Solome Kaweesi are not party to the appeal before this Court. A reference to them by the appellants now is illegal for lack of instructions. Counsel submitted that since the 1<sup>st</sup> defendant and 4<sup>th</sup> defendant have

not appealed the decision of trial Court, it's a clear that they agree with the findings of the trial Court.

Counsel for the Respondent argued that the learned trial Judge did not shift the burden of proof but rather pointed out that the appellants should have responded to the issues raised by the 1<sup>st</sup> and 4<sup>th</sup> defendants. An observation of Court cannot amount to a shifting of the burden of proof.

On ground 13, Counsel argued that, Clause 4 (2) of the Sale Agreement does not in any way bar the respondent who in this case was the plaintiff in the lower Court to seek remedies in the event that his interest has been threaten.

Counsel submitted the grounds 5, 9, 10, 11, 12, 18, 19 and 20 were argumentative and offended the Rules of this Court on how to draft grounds of appeal.

### **Resolution**

I have carefully considered the submissions of counsel, perused the voluminous record of appeal, as well as the authorities and the law cited by both Counsel.

This is a first appeal and as such this Court is required to re-evaluate all the evidence that was available to the trial Judge and make its own inferences on all issues of law and fact. See; *Rule 30(1)* of the Rules of this Court and ***Fr. Narcensio Begumisa & others vs Eric Tibebaaga; Supreme Court Civil Appeal No. 17 of 2002.***

I shall keep the above principles in mind while resolving the grounds of appeal.

The grounds of appeal are set out in the Memorandum of Appeal filed in this Court on the 12<sup>th</sup> January, 2011 where the appellant set out 22 grounds of appeal. Essentially, the grounds of appeal are mixed up and are argumentative. This obviously offends Rule 86(1) of the Court of Appeal Rules which provides that:





*" (1) A memorandum of appeal shall set forth concisely and under distinct heads without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make. "*

Grounds 4, 5, 7, 8, 11, 13, 20 and 21 would actually be struck out for this reason. I have considered the fact that the remaining grounds of appeal conform to the requirements set forth in Rule 86(1) of the rules of this court. I have therefore raised issues for this court to resolve which traverse the issues in contention in this appeal. These include;

1. Who is legally entitled to the ownership of the suit properties?
2. What are the remedies available to the parties?

It's important to point out from the onset that the 1<sup>st</sup> Defendant Chief Registrar of Titles and 4<sup>th</sup> Defendant Ms. Solome Kaweesa at the trial Court are not parties to this appeal. In this case, it is the understanding of this Court that the 1<sup>st</sup> and 4<sup>th</sup> defendants agree with the findings of the trial Court in this matter and the Court shall proceed as such in regard to this Appeal.

From the pleadings and evidence adduced at the trial, what is not in dispute, and is relevant for the determination of this appeal, is that the 1<sup>st</sup> defendant Ms. Solome Kaweesi was the administratrix of the Estate of the late Charles Makumbi. Secondly, that Ms. Solome Kaweesi was well within her powers to sell the suit property to the respondent and that the sale in this regard was valid.

From the pleadings and evidence adduced at the trial, what is not in dispute, is that on 6/9/2004 the respondent's interest was registered on the title. However, the 1<sup>st</sup> defendant canceled the respondent's interest on the title. The 1<sup>st</sup> defendant argued that she cancelled the registration of the respondent on the basis of Court orders of

16<sup>th</sup> September, 2005 and 28<sup>th</sup> September, 2005 respectively and the letters of administration vide High Court Administration Cause No. 588 of 2006.

The learned judge reviewed the order, decree and letter of Administration granted in High Court Civil Suit No. 162 of 2006 Civil Suit No. 532 of 2004 and High Court Admin. Cause No. 588 of 2006 and held that;

*"This order of Court is very clear; it did not order the cancellation of the plaintiff from the register and the title as opposed to the pleadings by the 1<sup>st</sup> defendant,*

*It is noted too, that this decree on appeal was not ordering the 1<sup>st</sup> defendant to cancel the registration of the plaintiff from the disputed*

*Annexure CR3 is the Letters of Administration that was granted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by the High Court of Uganda at Kampala on 15<sup>th</sup> June 2006. This grant was not ordering the 1<sup>st</sup> defendant to cancel registration of the plaintiff from the disputed title."*

Secondly, it's not disputed in the pleadings and evidence on record that the 21 days in the notice by the 1<sup>st</sup> defendant had not expired by the time the respondent obtained and registered the Order. In a letter dated 13<sup>th</sup> July 2006, the 1<sup>st</sup> defendant issued notice to the respondent that his registration was to be cancelled unless he produced a Court Order. The respondent received the notice on 9<sup>th</sup> August 2006 and obtained the Court Order on 15<sup>th</sup> August 2006. Furthermore, that 1<sup>st</sup> defendant did cancel the respondent's title without giving the respondent a hearing.

Section 59 of the RTA provides that every certificate of title issued under the Registration of Titles Act shall be received in all Courts as evidence of the particulars set forth in the certificate, and of the entry of the certificate in the Register Book; and shall be conclusive evidence that the person named in the certificate as the proprietor of, or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest





or has that power. It has been said that, "in the absence of fraud a Court will not go behind the fact of registration," **See: *Olinda De Souza Figueiredo vs Kassamali Nanji [1962] 1 EA756*** and further that, "*a certificate of title is only defeasible in a few instances which are listed in Section 176 of the Registration of Titles Act.*"

Because of the importance of the certificate of title in determining proprietorship in the terms provided for under sections 59 and 64 of the Registration of Titles Act, and the decided cases thereon, I consider it pertinent to reproduce here at the very outset, part of the record in the suit property, which was admitted in evidence at the trial; and is relevant for the determination of the matters in controversy between the parties hereto. It is as follows: –

1. The suit land is comprised in Busiro Block 459 Plot 15 at Sseguku- Katale. The Respondent "David Arthur Bagambe" purchased the suit land from one Ms. Solome Kawesa who was the registered proprietor as the administrator (of the estate) of her father, the late Charles William Makumbi. See 18/4/91 vide Mengo Chief Magistrate's Court Administration Cause No. 54 of 1991. See P. Exhibit 4
2. On 2/6/2004 Ms. Solome Kaweesa executed an agreement of sale of the suit land disposing of the last property of the estate of the deceased to the respondent for Shs. 96 million. According to the sale agreement, Shs. 50 million was paid on that date (2/6/2004) and Shs. 46 million was to be paid within 90 days from that date but not later than 31/8/2004. The land was vacant and without a registered encumbrance.
3. On 24/6/2004, the appellants learnt of the disposal of the suit land and lodged a caveat on the title vide Instrument No. KLA 261308 through Westend & Co. Advocates, Greenland Towers, P.O Box 12369, Kampala. By



reason of the caveat the respondent failed to have himself registered on the Certificate of Title as the owner by purchase.

4. The respondent in person and with his father approached the appellants as caveators and their lawyer but they refused to remove the caveat. He requested Solome to assist but she was unable to. He requested for the refund of the money but Solome refused promising to remove the caveat to pave way for his transfer through Buwule Mayiga Advocates, Solome on 2/9/ 2004 applied to the Registrar of Titles for removal of the caveat to no avail.
5. On 9/5/2005 the respondent as purchaser, through Ngaruye, Ruhindi Spencer & Co. Advocates applied to the 1<sup>st</sup> defendant to issue a notice to the Appellants, as caveators, to show cause why their caveat should not be removed.
6. On 29<sup>th</sup>/5/2005 the appellants were issued with a Notice to show cause to the respondent in the names of Philip Ddumba & Luzige c/o Westent Co. Advocates, P.O Box 12369, Kampala which was never complied with by the Appellants.
7. On 28/8/2005 M/S Ngaruye Ruhindi Spencer & Co. Advocates, on behalf of the respondent applied to the 1<sup>st</sup> defendant to remove the caveat on the basis of the notice issued by the defendant on 29/5/2005.
8. The appellants' caveat lapsed on 6/9/2005 vide Instrument No. KLA 280065 and the Respondent was registered as the owner on the same day vide Instrument Number KLA 280060.
9. On 8/9/2005, only two days after being registered as owner, the respondent effected sub-division of the suit land into plot Nos. 84-127 and had them registered into his names vide Instrument No. KLA 280185, the same





Instrument effecting registration of title of the suit property into the Respondent's names on 6/9/2005.

10. On 16/9/2005, the appellants obtained an *ex parte* order and an inter- parties order on 28/9/2005 from the High Court (Family Division) against the Commissioner for land Registration extending the Appellants' caveat until the hearing and final disposal of an appeal they had earlier filed to the Family Court. Consequently, the Commissioner reinstated the appellants' caveat and reinstated Ms. Solome Kaweesa as the registered proprietor of the suit land.

11. On 19.4.2006 Ms. Solome Kaweesa's Letters of Administration were nullified/revoked by consent pursuant to Civil Suit No. 532 of 2004 filed at Mengo Chief Magistrates Court by the appellant. The appellants thereafter, went ahead to apply for and obtained letters of administration on 15/06/2006 allegedly by which reason they were registered proprietors of the suit land on 17/7/2006.

Bearing the above in mind, I observe that by their plaint, the appellant alleged that the suit property had been fraudulently acquired and finally registered in the names of the respondent. Counsel for the appellant argued that notwithstanding Solome's letters of Administration, the registration of the respondent was tainted with fraud. Counsel contended that the registration by the respondent was procured by fraud in order to defeat the unregistered interest of the beneficiaries.

In response, the respondent denied any wrongdoing or notice of any wrongdoing by some other person; thereby raising the claim that he was a *bonafide* purchaser thereof for value, without notice of any circumstance that would have restrained him from the acquisition of the suit property.



The position of Section 134 of the Registration Titles Act is to the effect that an "A grantee of probate or letters of Administration" becomes the transferee and is deemed to be the proprietor of the land in issue.

Several provisions of the Succession Act spell out who has a legal right over the estate of a deceased person. The Interpretation Section 2 of the Succession Act provides as follows: –

*"In this Act, unless the context otherwise requires –*

(a) *"administrator" means a person appointed by a Court to administer the estate of a deceased person when there is no executor.*

Section 180 of the Act provides that: –

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

Bearing the above legal principles in mind, it's not in contention that Ms. Solome Kaweesa was the appointed administrator of the estate of the late Charles Makumbi Ddumba. Ms. Solome Kaweesi was well within her powers to dispose properties of the Estate of the late Charles Makumbi.

In this case, the appellants' arguments that the Ms. Solome Kaweesi did not hold the powers to sell do not hold any justification under the law.

Furthermore, for a title of a *bonafide* purchaser for value to be impeached, it must attribute fraud on the transferee. ***See: Kampala Bottlers Ltd vs Damanico (U) Ltd, Supreme Court Civil Appeal No. 22 of 1992 and Fredrick J.K. Zaabwe vs Orient Bank and 5 others, Supreme Court Civil Appeal No. 04 of 2006.***





The burden of proof lies on the one who alleges. In the instant appeal, it was neither in the appellants' pleadings, nor was any evidence adduced in Court, that Ms. Solome Kaweesi Administrator of the estate of Charles William Makumbi, fraudulently, or in breach of trust, transferred the suit lands to the Appellants; or that the Respondent David Arthur Bagambe was party or privy to the fraud/illegality that Ms. Solome Kaweesi is alleged to have committed. Further, fraud must be specifically pleaded and proved. The burden of proof is higher than the ordinary balance of probabilities.

Counsel for the appellants argued that, the respondent under-declared the consideration paid for the suit land, which was aimed at cheating the government of the stamp duty when they all consistently purport to have paid Ugs. 40,000,000/= despite the fact that their transactions reflect Ugs. 90,000,000/=.

This Court while addressing a similar issue in ***David Kizito Kanonya and others vs Betty Kizito Court of Appeal Civil No. 187 of 2012*** observed as follows; -

*"Firstly, that there is the issue of misrepresentation of the consideration of the property. The 1<sup>st</sup> appellant did not state the true consideration of the property when he stated in form exhibit P1 that it was a gift. We know it was not. The purpose of stating the consideration, among others is to help determine the value of the property. This is superfluous to say the least as the government valuer is required to physically inspect the property in issue in every application for transfer and ascertain its value, which value is endorsed on the transfer form under his or her signature..."*

*As already noted above the value of the land or whether or not it is developed, is ascertained by the government valuer's physical inspection, irrespective of what is written on the consented or transfer form."*

In other words, stamp duty is assessed or computed upon valuation of the property by the government valuer. It is not based on what is indicated on the transfer form.

Counsel for the appellants argued that the respondent had no cause of action against appellants to issue notice to show cause against the appellants.

***In John Katarikawe vs William Katwiremu (1977) HCB 187***, the Court held *inter-alia* that a contract for sale of land is not perfect until an effective transfer of title has been made, but failure to do so, does not affect the contract until the land is transferred to other persons. It was further held that before transfer of the land, a buyer under contract acquires only equitable interest. On the land being transferred to him, he acquires an indefeasible registered estate unless the transfer was effected through fraud.

In light of ***Katarikawe(supra)*** the respondent acquired an equitable interest. Solome Kaweesi the Administrator of the Estate sold the suit property at 96 Million Shillings. According to the sale agreement, Shs. 50,000,000 deposit was paid on 2/6/2004 and Shs. 46,000,000 balance was later paid within the 90 days as agreed.

I find that Counsel for the appellants' submission that the respondent was a mere purchaser with no cause of action against the appellants or the right to protect his interest is highly erroneous. It is trite that one may hold a legal or equitable interest in property. ***Katarikawe (supra)*** made it very clear that an unregistered right cannot be impeached for lack of registration specifically where a deposit or full payment has been made.

As is manifest from the record above, the respondent was registered on the suit land on 8/9/2005. On 19/4/2006 Ms. Solome Kaweesa's of Letters of Administration were revoked by consent pursuant to Civil Suit No. 532 of 2004 filed at Mengo Chief Magistrates Court by the appellant. The appellants thereafter went ahead to apply





for and obtained letters of administration on 15/06/2006 allegedly by which reason they were registered proprietors of the suit land on 17/7/2006.

The learned trial judge found that actions of the appellant were illegal. He had this to say: –

*"I agree with submissions of the 4th defendant and the plaintiff that the consents entered into between the 4th defendant, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not binding on the plaintiff nor affects the plaintiff's interests in the suit property which ceased to be part of the estate of the late Charles Makumbi Ddumba upon the sale and registration of the plaintiff. By the time the 2<sup>nd</sup> and 3<sup>rd</sup> defendants obtained the letters of administration in the High Court of Uganda on 15th June 2006, the plaintiff was a registered proprietor, implying that the suit property had already passed to the plaintiff and was no longer part of the estate of the deceased. Wherefore, the letters of administration that were granted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants exclude all the lands the 4th defendant sold to the plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants do not have any right over the same since the property had passed to the plaintiff before they acquired their Letters of Administration. From the foregoing analysis and arguments of the court, it is the holding of this Court that the acts of the 4<sup>th</sup> defendant prior to the annulment of her letters of Administration were valid."*

I agree with trial Judge that by the time the Solome Kaweesi's Letters of Administration were revoked, the respondent was the registered proprietor of the suit property as is evidenced by the entries in the Register of the suit property exhibited at the trial. Furthermore, I agree with the learned trial Judge that property in the suit land had already passed.

In the premises, I find that no evidence was adduced before Court that in the process of acquiring the suit property, the respondent indulged in any act of fraud.



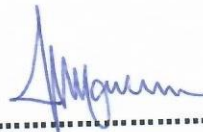
The respondent acquired equitable interest in the suit property upon purchasing it from the administrator of the estate of the late Charles Makumbi. He is therefore a *bonafide* purchaser of the suit property without notice of any factor or circumstance inhibiting such acquisition. Accordingly, then, the respondent's title to the suit property cannot be impeached.

In the result, this appeal fails in its entirety; and, I make the following declarations and orders: –

- (i) This appeal is hereby dismissed; and the judgment and orders of the trial Court are hereby upheld in favour of the respondent.
- (ii) The respondent is the lawful registered proprietor of the suit property; and is entitled to the enjoyment of legal possession thereof.
- (iii) Costs of this appeal, and of the Court below, are awarded to the respondent.

I so order.

**Dated at Kampala** this 15<sup>th</sup> day of Nov 2021.



.....  
**Kenneth Kakuru**  
**JUSTICE OF APPEAL**



**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 05 OF 2011**

*(Appeal against the Judgment of the High Court in Civil Suit No. 162 of 2006 before Hon. Mr. Justice Murangira dated 26<sup>th</sup> November, 2012)*

**1. PHILLIP DDUMBA**

**2. DAVID LUZIGE ::::::::::::::::::::::::::::::::::: APPELLANTS**

**VERSUS**

**DAVID ARTHUR BAGAMBE ::::::::::::::::::::::::::::::::::: RESPONDENT**

**CORAM: HON. JUSTICE KENNETH KAKURU, JA**

**HON. JUSTICE STEPHEN MUSOTA, JA**

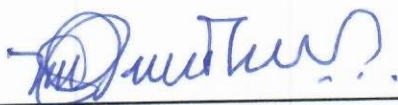
**HON. JUSTICE MONICA MUGENYI, JA**

**JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA**

I have had the benefit of reading in draft the judgment by my brother Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with his analysis, conclusions and orders he has proposed. This appeal ought to be dismissed with costs to the respondent both in this court and in the court below.

Dated this 15<sup>th</sup> day of Nov 2021



**Stephen Musota**

**JUSTICE OF APPEAL**



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

**CORAM: KAKURU, MUSOTA AND MUGENYI, JJA**

**CIVIL APPEAL NO. 05 OF 2011**

**BETWEEN**

**1. PHILLIP DDUMBA  
2. DAVID LUZIGE ..... APPELLANTS**

**AND**

**DAVID ARTHUR BAGAMBE ..... RESPONDENT**

**(Appeal from the Judgment of the High Court of Uganda (Murangira, J) in High Court  
Civil Appeal No. 162 of 2006)**



**JUDGMENT OF MONICA K. MUGENYI, JA**

I have had the benefit of reading in draft the Judgment of my brother, Hon. Justice Kenneth Kakuru, JA in this Appeal. I agree with the decision arrived at, the reasons therefor and the orders made, and have nothing useful to add.

Dated and delivered at Kampala this <sup>15<sup>th</sup></sup> day of <sup>Nov</sup>....., 2021.



**Hon. Lady Justice Monica K. Mugenyi**  
**Justice of Appeal**