

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO.84 OF 2013**

**TUCKER MUBIRU:::APPELLANT**

**VERSUS**

**THE ATTORNEY GENERAL:::RESPONDENT**

**CORAM: HON. MR. JUSTICE BARISHAKI CHEBORION, JA**

**HON. MR. JUSTICE STEPHEN MUSOTA, JA**

**HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA**

**JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA**

This is an appeal against the Judgment of the High Court Land Division at Kampala before the Hon. Mr. Justice Ruby Aweri Opio dated the 5/11/2012 in Civil Suit No.84 of 2011.

**Background of the Appeal**

On the 10<sup>th</sup> March, 2011 the appellant by ordinary plaint filed in the Land Division of the High Court a Civil Suit No.84 of 2011 for recovery of land which he alleged he had been fraudulently deprived of by officials of the Land Registry. The respondent on 7<sup>th</sup> April, 2011 lodged a Written Statement of Defence to the civil suit opposing the entire claim and contending that the transfers made by the Registrar of Titles were lawful and that the civil suit was time barred in law

having been filed out of the limitation period and should be struck out.

The appellant on 21<sup>st</sup> February, 2012 lodged an amended plaint to add a claim for special damages of 2,880,000,000/= being the  
5 current market value of the suit land.

The matter proceeded interparty by way of witness statements one by the appellant and another by N.K Ssali who valued the land. The respondent's counsel learned State Attorney Elison Karuhanga cross examined the witnesses presented by the appellant. The respondent  
10 did not present any witnesses during the trial. The parties filed written submissions which were considered by the trial Judge.

On 13<sup>th</sup> November, 2012 Judgment was delivered in presence of both counsel for the appellant(plaintiff) and the respondent(defendant).

Three issues were considered for determination.

- 15
1. Whether the plaintiff's land was fraudulently transferred?
  2. Whether the suit is barred by the principle of limitation
  3. What remedies available to the parties?

On the first issue the trial Judge found that the appellant/plaintiff had not satisfied the evidentiary burden placed on him as he found  
20 no scintilla of evidence of fraud. That even if such evidence were to be found it was not in any way attributed to the respondent/defendant. On the second issue the trial Judge found that the matter was fifty years old and by any measure it is time barred. As a result, the trial Judge dismissed the civil suit with costs.



The appellant was dissatisfied with the Judgment and decree of the High Court and lodged this appeal.

### **The Appeal**

5 In the Memorandum of Appeal, the appellant raises the following grounds of appeal;

10 ***1. That the Learned Trial Judge erred in law and fact by failing to hold that the evidence adduced by the appellant against the Registrar of Titles/ Commissioner for Land Registration in this matter stood unchallenged.***

15 ***2. The Learned Trial Judge erred in law and fact by failing to hold that failure by the Respondent to call the Registrar of Titles/Commissioner for Land Registration in this matter an adverse inference was drawable against the said party.***

***3. That the Learned trial Judge erred in law and fact by holding that the Appellant has failed to establish any evidence of fraud against the Registrar of Titles/ Commissioner Land Registration in this Matter.***

20 ***4. The learned trial Judge erred in law and fact by holding that the Appellant's suit against the Respondent was time barred.***

**5. That the Learned Trial Judge erred in law and fact by holding that the Appellant was not entitled to the relief sought in this matter.**

**6. That the learned trial Judge erred in law and in fact by failing to evaluate properly the evidence on record and thereby arrived at a wrong decision.**

The Appellant proposes that this Court grants orders that;

**a. The appeal be allowed**

**b. The decision of the High Court be reversed.**

**c. The appellant be granted costs of this Appeal and in the High Court.**

#### **Representations/appearances**

At the hearing of the appeal, Mr. Nasser Lumweno appeared for the Appellant. There was no appearance made for the Respondent.

The appellant filed conferencing notes on 10<sup>th</sup> June 2013. The respondent filed conferencing notes on 11<sup>th</sup> July 2013. On 15<sup>th</sup> April 2021 the appellants filed written submissions. This Court adopted the Appellant's submissions and decided to consider the respondent's conferencing notes on our record in deciding this appeal.

#### **Duty of this court as a first appellate court.**

This is a first appeal arising from the decision of the High Court in exercise of its original Jurisdiction. It is therefore important for this



court to remind itself of its duty as a first appellate court. The duty of a first appellate court is well settled. In the case of **Kifamunte Henry v Uganda (Supreme Court Criminal Appeal No.10 of 1997)** it was held that

5                   ***“The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment***  
10                   ***appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the***  
15                   ***appellate Court must be guided by the impressions made on the judge who saw the witnesses. However there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not which may warrant a***  
20                   ***court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See Pandya vs. R. (1957) E.A. 336 and” Okeno vs. Republic (1972) E.A. 32 Charles B. Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5.***

The duty of the Court of Appeal to re-appraise evidence on an appeal from the High Court in its original jurisdiction is set out in **rule 29 Rules of the Court of Appeal** as follows;

5        ***“29(1) on any appeal from a decision of a High Court acting in the exercise of its original jurisdiction, the court may;***

***(a) re-appraise the evidence and draw inference of fact,***

10       ***(b) in its discretion, for sufficient reason take additional evidence or direct that additional evidence be taken by the trial Court or by commissioner;***

***(2) .....***

***(3) .....”***

I shall abide by this duty as I resolve the issues in this appeal.

15       **Consideration of the Appeal**

I shall deal with the grounds of appeal in the order in which they have been stated in the memorandum of appeal.

20       ***Ground 1 That the Learned Trial Judge erred in law and fact by failing to hold that the evidence adduced by the appellant against the Registrar of Titles/ Commissioner for Land Registration in this matter stood unchallenged.***



### **Appellant's Submissions**

The appellant submitted that his evidence was unchallenged at the High Court since the Respondent did not call any witness to discredit it. That in **Kabu Auctioneers & Court Bailiffs & Another vs F. K.**

5 **Motors Ltd Supreme Court Civil Appeal No.19 of 2009 Tsekooko JSC** in his Judgment at page 8 held *inter alia* that in any case, it is the practice in our Jurisdiction that where admissible evidence is tendered in court in a trial by one side and the opposite side does not challenge such evidence, that evidence is normally acted upon by  
10 court. That the Registrar of Titles was a key witness for the Respondent and yet was never called as a witness. That failure to call the Registrar of Titles to testify leads to the inference that his evidence would have been averse to the respondent's case.

### **Respondent's Submissions**

15 The respondent states in the conferencing notes that the trial Judge was not bound to hold the evidence adduced by the appellant against the Registrar of Titles as unchallenged, having found that the appellant had failed to satisfy the evidentiary burden placed on him in the first place. That it would not be necessary to challenge what  
20 had not been proved. That the evidence of the Registrar of Titles as a key witness in this matter would only be crucial if the appellant had satisfied the evidentiary burden placed on him which he failed to do.

### **Determination of the Ground 1**

I have carefully considered the submissions of the parties.



The word unchallenged ordinarily means not disputed or questioned or not opposed or not defeated. The contention of the Appellant in this case is that the respondent did not question or oppose the evidence presented at the hearing of the case.

5 The record however, suggests otherwise. The respondent filed a written statement of defence denying the entire claim made by the appellant. The respondent went a step further and entered appearance at the hearing of the case through the then learned State Attorney Elison Karuhanga. Further to that the learned State  
10 Attorney cross examined all the plaintiff's witnesses during the hearing of the case and some of the answers given in cross examination formed the basis of the trial Judge's findings in the case. Therefore, as a matter of fact the plaintiff's evidence was challenged.

A defendant who files a Written Statement of Defence, enters  
15 appearance on the day of the hearing and goes ahead to cross examine the plaintiff's witnesses has surely done all that is necessary to challenge the evidence of the plaintiff. It would be a travesty of Justice to find otherwise.

It is the duty of the plaintiff to prove his case with or without any  
20 evidence from the defendant as required by **Sections 101 and 102 of the Evidence Act Cap 6** which state as follows;

*101. Burden of proof.*

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

10 Whereas I agree with the submission of counsel or the appellant that as held in the case of **Kabu Auctioneers & Court Bailiffs & Another vs F. K. Motors Ltd Supreme Court Civil Appeal No.19 of 2009 Tsekooko JSC**. the practice in our Jurisdiction is that where admissible evidence is tendered in court in a trial by one side and the  
15 opposite side does not challenge such evidence, that evidence is normally acted upon by court. In the instant case the evidence was effectively/sufficiently challenged in cross examination.

I accordingly would find no merit in ground 1 of the appeal.

**Ground 2 The Learned Trial Judge erred in law and fact by failing to hold that failure by the Respondent to call the Registrar of Titles/Commissioner for Land Registration in this matter an adverse inference was drawable against the said party.**

20



### **Appellant's Submissions**

The appellant submitted that the failure by the respondent to call the registrar of titles to testify leads to the inference that if presented his evidence would have been adverse to the respondent's case. That in  
5 the case of **J.K Patel Spear Motors Ltd Supreme Court Civil Appeal No.449 of 1991** the court held that parties evidence at trial amply showed that the defendant's general manager was a key witness in the case but since the defendant refused to call him as a witness an adverse inference would be drawn against the defendant.  
10 That therefore the trial Judge erred in not making the inference which he ought to have made.

### **Respondent's Submissions**

The respondent states in the conferencing notes that the trial Judge was not bound to hold the evidence adduced by the appellant against  
15 the Registrar of Titles as unchallenged, having found that the appellant had failed to satisfy the evidentiary burden placed on him in the first place. That it would not be necessary to challenge what had not been proved. That the evidence of the Registrar of Titles as a key witness in this matter would only be crucial if the appellant had  
20 satisfied the evidentiary burden placed on him which he failed to do.

### **Determination of the Ground 2**

I have carefully considered the submissions of the parties.

The word inference means a conclusion reached on the basis of evidence or reasoning. It is a matter of discretion for the court to



make an inference. Accordingly, this court as a 1<sup>st</sup> appellate court would only interfere with the trial court's discretion where the trial court has incorrectly applied a legal principle or the decision is so clearly wrong that it amounts to an injustice. Therefore, where the  
5 court does not make an inference there is no basis for this appellate court to determine whether or not the trial court ought to have made that inference.

I further would agree with the case of the respondent on this ground of appeal that the evidence presented by the appellant having been  
10 insufficient to meet the standard of proof for fraud, there was no basis on which the trial Judge could make any inference.

It is also entirely up to a defendant to decide whether to exercise his right to present a witness or not. With or without a witness presented by the defendant, the court still has to evaluate the evidence before  
15 it as whole and determine whether the plaintiff has made out a case or not. I would therefore find that the trial Judge was not duty bound to make any inference as the appellant would have wished.

It is the duty of the plaintiff to prove his case with or without any evidence from the defendant as required by **Sections 101 and 102**  
20 **of the Evidence Act Cap 6.**

I accordingly would find no merit in ground 2 of the appeal.

**Ground 3 That the Learned trial Judge erred in law and fact by holding that the Appellant has failed to establish any evidence**

***of fraud against the Registrar of Titles/ Commissioner Land Registration in this Matter.***

**Appellant's Submissions**

On this ground of appeal counsel for the appellant submits that the  
5 fraud against the Registrar of Titles/Commissioner Land Registration  
was so obvious or glaring. That the appellant discharged the burden  
of proving fraud. That there was an area schedule provided by the  
Registrar of Titles which did not provide any evidence that the  
appellant or his late father transferred the suit land to third parties.  
10 That no explanation was given by the Registrar of Titles to show how  
the land was transferred into the names of David Sejjaka Nalima's  
name and yet it did not appear anywhere in the area schedule. That  
the said transfer by David Sejjaka was made at a time when he was  
not the registered proprietor of the suit land. That the Registrar of  
15 Titles had fraudulently caused transfer to F.M. Walugembe yet the  
land belonged to Latima N. Kasozi the appellant's late father. That  
the Commissioner Land Registration was key in this fraud. That  
accordingly the finding of the trial Judge that the plaintiff had failed  
to establish fraud and to connect the Registrar of Titles to the fraud  
20 must be rejected.

**Respondent's Submissions**

The respondent states in the conferencing notes that from the  
evidence on record, the appellant failed to show that his father's land  
was fraudulently transferred and also failed to show that the  
25 Registrar of Titles was aware of and actively participated in the



alleged fraud. Further that no concrete evidence was led to support the allegation that the Registrar of Titles falsified records in respect of the deceased's land. That fraud cannot be based on mere assumptions by the Appellant but rather, should be based on concrete evidence of fraud. That the Appellant did not satisfy the evidentiary burden placed upon him to prove fraud.

### **Determination of the Ground 3**

I have carefully considered the submissions of the parties. Fraud was defined by Katureebe JSC (then) in the case of ***Fredrick JK Zaabwe V Orient Bank Ltd and 5 Others Supreme Court Civil Appeal No.04 OF 2006 [2007]*** where he stated as follows;

*"I find the definition of fraud in BLACK'S LAW DICTIONARY 6<sup>TH</sup> Edition page 660, very illustrative. "An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false,*



whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture.....A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. "Bad faith" and "fraud" are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. ....

As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture.....

In terms of the definition of the term "fraudulent" in BLACK'S LAW DICTIONARY it means "To act with "intent to defraud". It means to act wilfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself."

It is trite law as stated by Katureebe JSC in the ***Zaabwe case (supra)*** that in ***Kampala Bottlers Ltd –Vs- Damanico (U) Ltd, (S.C. Civil Appeal No. 22/92 (supra)*** the supreme court decided that even if fraud is proved, it must be attributable directly or by implication, to the transferee in order for it to be a ground for impeachment of title ***Wambuzi, C.J (as he was) stated at page 7*** of his judgment that;

*“...fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.”*


*“Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters.”*

This means that fraud is inherently a cause of action against a transferee and not against the office responsible to effect transfers. Therefore, legally, technically and factually a claim of fraud cannot be sustained against government unless government took over the land for its own purposes as a result. Recklessness and negligence are in themselves not fraud or evidence of fraud.

The appellant failed to demonstrate in his evidence that the Commissioner Land Registration or the government made an intentional perversion of truth for the purpose of inducing his late father or himself in reliance upon it to part with some valuable



*thing/the land in issue belonging to him or to surrender any legal right in relation to the suit land.*

The standard of proof for fraud is well settled. The law is that allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere probability is required. See **Ratlal  G. Patel vs. Baiji Makayi (1957) EA 314 at 317.**

It was the duty of the plaintiff/appellant to prove his case with or without any evidence from the defendant as required by **Sections 101 and 102 of the Evidence Act Cap 6.**

The particulars of fraud pleaded by the appellant in his plaint at the lower court were as follows;

**"PARTICULARS OF FRAUD BY THE SAID OFFICIALS OF THE LAND REGISTRY**

- a. *Transferring the deceased's land to third parties without authority or that of his Administrators.*
- b. *Falsifying the records in the Land registry in respect of the deceased's Land Comprised in Block 265, Plot 25 at Bunamwaya."*

To prove these allegations of fraud, the appellant only presented one witness of fact (the appellant himself) and the other was an expert/valuer of the suit land. Clearly this evidence was insufficient to meet the standard of proof for fraud. The Government was also not the transferee of the suit land therefore it would ordinarily not be



liable for fraud and it would be impossible to impute fraud on the Attorney General under the circumstances. No wonder the learned State Attorney elected not to present any witness in the matter.

I accordingly would find no merit in ground 3 of the appeal as well.

- 5    ***Ground 4 The learned trial Judge erred in law and fact by holding that the Appellant's suit against the Respondent was time barred.***

#### **Appellant's Submissions**

The appellant submitted that the suit was not barred by limitation.  
10    because the cause of action arose on 6<sup>th</sup> September, 2010 as pleaded in the amended plaint. That in his witness statement he also stated that he discovered from records produced by Registrar of Titles that his late father's land had been fraudulently transferred. That the appellant filed the amended plaint on 22<sup>nd</sup> February 2012 within 12  
15    years limitation period for suits regarding land matters. That section 25 of the Limitation Act postpones limitation period in cases of fraud and mistake. That the circumstances the appellant's right of action against the respondent began running on 6<sup>th</sup> September, 2010 and not before. That accordingly the learned High Court Judge erred in  
20    finding that the suit was barred by limitation law.

#### **Respondent's Submissions**

The respondent states in the conferencing notes that he supports the learned trial Judge's findings that the suit against the respondent was 52 years old and was therefore time barred. That the said suit is

founded on fraud and section 3(1) of The Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 provides that no action founded in tort shall be brought against the Government after the expiration of two years from the date on which the cause of action  
5 arose.

That although the plaintiff claimed that he came to know of the fraud in 2010, the trial Judge rightly pointed out that Exhibit D1 showed that the land was transferred into the name of FMJ Walugembe on 2<sup>nd</sup> July 1960; a copy of the Land Title Kyadondo Block 265 Plot 5647  
10 was registered in the names of John Batuma and Remigius Kyanoneka on 24<sup>th</sup> January 1980; 32 years thereafter the plaint was lodged. That the area schedule shows plot 5647 was the last subdivision and it occurred in 1980. That page 21 of Exhibit D1 showed that the title in the name of F.M.J Walugembe was caveated  
15 by Latima Kasozi but the same lapsed. That Latima Kasozi became aware of the FMJ Walugembe being registered proprietor well before 1980 and he caveated the land which caveat lapsed. That accordingly the trial Judge rightly rejected the alleged disability which was pleaded and that no disability was pleaded for this period.

20 **Determination of the Ground 4**

I have carefully considered the submissions of the parties.

I am inclined to agree with the reasoning and decision of the trial Judge as urged by the respondent. The evidence tended to prove that Latima Kasozi was aware of FNJ Walugembe was registered  
25 proprietor well before 1980. He caveated the plot 1189 long before it



entered the name of John Batuma and Remigious Kyanoneka. His caveat lapsed and no suit was filed.

This shows that the evidence before the trial Court was clearly not proving any disability on the part of the plaintiffs' case. It also tended  
5 to prove that the plaintiff did not fully know what he was talking about. Furthermore, I agree with the trial Judge that even the nature of disability pleaded by the plaintiff does not constitute a disability in law because it does not explain the source of disability why from 1960 up to 2009 nothing was done yet the alleged fraud had been detected.  
10 The valuation report indeed indicated that the land was fully developed with various residential houses of different shapes and sizes. The report also indicated that the plaintiff had been occupant of the land to the extent of 3.1 acres from the 12.1 acres originally owned by the late Kasozi. Therefore, clearly the appellant ought to  
15 have been aware of these developments on the land which ought to have triggered inquiry into the matter. The buildings were notorious evidence of adverse possession which cannot be ignored. The plaintiff sat on his rights.

For clarity the following are the particulars of disability pleaded by  
20 the appellant in his amended plaint;

**"PARTICULARS OF DISABILITY"**

*(a) The plaintiff since March 2008 had gone to the Registry of Lands to conduct a search in respect of the above-mentioned land but he was always informed by the officials*

thereat that the records had gone missing and could not be traced

(b) It was not until 6<sup>th</sup> September, 2010 after enormous pressure and threat by the plaintiff to refer the matter to the Directorate of land affairs office of the President that finally the registrar of titles produced the records for inspection by the plaintiff.

(c) It was on the abovementioned date (i.e) 6<sup>th</sup> September, 2010 that the plaintiff discovered the fraud that had been perpetrated on his late father's land by the officials at the Land Registry."

All the evidence tended to prove that the Appellant was not in any disability at all as pleaded.

It is the duty of the plaintiff to prove his case with or without any evidence from the defendant as required by **Sections 101 and 102 of the Evidence Act Cap 6.**

I accordingly would find no merit in ground 4 of the appeal as well.

**Ground 5 That the Learned Trial Judge erred in law and fact by holding that the Appellant was not entitled to the relief sought in this matter.**

Considering that I have found no merit in grounds 1, 2, 3 and 4, it follows that the Appellant was indeed not entitled to the reliefs sought in the High Court.



I would accordingly agree the trial Judge that indeed not only did the suit lack merit it was fifty years old and by any measure it is time barred.

I find no merit in ground 5 of the appeal as well.

- 5 ***Ground 6 That the learned trial Judge erred in law and in fact by failing to evaluate properly the evidence on record and thereby arrived at a wrong decision.***

Since I agree with the trial Judge on grounds 1, 2, 3, 4 and 5, it means the trial Judge did effectively evaluate the evidence and did  
10 not err in law or in fact and arrived at the right conclusion.

Accordingly Ground 6 of the appeal lacks merit.


### **Conclusion**

For the reasons I have given I would accordingly dismiss this appeal with costs to the respondent.

15 I so order

Dated this 15<sup>th</sup> day of Dec 2022

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**Stephen Musota**  
**JUSTICE OF APPEAL**

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THE REPUBLIC OF UGANDA,  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
(CORAM: CHEBORION, MUSOTA, MADRAMA, JJA)

CIVIL APPEAL NO 84 OF 2013

TUCKER MUBIRU} ..... APPELLANT

10

VERSUS

ATTORNEY GENERAL} ..... RESPONDENT

*(Appeal from the Judgment of Aweri Opio J of the High Court of Uganda at  
Kampala in High Court Civil Suit No. 84 of 2011 dated 13<sup>th</sup> December 2013)*

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JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the Judgment of my learned brother  
Hon. Justice Stephen Musota, JA.

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I concur with decision that the appeal be dismissed. My decision is however  
confined to ground 4 of the appeal which upholds the finding of the learned  
trial judge that the suit was time barred.

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The plaintiffs action was for declaration that the plaintiff was wrongfully  
deprived of his land by the defendant and secondly for an order for valuation  
of the property and the payment of general damages of Uganda shillings  
2,880,000,000/- as well as for interests on the amount and costs of the suit.

30

Primarily, the plaint discloses that the plaintiff alleged fraud of the officials  
of the land registry in that it was alleged that the property was transferred  
into the names of third parties while there was a caveat lodged by the  
deceased which had not been vacated. That the Registrar of Titles connived  
with other parties to have the title transfers. The plaintiff was aware that  
the suit was time barred and pleaded disability which arose since March  
2008 in that he tried to conduct a search of the title to establish the status  
and was resisted by the respondent's agents. That only after 6<sup>th</sup> September  
2010 did he succeed in getting the particulars in the registry. The record  
shows that the plaintiff obtained letters of administration to the estate of



5 the late Latima Nkonko Kasozi 17<sup>th</sup> of July 2009. The subject matter of the suit is Kyadondo Block 265 Plot 25 at Bunamwaya measuring 12.1 acres.

As a matter of fact, the learned trial judge found that the property had been subdivided and transferred as way back as 27<sup>th</sup> of June 1960 to F.M.J Walugembe. Thereafter several other persons who became the  
10 beneficiaries of the various plots and the estate of the deceased remained with about 3.1 acres which is still in possession of the appellant. Further the learned trial judge found that the deceased had lodged a caveat on the suit property which lapsed and was therefore aware of any fraud. The suit property was subsequently transferred. Particularly the learned trial judge  
15 found that exhibit D1 shows that the land was transferred in the name of FMJ Walugembe on 2<sup>nd</sup> July 1960. Secondly exhibit D1 also shows that block 265 plot 5647 was registered in the names of John Batuma and Remigius Kyanoneka 24<sup>th</sup> of January 1980, 32 years before the plaint was lodged in court. Further Plot 5647 which was the last subdivision which occurred in  
20 1980. The title was caveated by the deceased whose estate the appellant was administering and it had lapsed before further transfers were made.

There is no clear evidence as to when the deceased died for the court to establish anything about when the cause of action lapsed. Clearly the suit was time barred because it was an action for damages and not for recovery  
25 of land. The cause of action is in tort and has to be filed in court against the Attorney General within two years from the time the cause of action arose.

In the premises, I concur with my learned brother that appeal be dismissed but confine the decision on the ground that the action of the plaintiff in the High Court was time barred and that is sufficient to dispose of the appeal.

30 Dated at Kampala the 15<sup>th</sup> day of Dec 2022

  
Christopher Madrama

Justice of Appeal

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**THE REPUBLIC OF UGANDA**

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

*(Coram: Cheborion Barishaki, Stephen Musota, Christopher Madrama, JJA)*

**CIVIL APPEAL NO.84 OF 2013**

**TUCKER MUBIRU:.....APPELLANT**

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**VERSUS**

**ATTORNEY GENERAL:.....RESPONDENT**

*(Appeal from the judgment of Ruby Aweri Opiyo, J (as he then was) in the High Court of Uganda at Kampala in Civil Suit No.84 of 2011 dated 13<sup>th</sup> December, 2013)*

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**JUDGMENT OF CHEBORION BARISHAKI, JA**

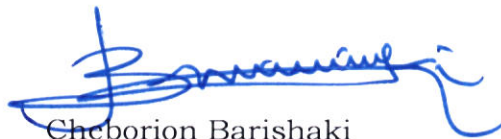
I have had the benefit of reading in draft the judgment in the above appeal prepared by my learned brother Stephen Musota, JA. I agree with him that the Appeal lacks merit and ought to be dismissed with costs.

20

Since Madrama, JA also agrees, this Appeal is dismissed with costs to the respondent.

It is so ordered.

Dated at Kampala this .....<sup>15<sup>th</sup></sup>..... day of .....<sup>Dec</sup>..... 2022.



Cheborion Barishaki

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**JUSTICE OF APPEAL**