THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.122 OF 2014

(An appeal arising from the Judgment of the High Court (Land Division) in Civil Suit No.41 of 2008 dated 21st February 2014 delivered by the Hon. Mr. Justice J.W Kwesiga)

SEMANDA JOSEPH:: APPELLANT

VERSUS

JOBBINGFIELD PROPERTIES LTD:: RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

HON. LADY JUSTICE ELIZABETH MUSOKE, J.A.

HON. LADY JUSTICE IRENE MULYAGONJA, J.A.

JUDGMENT OF THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

Introduction

This is an Appeal from the Judgment of High Court (Land Division) in Civil Suit No. 41 of 2008 delivered by Hon. Mr. Justice J.W. Kwesiga dated 21st February, 2014.

Background

The Respondent Company sued the Appellant at the High Court (Land Division) for a declaration that it had a subsisting lease in land comprised in LRV 769 Folio 5 Plot 339 Block 265 land at Bunamwaya. The Appellant also filed a Counterclaim seeking a Declaration that the Respondent's title was void for non-payment of Rent and that he be allowed to re-enter the land. The Appellant's claim was that he was the mailo owner of the suit land and had

bought the suit land from the late Omubejja Kasalina Nkinzi (hereinafter referred to as Princess Nkinzi). Judgment was rendered in favour of the Respondent hence this Appeal.

Grounds of Appeal

The following are the grounds of Appeal in this matter:

1. **The trial Judge erred when he held that the Respondent had a valid lease on the Appellant's Mailo Certificate of title to the suit land and yet by the time the Respondent alleged to have obtained the consent for his assignment of the lease from the former lessee, Italian asphalt and Haulage limited, the former owner of the mailo Title Princess Kasalina had already sold the Mailo Title to the Appellant and therefore Princess Kasalina Nkinzi had long ceased to have authority to transact business in respect of the suit land.**
2. **The trial Judge erred when he failed to find that the Respondent had failed to adduce evidence proving that it had obtained an assignment of the lease because the parties who were alleged to have participated in the alleged assignment of the lease were not called to testify.**
3. **The trial Judge wrongly overlooked the fact that the Respondent had not paid taxes for the alleged transfer of the lease.**
4. **The trial Judge erred in law and fact when he failed to properly evaluate the evidence on the record.**

Representations

The Appellant was represented by Mr. Robert Bautu and Mr. Nyegenye Henry while the Respondent was represented by Mr. Lutaakome and Mr. Patrick Bugembe.

Duty of the Court

This is a first Appeal and this Court is charged with the duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10. This court also has to caution itself that it has not seen the witnesses who gave testimony first hand. Based on its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya v R [1957] EA 336 and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No.10 of 1997.**

Preliminary Point of Law

At the hearing of the Appeal, this court was drawn to an Application to strike out the Appeal for failure to take an essential step. This court then formulated an issue on this point of law (as articulated hereinafter) and directed the parties to submit on it.

Issue on the Preliminary Point of Law

Whether the Appellant did not serve the **memorandum of Appeal and record of Appeal** upon the Respondent's Counsel hence failing to take an essential step in the instant Appeal?

Respondent's Submissions on the Preliminary Point of Law

Counsel for the Respondent submitted that the Appeal was incompetent because the Appellant failed to take an essential step in prosecuting it. He submitted that the Appellant had not served the Respondent with the Memorandum of Appeal. He relied on Rule 82 of the Rules of this court and prayed that the Appeal be struck out.

Counsel for the Respondent submitted that the Respondent only got to know about the Memorandum of Appeal after being served with conferencing directives. He submitted that this was what had prompted him to crosscheck with the court and find that the Appellant had filed the Appeal on 23rd July 2014; but had not served the Respondent.

Counsel for the Respondent relied on the case of **Andrew Maviri vs. Jomayi Property Consultants Ltd CACA No. 224 of 2014**, where this court held that taking an essential step was the performance of an act by a party whose duty is to perform that fundamentally necessary action demanded by the legal process, so that subject to permission by the court, if the action is not performed as provided by law prescribed, then whatever legal process that has been done before, becomes a nullity.

Appellant's Reply to the Preliminary Point of Law

Counsel for the Appellant submitted that the Respondent was actually served with the Record and Memorandum of Appeal.

Counsel for the Appellant submitted that the Appellant had averred in his affidavit dated 29th July 2020 that by the time the High Court delivered Judgment, the Respondent was being represented by M/S SYBA Advocates on whom Notice of Appeal was served but the said Advocates had refused to acknowledge receipt on the other hand the current Advocates for the Appellant, M/S Arcadia acknowledged receipt of the Notice of Appeal.

It was submitted by counsel for the Appellant that the counsel for the Respondent was actually served with the Record of Appeal and Memorandum of Appeal but they refused to acknowledge receipt.

He further argued that counsel for the Respondent received the Record of Appeal and Memorandum of Appeal because they were able to answer to the Memorandum of Appeal by filing Conferencing notes on 27th October 2015.

It was further submitted by counsel for the Appellant that the Respondent did not serve the Appellant with a Notice of Full and sufficient Address of Service in accordance with Rule 80 of the Rules of this court. Rule 80 of the Rules of this court provides that the Respondent is to give his Address for Service.

He submitted that even though Rule 88 of the Judicature (Court of Appeal) Rules provides that the Appellant should serve the Respondent with the Memorandum of Appeal and the Record of Appeal within seven days from the lodgment of the same in court registry this Provision is still subject to Rule 80. Rule 80 provides that the Respondent is supposed to give his address for service.

Counsel for the Appellant prayed that the preliminary objection be resolved in the negative.

Court's Findings

The issue for determination in this preliminary point of law is whether the failure by the Appellant to serve the Respondent with the Record and Memorandum of Appeal renders this Appeal a nullity. Counsel for the Respondent has submitted that the Appellant did not serve the Respondent with the Record and Memorandum of Appeal. That he only found out about the Appeal after he was issued with conferencing directives.

Counsel for the Appellant on the other hand has submitted that service of the Notice, Record and Memorandum of Appeal was effected; however the counsel for the Respondent had refused to acknowledge receipt. Secondly, counsel for the Appellant has submitted that the legal representatives of the Respondent had changed from M/S SYBA Advocates to M/S Arcadia since the time the suit was filed in the High court. Thirdly, that the Respondent also defaulted as there was no service on the Appellant of a Notice of Full and Sufficient Address of Service in accordance with Rule 80 of the Rules of this court.

In this particular case the essential step that was supposedly omitted by counsel for the Appellant was the failure to serve the Respondent with the Memorandum of Appeal. In the case of **Utex Industries Ltd vs. AG SCCA** No. 52 /1995 (unreported) it was held that;

"it is the duty of the intending Appellant to actively take necessary steps to prosecute his Appeal. It is not the duty of the Respondent or the court to do it for him."

It was further held that:

"It is now settled law that failure to take an essential step in the process prosecuting an Appeal renders the Appeal incompetent. Even failure to do so within the prescribed time has the same effect."

Even though this is what the Respondent alleges I am unable to find in favour of the Respondent because of the following reasons. First, the Respondent was represented by two law firms from the time the suit was filed in the High court and then on Appeal to this court. In the affidavit of service by Luyijja Willy, a court process server, he averred that the Applicant was being represented by M/S SYBA Advocates who refused to acknowledge service of court process this notwithstanding, the current Advocates M/s Arcadia Advocates ultimately acknowledged service .

Secondly, counsel for the Respondent has somehow managed to file his responses to this Appeal in time therefore the Respondent was not prejudiced by this action. The conferencing notes of the Appellant were received by this court on the 15th September 2015 while those of the Respondent were received on 27th October 2015. Furthermore counsel for the Respondent was able to appear when this Appeal was cause listed for hearing.

Therefore, following Article 126 (2) (e) of the Constitution and Rule 2(2) of the Rules of this court I dismiss the Preliminary objection for lack of merit. I will now proceed to resolve the merits of this Appeal.

Ground 1 and 4

Whether the trial Judge erred when he held that the Respondent had a valid lease on the Appellant's Mailo Certificate of title to the said land and yet by the time the Respondent alleged to have obtained consent for

assignment of the lease from the former lessee, Italian Asphalt and haulage limited, the former owner of the Mailo Title Princess Kasalina Nkinzi had already sold the mailo title to the Appellant and therefore she (Princess Kasalina Nkinzi) had long ceased to have authority to transact business in respect of the suit land.

And

Whether the trial Judge erred in law and fact when he failed to properly evaluate the evidence on record.

Appellant's submissions

Counsel for the Appellant submitted that he would argue Ground four before ground one.

He argued that it was the duty of this court to evaluate the evidence on record as a whole before making their independent decisions and the failure to evaluate the evidence was sufficient to constitute a ground of Appeal.

Secondly, counsel for the Appellant submitted that Princess Nkinzi having sold her Mailo interest in the land to the Appellant on 26th April 2004, she had no powers or authority thereafter to execute any other transaction including giving Consent for the Assignment or transfer of Lease under the suit property.

Thirdly, counsel for the Appellant submitted that the date on which Luigi Gianiazzi (Pw1) a Director of the Respondent Company met with Princess Nkinzi was very important and yet he did not mention it.

He submitted that Luigi Gianiazzi (Pw1) merely testified that he met her some time in 2004. Juma Mubiru (Pw2) who had taken Luigi Gianiazzi (Pw1) to meet Princess Nkinzi also testified that he did not remember when he met her. Furthermore counsel for the Appellant submitted that the exact date on which the lease was extended was also not known.

Counsel for the Appellant submitted that both the variation to the lease and the consent to extension of the lease were concocted. This was because Luigi Gianiazzi (Pw1) had testified that he agreed to extend the lease and then purchased the land in 2004. During cross-examination Luigi testified that the purchase of the land was done in February 2004 which would imply that the extension of the lease was made before February 2004. However, counsel submitted that the variation of the lease for a further 24 years was made on 2nd August 2004 (Exhibit P. 1).

Counsel for the Appellant submitted that the impugned consent was therefore forged. This was because the consent was never tendered in Court as an exhibit, it was never filed and registered in the land office yet these were all mandatory requirements under the law. Counsel in addition argued that the Respondent did not present as a witness, Andrew Lumonya the Advocate who witnessed the said consent.

Thirdly, counsel for the Appellant submitted that Luigi Gianiazzi (Pw1) who was the director of the Respondent Company did not testify that Princess Nkinzi executed a consent in favour of the Respondent. He merely testified that he met the late Princess Nkinzi and she had agreed to extend the lease for a further 24 years. Furthermore, he submitted that Juma Mubiru (Pw 2) who escorted the director of the Respondent company to meet Princess Nkinzi as

the interpreter testified that Princess Nkinzi never signed any papers in his presence.

Fourthly, counsel for the Appellant submitted that none of the witnesses who would have clarified on the authenticity of the consent agreement were called upon to testify in court. The first witness who could have testified was Princess Nkinzi however by the time of hearing the suit she had died. The second witness who could have testified about the consent agreement was Andrew Lumonya (Advocate), who was alleged to have witnessed the consent however he was not called in as a witness.

It was submitted by counsel for the Appellant that the Respondent could not rely on Section 54 of the Registration of Titles Act that provides that instruments are not effectual until registered because the Respondent acquired the lease title in respect of the suit property without first obtaining a legitimate consent form from the registered proprietor.

Counsel for the Appellant submitted that the alleged consent that was presented in court could not be relied upon since it was never tendered as an exhibit. Furthermore, the impugned consent was not filed or registered in the land office because it did not bear any received stamp of the land office or any endorsement from the Registrar of titles.

Respondent's submissions

Counsel for the Respondent submitted that both the Grounds four and one were superfluous and redundant because they did not specifically point out in what aspect the court had erred in. He prayed that the said Grounds therefore be dismissed with costs.

He in this regard relied on the case of **Magara Ramdahan vs. Uganda Criminal Appeal No.146 of 2009**. Counsel submitted that in that case, the court found that Rule 30 of the Rules of this Court grants power to this Court as a first Appellate court to re-appraise all evidence and draw its own conclusions. This Rule therefore renders ground one superfluous and redundant.

In response to the submission of the Appellant's argument that his Mailo interest was registered before the Respondent's lease interest, counsel submitted that whereas the Appellant testified that he purchased his Mailo interest on 26th April 2004, according to the sale agreement the Appellant was actually registered as the proprietor on 15th July, 2005. On the other hand, counsel submitted that the Respondent became a lessee on the suit land on the 20th of July 2004 which was a year before the Appellant acquired his interest in the land.

Counsel further submitted that at the time of registration of the Respondent's lease, Princess Nkinzi was still the proprietor and owner of the Reversionary interest in the land. Furthermore, counsel for the Respondent submitted that Princess Nkinzi also executed a variation of the lease on 2nd August 2004.

Thirdly, counsel for the Respondent submitted that the interest acquired by the Appellant upon purchase was not binding on the Respondent because the Respondent was not aware of it.

He submitted that from the Record of Appeal at page 45, the Respondent's Director got to know about the proprietorship of the Appellant long after it had been registered its lease interest. Counsel for the Respondent further submitted that the Respondent acquired valid proprietary lease interest in the

suit land since it had no knowledge of another landlord save for the late Princess Nkinzi who was the registered proprietor on record. Counsel argued that unregistered instruments are ineffectual to pass any interest in land. In this regard he relied on Section 54 of the Registration of Titles Act and the case of **Souza Figueredo and Co. Ltd vs. Moorings Hotel [1960] EA 926.**

Finally, counsel for the Respondent submitted that the Appellant had notice that there was a subsisting lease on the suit land owned by the Respondent. In support of this argument, counsel submitted that the Appellant had admitted that when he purchased the land there was an old house which had been built on the suit land by the Italians. Furthermore, the Appellant further admitted during cross examination that at the time the Appellant purchased the land, there was a valid lease existing for the Italians.

Court's findings

I have considered the submissions of all opposing counsel and reviewed their authorities for which I am grateful.

The issue for determination in this ground is the legal status of the parties on the suit land. In order to do so, it is necessary to re-evaluate the evidence as to the timing as to when the contesting parties acquired interest in the suit land and when these interests were registered.

Counsel for the Appellant has submitted that the Appellant's interest in the land was purchased first having acquired a mailo interest, from the former mailo owner Princess Nkinzi; who thereafter lost the authority to consent to the assignment of the lease from the former lessee (Italian Asphalt and Haulage Limited) to the Respondent. Conversely, counsel for the Respondent

has submitted that the Respondent's lease was actually registered before the Appellant registered his interest.

The trial Judge found that the defendant (now Appellant) purchased the mailo tenure subject to the terms and conditions of the lease. In the said Lease, the Respondent had succeeded the previous registered proprietor (Italian Asphalt and Haulage Limited) who was registered in 1970 and by virtue of the variation of the lease had acquired an extra 24 years. The reasons for this finding was founded on the principle of indefeasibility of title under Section 54 of the Registration of Titles Act in addition to the fact that the Appellant already had notice of the Respondent's interest.

So what was the order of events based on the evidence before Court? I agree with the finding of the trial Judge that following the Registration of the lease in 1970 there was a subsequent variation of the said lease as a result of which, the Respondent had acquired extra 24 years of tenure.

I further agree with the Trial Judge that the Appellant's mailo interest was subject to the terms and conditions of the Respondent's lease since the Appellant's interest on the land (executed on the 26th April 2004) was registered on 15th July 2005 whereas the Respondent's lease interest was registered earlier on the 20th July 2004.

Section 54 of the Registration of Titles Act provides that: -

> "54. Instruments are not effectual until registered
>
> *...No instrument until registered in the manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act or render the land liable to any mortgage; but upon such*

registration the estate or interest comprised in the manner and subject to the covenants and conditions set forth and specified in the instrument or..."

A similar section (Section 51) of the Registration of Titles Ordinance has been interpreted by the case of **Souza Figueiredo and Co. Ltd vs. Moorings Hotel [1960] EA 926.** In that case the Respondent by contract leased the suit properties to the Appellant for a period in excess of three years. The lease was however not registered. Before the time elapsed, the Appellant vacated the premises in arrears. The Respondent in that matter argued that the lease was not effectual thus he was not liable to pay rent. The Respondent argued that there was an equitable remedy. However the Appellant submitted that Equity could not override the provisions of the Registration of Titles Ordinance.

Sir Kenneth O' Connor J. found that no estate or interest in the land can be created or transferred by an unregistered instrument and the landlord cannot be made liable to the covenant in an unregistered instrument but Section 51 does not say that an unregistered instrument cannot operate as a contract interparties.

Therefore, from the period when the Appellant purchased his mailo interest to the period when he had it registered he can only enforce his rights against the lessor and not the Respondent because his interest was not registered.

The Trial Judge further found that the Appellant had notice of the Respondent's interest in the land since he testified that the land he bought already had an abandoned house which belonged to the Italians who had leased the land long time ago. Furthermore, in the sale agreement between Joseph Semanda and Princess Nkinzi under the title deed it provides that the

vendor's original certificate of title got lost in the year 2002 when it was stolen from her home at Bunamwaya, Ngobe. The vendor then undertook to obtain a Special Certificate of Title and in addition to have the lease cancelled and thereafter re-enter the land.

This provision in the sale agreement is evidence that if the Appellant had undertaken due diligence he would have found that the Respondent still had an interest in the land.

The Appellant claims that the consent to variation of the lease and the variation of the lease were concocted because they were not registered in the land office, however I have scrutinized both documents on pages of the Record of Appeal and find that both documents on the contrary were actually registered in the land office. They both have stamps from the land registry with their instruments numbers given.

I therefore resolve these grounds in the negative.

Ground two

Whether the trial Judge failed to find that the Respondent had failed to adduce evidence proving that it had obtained an assignment of the lease because the parties who were alleged to have participated in the alleged assignment were not called to testify.

Appellant's submissions

Counsel for the Appellant submitted that Princess Nkinzi sold her Mailo interest in the suit land to the Appellant on 26th April 2004 and this meant that she did not have the authority to execute any other transaction in respect

of suit the land including the assignment of the lease and the variation of the lease.

Secondly, counsel for the Appellant submitted that there was no other witness who was present when the Princess Nkinzi was executing the said lease. Counsel for the Appellant submitted that the Respondent ought to have called Counsel Lumonya as a witness since he was said to be present when the variation of the lease and consent were being signed. He submitted that the evidence of Luigi Gianiazzi (Pw1) and Juma Mubiru (Pw.2) left many gaps relating to whether the documents were actually signed. He argued that the evidence of Juma Mubiru (Pw. 2) who escorted Luigi Gianiazzi (Pw.1) was to the effect that he never actually saw Princess Nkinzi signing any documents.

Counsel for the Appellant submitted that the presentation of the certificate of title by the Respondent in respect of the suit property was not enough to prove that the Respondent Company owned the leasehold title. Counsel for the Appellant argued that the Appellant had pleaded in his defence and Counterclaim that the Respondent had acquired the lease in circumstances that were illegal and fraudulent.

Counsel for the Appellant submitted that the Respondent did not adduce any cogent and reliable evidence to prove that it ever obtained any assignment of the lease from Princess Nkinzi.

He prayed that ground two be resolved in the affirmative.

Respondent's submissions

Counsel for the Respondent submitted that Mr. Luigi Gianiazzi (Pw.1), the director of the Respondent who executed the assignment agreement, was called to testify.

Counsel for the Respondent Company submitted that the Respondent led evidence of a purchase agreement between itself and Italian Asphault which was executed by Mr. Luigi Gianiazzi (Pw.1) on behalf of the Respondent. He submitted that the Respondent also led evidence of a variation agreement with the Late Princess Nkinzi which was still executed on behalf of the Respondent Company.

Counsel for the Respondent Company relied on Section 59 of the Registration of Titles Act which provides that the production in court of a certificate of title by a party named therein is sufficient proof of ownership by the party of the land described therein.

It was argued by counsel for the Respondent that no fraud was alleged and or proved on the Respondent's part. Counsel for the Respondent prayed that we find that the Respondent was the registered owner of the lease in the suit land.

Court's findings

The upshot of this ground is that the Appellant criticizes the findings of the trial Judge as regards the lease of the Respondent in that there was no evidence called to support it. Conversely, counsel for the Respondent submitted that trial Judge was correct to rely on the assignment on the lease

to prove that the Respondent had acquired leasehold interest since the director of the Respondent was called to testify about it.

The trial Judge in finding that the Respondent's lease was legally binding on the Appellant relied on several documents. These were;

a) a lease between Kasalina and Italian Asphalt and Haulage Ltd, dated 29th July, 1970 for 49 years.
b) Kasalina's consent to transfer the lease from Italian Asphalt and Haulage Ltd to Jobbingfield Properties Ltd dated 7th May 2004.
c) The transferred Leasehold Title with effect from 20th July 2004.
d) The variation of Lease dated 2nd August 2004.

Furthermore, the trial Judge found that the Appellant also corroborated the Respondent's evidence that the Respondent was in occupation of the land. Since the Respondent had testified that he had never taken possession of the land and that Princess Nkinzi told him that the property belonged to the Italians. Furthermore, he testified that there was renovation and fencing that was taking place on the house.

The trial Judge found that;

"the contention that there was no consent to the transfer because the plaintiff did not call Mr. Lumonya who witnessed the consent to transfer is not sufficient to deny the plaintiff its registered proprietorship".

I agree with this finding.

Furthermore, the variation of the lease was also registered in the land Office and given an instrument NO. 344530. It was signed by Mr. Luigi Gianiazzi as a lessee on behalf of the Respondent Company.

The trial Judge found that the same way Section 59 of the Registration of Titles Act protected the Appellant's mailo certificate of title was the same way that it protected the Respondent's registered interest in the leasehold title.

Section 59, provides as follows: -

"...59. Certificate to be conclusive evidence of title

No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this 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..."(emphasis mine)

I also resolve this ground in the negative.

Ground 3

Whether the trial Judge wrongly overlooked the fact that the Respondent had not paid Government taxes for the alleged transfer of the lease.

Appellant's submissions

Counsel for the Appellant submitted that the transfer instrument under which the Respondent acquired the lease did not reflect that the Respondent paid any consideration to Italian Asphalt because the space for consideration was blank. He argued that this implied that the Respondent had not paid any stamp duty for the transfer.

Secondly, counsel for the Appellant submitted that the Representative of the Respondent made contradictory statement about the consideration that was paid first he testified that the Respondent paid Shs. 812,500,000/= as consideration for the transfer of the suit land from Italian Asphalt and Haulage Limited. Yet on the consent form for the transfer the Respondent stated a sum of Shs. 100,000,000/= as consideration. Counsel for the Respondent submitted that if the Respondent had paid stamp duty for the transfer it would have stated the exact consideration at which it bought the suit land.

Counsel for the Appellant submitted that the trial Judge ought to have nullified the Respondent's title deed for non-payment of stamp duty because it rendered the transaction void because of fraud.

Counsel for the Appellant submitted that any transaction designed to defraud the Government of its revenue is illegal and therefore a title deed acquired in such circumstances would be void because of fraud. He relied on the case of **Samuel Kizito Mubiru and another vs. G. W. Byensiba and Anor**, H.C.C.S No. 513 of 1982 for this proposition.

Respondent's submissions

Counsel for the Appellant submitted that non-payment of stamp duty did not invalidate a transaction.

First, counsel for the Respondent submitted that there was no evidence on the record that showed that taxes had not been paid by the Respondent.

He submitted that the burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were given on either side. He relied on Section 103 of the Evidence Act for this proposition and the case of **Sebanakita vs. Fuelex Uganda limited**; Civil Appeal No. 4 of 2016. He submitted that there was evidence to show that stamp Duty had been paid from the consent to transfer at page 80 of the record.

Secondly, counsel for the Appellant submitted that failure to pay stamp duty did not amount to fraud and neither did it render the transaction void.

Counsel for the Respondent first referred us to the case of Byamugisha J.A., (R.I.P) **Dieter Pabst vs. Abdu Ssozi** Civil Appeal No.116 of 2000 for the proposition that the decision whether the instruments attracted duty or not ought to make before the instrument is admitted. The party concerned ought to be given an opportunity to pay the duty so that the instrument can be used in evidence.

Thirdly, counsel for the Respondent submitted that fraud must be specifically pleaded and particularized. He argued that the Appellant was not entitled to raise issues that were never pleaded at the trial. He submitted that fraud was never pleaded nor brought to the attention of court.

Court's findings

The issue for determination under this ground is whether the non-payment of stamp duty by the lessee rendered the transaction void for fraud. Counsel for the Appellant has submitted that the instrument of transfer of the lease from

Italian Asphalt and Haulage Limited to the Respondent did not show the consideration meant also that there was no payment of stamp duty on that transaction. On the other hand, counsel for the Respondent has submitted that the non-payment of stamp duty did not render the transaction void.

The law requires that the true consideration in land transfers must be declared. Section 92 (1) of the Registration of Titles Act provides that: -

"...Where the consideration for a transfer does not consist of money, the words "the sum" in the forms of transfer in that schedule shall not be used to describe the consideration, but the true consideration shall be concisely stated..."

A letter dated 11th November 2007 from Uganda Revenue Authority says that there are no records of stamp duty on the transfer of MVR 769 PLOT 339 from Italian Asphalt and Haulage Limited to M/S. Jobbingfield Properties Ltd. The reason for this finding is simple and straightforward in that the Register that was checked in this particular case was the MVR 769 Plot 339 which means that the Register that was checked was the Mailo land Register and yet the transaction in question must have been registered in the leasehold Register since it was Leasehold Register volume 769 Plot 339.

The letter reads as follows;

"We have checked our records of stamp Duty payments and confirmed that stamp duty was not paid on the transfer of MVR 769 Plot 339 from Italian Asphalt and Haulage Limited to Ms. Jobbing field Properties Ltd. Our records show that on the 5th July 2004 the serial numbers of the instruments stamped range from 197 to 303 and not 1938 which is on the purported transfer instrument in question."

I have scrutinized the transfer instrument of land from M/S Italian Asphalt and Haulage Ltd to M/S Jobbingfield Properties Ltd on page 80 of the Record of Appeal. There are two stamps for payment of stamp duty dated 5th July 2004 embossed thereon, one of them has stamp duty section "Release" endorsed on it. I have also observed the Application for consent transfer of sublease at page 81 of the Record of Appeal, it has the consideration of one hundred million shillings. The Government Valuer assessed the stamp duty to be paid to be three hundred thousand shillings. I find therefore that the stamp duty was actually paid.

The trial Judge acknowledged both the Appellant's mailo title and the Respondent's leasehold interest in the land mainly because of the legal principle of indefeasibility of title under Section 59 of the Registration of Titles Act. He found on page 103 of the Record of Appeal that Section 59 also protected the Respondent's registered interests in the leasehold title. He found that the Appellant had bought the land subject to the terms and conditions of the lease.

Whereas this finding shows that the trial Judge was not overtly concerned with whether the Appellant had paid the correct government taxes there is evidence that such payments were made and any short fall if at all could be corrected see the decision of this Court in **Dieter Pabst (Supra)**.

This ground also fails.

Final Result

The Preliminary Objection and all grounds are unsuccessful. This Appeal consequently is dismissed with costs.

I so Order.

Dated at Kampala this 3rd **day of** March **2022.**

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 122 OF 2014

JOSEPH SSEMANDA::APPELLANT

VERSUS

JOBBINGFIELD PROPERTIES LIMITED::::::::::::::::::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala (Land Division) before Kwesiga, J. dated 21st February, 2014 in Civil Suit No. 41 of 2008)

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA
HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. LADY JUSTICE IRENE MULYAGONJA, JA

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading in draft the judgment of my learned brother Kiryabwire, JA. For the reasons he gives with which I agree, I too, would dismiss this appeal with costs.

Dated at Kampala this ..... 30 day of March .....2022.

.....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram; Kiryabwire, Musoke, Mulyagonja, JJA)

CIVIL APPEAL NO. 122 OF 2014

BETWEEN

SEMANDA JOSEPH.....APPELLANT

AND

JOBINGFIELD PROPERTIES LTD.....RESPONDENT

(Arising from the judgment of Kwesiga J, delivered on 21st February, 2014)

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree that the appeal should be dismissed with costs to the respondent, for the reasons that he has set out in his judgment.

Dated at Kampala this .....30.....day of .....March.....2022

.....IKMulyagonja.....

Irene Mulyagonja

Justice of Appeal/Constitutional Court