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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0421 OF 2021
(Coram: Musoke, Gashirabake and Luswata, JJA)

ATTORNEY GENERAL:.....APPELLANT

10

VERSUS

HENLEY PROPERTY DEVELOPERS LTD:.....RESPONDENT

(Appeal from the judgment and decree of the High Court at Kampala before Wamala, J. dated 10th May ,2021 in High Court Civil Suit No. 747 of 2016)

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

15 **Introduction**

This is an appeal against the judgment and decree of Wamala J. dated 10th May, 2021. in H.C.C.S. No. 747 of 2016, wherein he made orders awarding the Respondent a sum of UGX. 50,000,000,000/= (Uganda Shillings Fifty Billion only) being
20 compensation amounting to the market value of the suit land; interest on the compensation at 15% p.a. from the date of filing the suit until payment in full, and costs.

Background

The Respondent instituted the suit in the trial Court seeking for
25 compensation from the Appellant due to acts of his agent, the Registrar at Mukono Land Office, that had led it to suffer financial loss, that is loss of the purchase price for the suit land it had paid to the vendors, Nantume Filomero Nakalema and Nabunjo Manjeri

5 Kiwanuka, only to subsequently discover that the suit land belonged to another person and not the vendor.

The Respondent claimed that in October, 2011, it had expressed interested in buying certain land in Mukono District registered as East Buganda Block 171 Plot 6 at Namasaga, measuring 123.83
10 hectares. It had met with one Nantume Filomero Kiwanuka, who had assured it that she was the owner of that land, as administrator of the Estate of the late Kiwanuka Samuel Kaliginya, who owned the land prior to his death. The Respondent severally requested for searches at the Mukono District Land office, and was
15 given search reports that confirmed that Nantume was the owner of the said land. On the basis of the search reports, the Respondent, on 12th November, 2011, concluded a land sale agreement wherein he agreed to purchase the land for UGX. 6,097,200,000/= (Uganda Shillings Six Billion Ninety, Seven
20 Million Two Hundred Thousand only) from the said vendor. Subsequently, Nantume transferred the suit land to one Nabunjo Manjeri Kiwanuka and the parties executed an addendum to reflect that fact. The Respondent subsequently got registered as the owner of the land on 8th May, 2013.

25 In 2016, three years after the Respondent was registered as owner of the land, it received notification from the Commissioner Land Registration ("CLR") of her intention to cancel its certificate of title on grounds that it had been issued in error. The CLR said that, upon conducting routine inspection of the register, it had been
30 discovered that the land was part of a bigger piece of land covered in a certificate of title issued earlier, namely, Buganda, Mengo, Kyagwe Freehold Register Volume 64 Folio 18 known as Kasenso

5 Estate, measuring 882.39 acres, belonging to the Sugar Corporation of Uganda Limited ("SCOUL"). On 5th September, 2016, the CLR cancelled the Respondent's title.

The Respondent was aggrieved with the cancellation of its title and sued the Appellant for the acts of its agent, the CLR. The
10 Respondent claimed that the acts of the Registrar and the CLR, the custodians of the Register, in creating and cancelling its title had led to loss of monies it had paid to the vendors. The Respondent claimed that it had relied upon the search information obtained from the CLR as well as the information on the register which
15 showed that the vendors were the owners of the land. The Respondent averred that it had suffered loss and sought damages for the same.

The Appellant filed a Written Statement of Defence to oppose the Respondent's suit. The Appellant claimed that the Respondent's
20 title was fraudulently created given that the same was issued for land which was covered in an already existing certificate of title belonging to SCOUL. The Appellant denied liability and averred that the Respondent ought to have sought a refund of the money from the vendors Nantume Filomero Nakalema and Nabunjo
25 Manjeri Kiwanuka who had sold it non-existent land. The Appellant further averred that the Respondent should have done a physical search on the suit land as that would have helped them to discover that the land was already owned by SCOUL. The Appellant averred that the CLR proceeded correctly when she
30 cancelled the Respondent's title as the same was granted in error. The Appellant prayed for dismissal of the suit.

5 The learned trial Judge, after hearing the evidence, found in favour
of the Respondent. He found that the Respondent had not acted
fraudulently in the process leading to the Respondent being
registered as the proprietor of the land. He also found that the
Respondent was a bonafide purchaser of the land from the
10 vendors, Nantume and Nakalema, without notice of SCOU's
interest in the suit land. He found that the Respondent had
exercised sufficient due diligence by obtaining a search report from
the Mukono District Land Office, prior to purchasing the land from
the vendors. The learned trial Judge also found that the
15 responsible officers at the Mukono District Land Office had
erroneously created, maintained and issued the certificate of title
which the Respondent had subsequently owned. He observed that
the Respondent, as a registered proprietor had assurance, based
on the principle that the information on the register is correct, and
20 that because the information on the register turned out to be
incorrect, the appellant was liable. The learned trial Judge entered
judgment in the Respondent's favour on the terms stated earlier.
The appellant, being dissatisfied with the judgment of the learned
trial Judge, now appeals to this Court on the following grounds:

- 25 ***“1. That the learned trial judge erred in law and in fact in
holding that the vendors had a valid certificate of title.***
- 2. The learned trial Judge erred in law in holding that the
Respondent qualified to be a bonafide purchaser for
valuable consideration without notice.***
- 30 ***3. The learned trial judge erred in law in ordering the
Appellant to pay the sum of 50,000,000,000/= (Fifty Billion
Shillings) only being compensation for the market value of
the suit land.***

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4. *The learned trial Judge erred in law and fact in awarding 15% p.a interest from the date of filing, until payment in full which was manifestly high and excessive.*

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5. *The learned trial judge erred in law and fact when he failed to evaluate evidence of the Appellants thereby arriving at a wrong decision.”*

The Respondent opposed the appeal.

Representation

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At the hearing of the appeal, Ms. Nabaasa Charity, State Attorney appeared for the Appellant; and Mr. Enoth Mugabi appeared for the Respondent.

Parties filed written submissions which with courts permission they adopted at the trial

Analysis

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I have considered the materials on record, the submissions of counsel and the law and authorities cited. This is a first appeal.

Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10 provides that:

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“(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

(a) reappraise the evidence and draw inferences of fact”

In the case of **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 Of 1997**, it was held:

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“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

5 *the judgment 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 appellate Court must be guided by
the impressions made on the judge who saw the witnesses.
10 *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 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)
15 *E.A. 336 and Okeno vs. Republic (1972) E.A. 32 Charles B. Bitwire*
Vs Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at
page 5”.

I shall bear the above principles in mind as I determine this appeal.
I note that Counsel for the Appellant argued grounds 1 and 5
20 together, and ground 2, 3 and 4 separately. Counsel for the
Respondent argued grounds 1, 2 and 5 together and 3 and 4
separately. I shall consider grounds 1 and 5 together, and
thereafter consider each of grounds 2, 3 and 4 separately.

Grounds 1 and 5

25 **Appellant’s submissions**

Counsel for the Appellant submitted that the learned trial Judge
erred in finding that the vendors who sold the suit land to the
Respondent had a valid and apparent title. Counsel submitted that
a Court has to investigate the legality and origins of a certificate of
30 title before pronouncing itself on its validity. For this proposition,
Counsel cited two Kenyan cases, namely, **Hubert L. Martin and 2**
Others vs. Margaret J. Kamar and 5 Others [2016] e KLR; and
Munyu Maina vs. Hiram Gathitha Maina, Kenya Civil Appeal

5 **239 of 2009**. Counsel for the Appellant submitted that the facts showed that at the time the title for Kyagwe Block 171 Plot 6 land at Namasaga was issued to the vendors on 31st May, 2011, there was another title, Freehold Register Volume 64 Folio 18 created on 28th November, 2007 that covered the land.

10 Counsel for the Appellant further argued that the learned trial judge erred in fact when he found that Filomera Nantume had a trace of her claims and that as Administrator of the Estate, she came across such a certificate within the estate, checked within the land office and the same was transferred in her names.

15 Counsel for the Appellant further submitted that it is trite law that because land is valuable, there is need to conduct thorough investigations or due diligence before purchase. She further argued that a buyer who fails to carry out due diligence and buys from fraudsters gets no legal title. Counsel submitted that learned

20 trial Judge ignored to consider that better investigations before purchasing the land would have helped the Respondent to discover that the vendors were not the owners of the land. For instance, the learned trial judge ignored the fact that at the of execution the sale of the suit land by Nantume Filomera Nakalema did not have the

25 rights over the suit land thus the execution of the addendum to the sale agreement with Nabunjo Kiwanuka Manjeri because there was no land to give since the Mailo title of Block 171 was curved out of the Freehold title of which Sugar Cooperation Uganda Ltd was already registered and had an estate of sugar cane growing.

30 Furthermore, the learned trial Judge failed to consider the fact that by the time of the execution of the addendum, a civil suit (HCCS 1657/2012) concerning the suit land had already been filed by

5 Nabunjo Manjeri Kiwanuka one of the vendors, against SCOUL seeking for eviction orders.

Counsel for the Appellant also faulted the learned trial Judge for finding that the Respondent had not acted with dishonesty or bad faith. It was argued that the Respondent knowingly entered into
10 an agreement with different vendors yet the suit land was also occupied with squatters as recognized in the addendum to the suit land sale agreement. Counsel argued that considering the highlighted circumstances, it was erroneous for the learned trial Judge to find that the neither the vendors nor the Respondent were
15 aware that there were other claims to the land. In addition, Counsel for the Appellant submitted that the withdrawal of the suit against SCOUL was upon the vendor's realization that SCOUL's title was issued earlier than their title. She urged this Court to find that the Respondent already knew that Sugar Corporation limited
20 (SCOUL) was on the suit land and it already had a title to the land, at the time it purportedly acquired the title.

Counsel for the Appellant further submitted that the learned trial Judge erred in holding that the Respondent's claim was for compensation and not priority or validity of title. Counsel
25 submitted that questions of priority and validity of title are relevant in determining whether the Respondent was entitled to compensation. The learned trial Judge ought to have considered that a Mailo title could not be created by subdivision from a Freehold title. Further, to counsel, it was erroneous for the learned
30 trial Judge to find that the Respondent held a valid certificate until the errors affecting the same were discovered by the CLR. In counsel's view, the vendors who sold to the Respondent did not

5 own the suit land and therefore passed no valid title to the
Respondent. Counsel contended that under the ***nemo dat***
principle, a grantee cannot give away what he or she does not
possess. Counsel for the Appellant concluded by submitting that
the vendors who sold to the Respondent did not pass a valid title
10 as they owned no title in the first place.

Respondent's submissions on grounds 1 and 5

Counsel for the Respondent submitted that the learned trial Judge
rightly considered the evidence and arrived at the correct
conclusions. The learned trial Judge rightly considered that the
15 Respondent searched the Register, not once, but thrice and were
given the same results, that the vendors' certificate of title was
valid.

With regard to the submission that sugarcane had been planted
on the suit land, Counsel for the Respondent submitted that
20 whereas that submission was true, the vendors informed the
Respondent that they knew the person who had planted the
sugarcane and assured the Respondent that they would ensure
that that person vacated the land. Counsel for the Respondent
further submitted that the vendors had instituted Civil Suit No.
25 165 of 2012 against SCOUL, in the High Court of Uganda at Jinja,
to ensure that it gave vacant possession of the suit land. The
Respondent was subsequently added to that suit. Counsel for the
Respondent submitted that in light of the above stated facts, the
learned trial Judge had rightly found that the Respondent was
30 entitled to believe the vendors, and that the Respondent had acted
honestly and had no knowledge or notice that there was another
person with title to the land.

5 Counsel for the Respondent further submitted that the learned trial Judge rightly held that the mere fact that the land was partly cultivated did not constitute notice to the Respondent of SCOUL's interest.

10 With regard to the addendum to the sale agreement for the suit land, Counsel for the Respondent submitted that the same arose from a dispute resolved by the Respondent that secured the suit land to be transferred from Nantume Filomera Nakalema to Nabunjo Manjeri Kiwanuka, who then signed transfer forms in favour of the Respondent. There was no evidence of bad faith on
15 the Respondent's part in signing the addendum.

Counsel for the Respondent further submitted that the learned trial Judge rightly held that the circumstances of the case did not justify the Respondent to sue the vendors. The Respondent had prior to purchasing the land obtained a search report from the
20 Lands Office that revealed that Nantume Flomera Nakalema was the registered proprietor of the suit land. Counsel for the Respondent submitted that the vendors held an apparent title, which existed on the land register. In those circumstances, it was unnecessary for the Respondent to sue the vendors as its cause of
25 action arose from the acts of the lands office of creating and maintaining two certificates of title on the Register, and not on any wrong doing on the part of the vendors. In those circumstances there was no reason to sue the vendors.

As for the submissions on the withdrawal of the suit against
30 SCOUL, Counsel for the Respondent submitted that the Appellant did not plead this issue in the lower Court and led no evidence on the same, and had only briefly mentioned the issue during cross-

5 examination. Nonetheless, Counsel for the Respondent argued
that the learned trial Judge duly considered the fact of withdrawal
of the suit against SCOUL and correctly held that the withdrawal
was upon realization that SCOUL's title was issued earlier in time
than the one for the Respondent. The learned trial Judge rightly
10 considered that since the Respondent's claim was for
compensation and not for priority or validity of its title, nothing
much could be read into the withdrawal of that suit.

Regarding the Appellant's contention that the Respondent's
conducting of three searches on the register was suspicious,
15 Counsel for the Respondent submitted that this issue was neither
pleaded nor canvassed in evidence by the Appellant. It should
therefore be deemed as not having been raised in the lower Court.
Respondent's Counsel urged this Court to find that the contention
is an afterthought and a departure from the Appellant's pleadings
20 and not to consider it, as to do so would amount to this Court
permitting the Appellant to depart from his pleadings. For this
submission, Counsel relied on the case of **Twiga Chemical
Industries Ltd V Viola Bamusedde T/A Triple B Enterprises,
Supreme Court Civil Appeal 9 of 2002**. In the alternative,
25 Counsel for the Respondent submitted that the arguments on the
alleged suspicion caused due to the fact that the Respondent
conducted several searches were rightly considered as superfluous
by the learned trial Judge, and that the Respondent's duty rightly
ended at applying for the searches.

30 In reply to the submissions on the nemo dat rule, Counsel for the
Respondent submitted that the learned trial Judge rightly held
that rule was inapplicable to the present case since the

5 Respondent based his case on the duty placed on the Registrar to maintain an accurate Register, and not on asserting priority of title.

Counsel for the Respondent further submitted that the learned trial Judge correctly held that upon issuance of the certificate of title for the suit land, the vendors who sold to the Respondent held a valid certificate of title, until the Lands Office deemed that the title was issue in error and cancelled it. In counsel's view, the cancellation of the relevant title did not have retrospective effect and that the rights obtained prior to cancellation of the title had to be protected.

With respect to the Appellant's submissions on fraud, Counsel for the Respondent submitted that whereas the Appellant had made allegations of fraud in his WSD, he did not particularize the fraud as required under **Order 6 Rule 3** of the **Civil Procedures Rules, SI 71-1**. Counsel further contended that even the Appellant's witnesses failed to adduce evidence proving that the Respondent engaged in fraud. Counsel for the Respondent submitted that this Court ought to find that the Appellant failed to discharge the burden of proving fraud against the Respondent.

25 Counsel for the Respondent further noted that the Appellant's case was that the Respondent had acted fraudulently because it obtained a title for land which was covered in an already existing title. However, he contended that the learned trial Judge had properly handled this aspect when he found that the Appellant had not adduced sufficient evidence to prove his case.

5 **Decision on Grounds 1 and 5**

By its pleadings, the Respondent claimed for payment of adequate compensation, special damages and lost earning, general damages, interest and costs of the suit arising as a result of cancellation of the Certificate of Title to Land comprised in Mailo Register Kyaggwe 171, Folio 6 – the suit land.

The Respondent's claim was founded on cancellation of its Certificate of Title created, maintained and issued by the Commissioner Land Registration.

In my view, as rightly found by the trial Judge, under the torrens system, the register is everything, except in cases of actual fraud on part of the person dealing with the registered proprietor, such person upon registration of title has indefeasible title against the whole world. As such, a certificate of title is indefeasible except on ground of fraud. [**See; David Sajjaaka Nalima v Rebecca Musoke (Civil Appeal 12 of 1985) [1986] UGSC 12 (09 November 1986)**]

I agree with the findings made by the learned trial Judge to the effect that, the Respondent's claim was premised on the assurance that is granted to a registered proprietor of land by virtue of the operation of the Torrens system of registration; that under the system, security of title is based on the four principles of indefeasibility (cannot be impeached); registration (title is by registration); the curtain principle abolition of notice or exhaustive inquiry); and assurance (compensation upon detrimental reliance).

I also agree that the lands registrar guarantees the accuracy of all the particulars contained on the register. The register is conclusive

5 evidence of ownership and thus, there is no need to search behind
or beyond the certificate of Title to ensure proven ownership of the
land. [See; **Kampala Bottlers Ltd v Damanico (U) Ltd (Civil
Appeal 22 of 1992) [1993] UGSC 1 (11 January 1993); Aziz
Kalungi Kasujja v Naune Tebekanya Nakakande (Civil Appeal
10 63 of 1998) [1998] UGSC 6 (25 March 1998);]**

Accordingly, once a person is given such assurance by the
custodian of the Land Register, as was the case herein, should
such information turn out to be false, a party who has relied upon
such information to their detriment has a cause of action against
15 the defendant irrespective of whether the action or omission of the
Registrar was negligent or simply erroneous.

Further, I wish to note that pursuant to **sections 59 and 176 of
the Registration of Titles Act (RTA)** production of a certificate to
title in the names of the registered owner was sufficient proof of
20 ownership of the land in question unless the case falls within the
exceptions under **Section 176 of the RTA**, of which fraud is one
of them. There was nothing warranting the Respondent to sue the
vendors in the circumstances. The vendors committed no wrong
since the relevant title was issued by the land registrar. I agree
25 with the findings of the lower Court to the effect that the
Respondent was convinced that the vendors had neither
committed fraud nor aware of any defect in title; the Respondent
had carried out a due diligence and was satisfied the vendors had
a clean title; even land office was convinced the vendors were the
30 registered proprietor of the suit land; the vendors and Respondent
had nothing to do with the existence of an earlier Freehold Title.
The learned trial Judge was therefore correct when he found that

5 the Respondent cause of action was against the creation and maintenance of two certificates of title on the Register and was not based on wrong doing by the vendors.

With regard to the submissions on the *Nemo dat rule* was inapplicable. I would agree with the submissions of Counsel for the
10 Respondent that that rule did not apply in the present case.

I also reject the Appellant's argument that the issuance of all the three search certificates by the same Registrar was suspicious, and instead agree with the finding that the Respondent had no control on who issued the search certificates after lodging a search
15 application.

In relation to the suit against SCOUL, I find that the Respondent was entitled to withdraw that suit considering that its certificate of title was subsequently cancelled and it became unnecessary to continue pursuing that suit.

20 I would therefore answer grounds 1 and 5 in the negative.

Ground 2

Appellant's submissions on ground 2

Counsel for the Appellant submitted that the learned trial Judge erred when he found that the Respondent was a bonafide
25 purchaser of the suit land for value and without notice. Counsel for the Appellant submitted that the burden to establish or prove the plea of bonafide purchaser for value lies on a person who sets it up. It is a single plea and is not sufficiently made out by proving purchase for value and leaving it to the opposite party to prove
30 notice if he can.

5 Counsel for the Appellant relied on the case of **Abdu Nasser Katende Vs Vithalidas Haridas & Co. Ltd CACA 84/2003** in support of this submission. Appellant's Counsel contended that for a purchaser to successfully rely on the plea of bona fide purchaser for value, he must prove that:

- 10 ***a) He holds certificate of title issued under the Registration of Titles Act in respect of the property.***
- b) He purchased the property in good faith.***
- c) He had no knowledge of the fraud.***
- d) He purchased for valuable consideration.***
- 15 ***e) The vendors had apparent valid title.***
- f) He purchased without notice of any fraud.***
- g) He was not party to the fraud."***

Counsel for the Appellant relied on the case of **Hannington Njuki vs. William Nyanzi HCCS No. 434 of 1996 [1999] KALR 779** (cited with approval by the Court of Appeal in **Abdu Nasser Katende Vs Vithalidas Haridas & Co. Ltd** and **Ndimwibo Sande & 3 others vs Allen Peace Ampaire CACA No. 65 of 2011**) for this proposition.

In relation to whether the Respondent held a certificate of title for the suit land issued under the Registration of Titles Act, Cap. 230, Counsel for the Appellant submitted that the Respondent did not satisfy this requirement. He argued that, ordinarily, no land should be registered more than once and have two separate title deeds held by separate persons. In cases of more than two separate title deeds, one of them will be genuine and the other unlawful or irregular.

5 For this submission, Counsel for the Appellant relied on the case of **Joseph Kiprotich Bor —vs- Tabutany Chepkoech Chebusit Kenya Environmental and Land Appeal No. E001 of 2020.**

10 Counsel for the Appellant contended that the fact that the genuine certificate for the suit land was held by SCOUL meant that the title claimed by the Respondent was unlawful. She criticized the learned trial Judge for failing to acknowledge this fact and for erroneously finding that the Respondent's source of title was different from that of SCOUL. In Counsel's view, the learned trial Judge's findings were erroneous because the two titles concerned
15 the same piece of land. Counsel for the Appellant argued that, on this requirement alone, the trial Judge should have found that the Respondent was not a bonafide purchaser for value.

It was further submitted by Counsel for the Appellant that the Respondent did not qualify as a bonafide purchaser for value
20 without notice because it did not purchase the suit land in good faith and neither did it have no knowledge of fraud. Counsel for the Appellant submitted that a person is considered a purchaser in good faith if he or she buys property without notice that some other person has a right or interest in such property and pays its
25 fair price before he or she has notice of the adverse claims and interest of another person in the same property. Further, that good faith connotes an honest intention to abstain from taking undue advantage of another. Good faith consists in the buyer's belief that the person from whom the buyer purchased the land was the
30 owner and could convey Good faith. While it is always to be presumed in the title, absence of proof to the contrary, requires a well-founded belief that the person from whom title was received

5 was himself or herself the owner of the land, with the right to
convey There is good faith where there is an honest intention to
abstain from taking any unconscientious advantage of another.
Otherwise stated, good faith is the opposite of fraud and it refers
to the state of mind which is manifested by the acts of the
10 individual concerned. Appellant' Counsel relied upon the case of
**Phillipine National Bank-vs- Heirs Estanislao Militar and
Deogracias Militar, Supreme Court Manila, June 30th 2006** for
this proposition.

Counsel for the Appellant submitted that the learned trial judge
15 misdirected himself in failing to consider the evidence on record
when he came to the finding that the Respondent purchased the
property in good faith and had no knowledge of the fraud and they
were not party to any fraud. Counsel for the Appellant contended
that the presence of Survey Report dated 21st July 2011 by
20 Jolanam Survey services – showing the suit land was in the
METHA sugar region; constituted notice that the “suitland was
owned by Sugar Corporation Uganda Limited”. Counsel for the
Appellant further argued that the Respondent employed the
services of senior advocates to carry out searches at the land office
25 and they had a chance of physically visiting the land but did not
do so. Counsel for the Appellant contended that the Respondent's
agents by failing to carry out the due diligence required in the
circumstances are deemed to have had imputed knowledge of the
ownership of the suit land. Appellant Counsel submitted that,
30 knowledge of the fraud by the plaintiff's agents is imputed on the
plaintiff itself. For this submission, counsel relied on the case of
David Sejjaka Vs Rebecca Musoke CACA No. 12 of 1985.

5 Counsel for the Appellant further submitted that the Respondent did not also qualify as a bonafide purchaser for value, because, as submitted earlier, it did not have an apparent title for the suit land.

Counsel for the Appellant further contended that there was enough circumstantial evidence to support the inference that the Respondent acted fraudulently in the purchase of the suit land.

He relied on the case of **Vivo Energy Uganda Limited (Formerly Shell Uganda Ltd) Vs Lydia Kisitu SCCA No. 07 OF 2015** citing

with approval the holding of the Court of Appeal in **Civil Appeal No.193 of 2013 (Vivo Energy Uganda Ltd (Formerly Shell Uganda Ltd Vs Lydia Kisitu)** for the proposition that existence of

circumstantial evidence requiring a purchaser to investigate ownership of land beyond the title may negate the plea of bonafide purchaser. Counsel for the Appellant cited the following

circumstantial evidence. First, the Respondent bought the suit land from two vendors. Secondly, the Respondent had, prior to purchasing the suit land, discovered that there was a sugar cane plantation on part of the suit land but had gone ahead with the purchase. Thirdly, the Respondent did not, prior to purchase,

inquire about the ownership of the suit land from the neighbours or the area LC1 Chairperson. Fourthly, the Respondent became aware prior to the purchase, that suit land had squatters living on it but did not take interest in discovering their interest.

Counsel for the Appellant submitted that the Respondent was negligent in failing to take reasonable steps to discover the true owner of the suit land in view of the above highlighted circumstantial evidence. Therefore, the Respondent did not qualify as a bonafide purchase of the suit land for value without

5 notice, and that the learned trial Judge had erred in finding otherwise.

Respondent's Submissions on Ground No. 2

Counsel for the Respondent supported the learned trial Judge's findings that the Respondent was a bonafide purchaser of the suit
10 land for value and without notice, and submitted that the learned trial Judge properly considered the law and the evidence in reaching that conclusion. Counsel for the Respondent submitted that the Respondent proved to Court that it held a certificate of title for the suit land; had purchased the land in good faith and
15 for valuable consideration from vendors with apparent title; did not have knowledge or notice of fraud neither were they party to fraud. To counsel, the Respondent's evidence sufficiently proved that it was a bonafide purchaser of the suit land.

Decision on Ground 2

20 I find no reason to differ from the finding of the learned trial Judge that the Respondent was a bonafide purchaser of the suit land, for value and without notice. I am unable to impute bad faith on the Respondent in the manner of acquisition of the suit land.

I have considered the Survey Report made following the survey of
25 the suit land at pages 22 to 23 of the Supplementary Record of Appeal. The Report noted that the suit land, measuring 165 hectares, was at the time registered as Block 171 Plot 1 Kyaggwe, with the proprietor being Nantume Filomera Nakalema. The Survey Report recommended that all dealings with the registered
30 proprietor should be done with confidence and that the suit land was suitable for various activities like residential estate, industrial

5 estate and others. It will also be noted that the Respondent made searches of the Register and the Lands Office confirmed that Nantume was the proprietor of the suit land.

I also observed that the Respondent, prior to the purchase, visited the suit land and saw that there was sugar cane being grown on the suit land, at the time. The Respondent inquired from the vendor and was assured that the sugar cane on the suit land would be removed. I have considered the Appellant's submission that the fact that there was sugar cane on the suit land coupled with the fact that, as indicated in the Survey Report, the suit land was situated in the Metha Sugar Region, should have given notice to the Respondent of the possibility that there were other owners of the suit land and not the vendors. I have also considered the Appellant's submission that the fact that the Respondent employed senior advocates to conduct the relevant searches at the Lands Office, and that the advocates should have physically visited the suit land. However, as I see it, the learned trial Judge was right in finding that the Respondent conducted a sufficient inquiry by searching the Register. As the learned trial Judge rightly noted, under the torrens system of land registration, the register is everything, and that except in cases of actual fraud on part of the person dealing with the registered proprietor, such person upon registration of title has indefeasible title against the whole world. The learned trial Judge gave a detailed consideration of the evidence and reached the right conclusion that the Respondent was a bonafide purchaser for value and without notice. I would disallow ground 2 of the appeal.

5 **Ground 3**

Appellant's submissions

Counsel for the Appellant submitted that the learned trial Judge's decision to award the Respondent, the sum of UGX. 50,000,000,000/= (Fifty Billion Shillings) as compensation was
10 erroneous because there was insufficient evidence to justify the award. In the first place, Counsel for the Appellant submitted that there was no evidence to prove that the Respondent paid UGX. 6,500,000,000/= (Six Billion, Five Hundred Million) as the purchase price for the suit land. The Respondent did not tender
15 evidence of invoices or bank statements to show that it paid the said money to the vendors. In addition, Counsel for the Appellant submitted that the Respondent did not adduce evidence of transfer documents to show that it paid the relevant taxes due upon transfer of the suit land or that it paid any consideration for the
20 purchase of the suit land.

Respondent's submissions

In reply, Counsel for Respondent argued that the record shows the learned trial Judge considered the evidence and all material facts before him, particularly the three Valuation Reports that put the
25 value of the suit property variously at UGX. 40,392,000,000/= by 14th February 2017 (by Government Valuer); UGX. 55,000,000,000/= by 25th July 2016 (by Valuer engaged by the Plaintiff); and UGX. 75,000,000,000/= by 14th July 2020 (by Valuer engaged by the Plaintiff). In counsel's view, the fact that the
30 learned trial Judge declined to award the sum of UGX. 75,000,000,000/= which was the most up to date valuation of the

5 suit land, shows that the Judge awarded a reasonable amount of compensation.

Counsel for the Respondent further submitted that the learned trial Judge duly considered evidence of DW2 which shows that the suit land is located in an industrial belt and was likely to appreciate in value as Government was considering setting up an industrial park in the area.

With regard to the Appellant's submission that the Respondent failed to tender evidence of bank statements and receipts to show how much it paid for the suit land, Counsel for the Respondent replied that the value of the suit land was proved by the land sale agreement and the addendum thereto which indicated that the Respondent paid UGX. 6,117,200,000 for the suit land.

As for the submission that the Respondent's allegation of having purchased the suit land was a fraudulent scheme, Counsel for the Respondent emphasized that the Appellant failed to prove fraud against the Respondent.

All in all, Counsel for the Respondent submitted that the Appellant has not demonstrated the existence of any reason to justify this Court to interfere with the learned trial Judge's award of damages of UGX. 50,000,000,000/=. Counsel for the Respondent referred to the case of **Matiya Byabalema & 2 Ors V Uganda Transport Company, Supreme Court Civil Appeal 10 Of 1993**) (per Odoki, Ag. DCJ (as he then) for the proposition that an appellate Court may only interfere with an award of damages upon proof that the trial Court, in awarding the damages, proceeded on a wrong principle or misapprehended the evidence and as a result arrived

5 at an award which was inordinately too high or too low. Counsel
for the Respondent urged this Court to maintain the learned trial
Judge's award of damages.

Decision on Ground 3

10 I have considered the submissions of counsel for either side on
ground 3. It will be noted that after finding that the Respondent
deserved compensation after it was unlawfully deprived of the suit
land which it had purchased for valuable consideration, the
learned trial Judge awarded an amount of UGX.
15 50,000,000,000/=, being a fair valuation of the suit land at the
time of the judgment, as damages. I have considered the evidence
of valuation of the suit land conducted at various periods. As of
14th February 2017, the suit was valued at **UGX.
40,392,000,000/=** by the Chief Government Valuer. Further
valuation of the suit land conducted three years later put the value
20 of the suit land at **UGX. 55,000,000,000/=**, while the further re-
valuation after the lapse of three years put the value at **UGX.
75,000,000 billion** (Respondent's) value. In my view, considering
the other valuation exercises that gave a higher value of the suit
land, the award of UGX. **50,000,000,000/=** was reasonable in the
25 circumstances of the case.

It is also clear that the suit land was in a lucrative industrial belt
which led to its appreciating in value. Therefore, the Respondent
deserved adequate compensation to reflect his fact and I find that
the sum awarded by the trial Court was justified.

30 Ground 3 of the appeal must also fail.



5 **Ground 4**

Appellant's submissions

Counsel for the Appellant submitted that the learned trial Judge erred when he awarded interest at 15% on the amount of UGX. 50,000,000,000/= awarded as damages because that amount of
10 interest was manifestly high and excessive. Counsel submitted that the rate of interest was not justified since the case did not involve a commercial transaction. Counsel cited the case of **ECTA (U) Ltd v Geraldine S. Namurimu & Anor, Supreme Court Civil Appeal No. 29 of 1994**) in support of the proposition that interest
15 in cases that do not involve a commercial transaction ought to be lower. Counsel for the Appellant urged this Court to set aside the amount awarded as interest and that if it is inclined to award interest to do so at Court rate.

Respondent's submissions

20 In reply, Counsel for the Respondent submitted that, pursuant to **Section 26 (2) Civil Procedure Act, Cap 71**, an award of interest is at the discretion of the trial Court. Counsel also cited the case of **Attorney General Vs Virchand Mithalal and Sons SCCA NO. 20 OF 2007** in support of this submission. Counsel submitted
25 that as the trial Court awarded interest at 15% which was lower than the 22%, the commercial rate, which was claimed by the Respondent, this Court ought to find that the amount awarded as interest was fair and reasonable.

5 **Decision on Ground 4**

I have considered the arguments of counsel for both sides on ground 4. After considering the evidence, the learned trial Judge stated as follows on the appropriate rate of interest:

10 ***“Regarding the rate of interest, the Plaintiff is a commercial enterprise. The had been purchased to undertake a commercial venture. The Plaintiff has, no doubt, suffered a commercial loss. They are therefore entitled to interest at a commercial rate. Given the circumstances the Plaintiff interest on the principal sum volume of the sums involved, I award the Plaintiff interest on the***
15 ***principal sum awarded above at the rate of 15% p.a. from the date of filing the suit until full payment.”***

I agree with the learned trial Judge. I only wish to add that considering that the Respondent was engaged in business, and the fact that in being deprived of the suit land, the Respondent was
20 denied an opportunity to invest and generate profits, justified the award of compensation for lost commercial opportunities. It is worth noting that the determination of the cost of money is very independently managed by the Central Bank of Uganda through a well-structured mechanism that involves periodic determination of
25 the Central Bank Rate (CBR) that then defines interest across commercial Banks. When the Trial Judge entered judgement in 2021, the average lending rate was **23%** (**Source: *Tradingeconomics.com/Uganda/interest-rate***). Clearly, the award of 15% interest then, was certainly very conservative but
30 reasonable. There is no merit in finding **15%** per annum interest payable till due full payment of the decretal sums unreasonable especially now, when the situation on interest rates has further

5 worsened owing to the global economic pressures that have driven high all macro-economic indicators including interest rates.

I would therefore find that the interest rate of 15% p.a is not excessive, and would uphold it.

Ground 4 of the appeal must also fail.

10 In conclusion, having found that all grounds must fail, I would find no merit and would dismiss the appeal with costs to the Respondent.

Dated at Kampala this 09th day of January 2023.

15


Christopher Gashirabake

Justice of Appeal

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0421 OF 2021**

ATTORNEY GENERAL:.....APPELLANT

VERSUS

HENLEY PROPERTY DEVELOPERS LTD:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Wamala, J dated the 10th day of May, 2021 in Civil Suit No. 747 of 2016)

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA
HON. LADY JUSTICE EVA K. LUSWATA, JA**

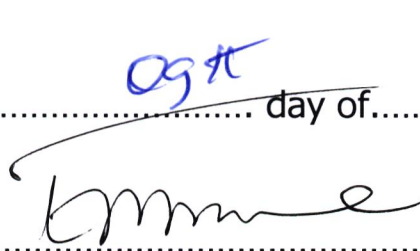

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading in draft the judgment of my learned brother Gashirabake, JA. I agree with it, and for the reasons stated therein, I would dismiss this appeal and make the orders that Gashirabake, JA proposes.

Since Luswata, JA also agrees, the Court unanimously dismisses the appeal with costs to the respondent.

It is so ordered.

Dated at Kampala this day of 2023.

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
[Coram :Elizabeth Musoke ,Christopher Gashirabake, Eva Luswata JJA]

CIVIL APPEAL NO.421 OF 2021

(Arising from High Court Civil Suit No 747 of 2016)

BETWEEN

ATTORNEY GENERAL =====APPELLANT

AND

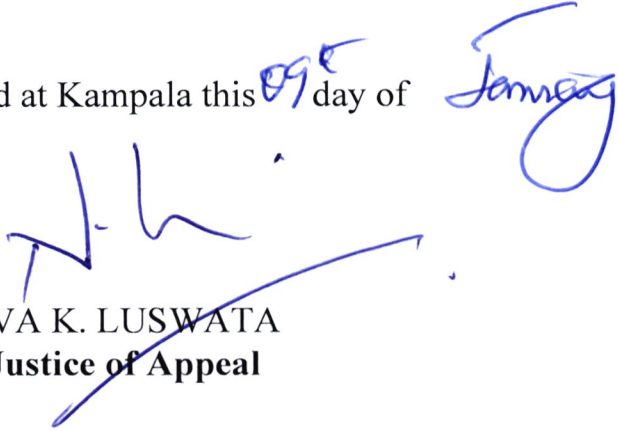
HENLEY PROPERTY DEVELOPERS LTD =====RESPONDENTS

(Appeal from the Decree/Judgment of the High Court at Kampala [Boniface Wamala, J] delivered on the 10th May ,2021)

JUDGMENT OF EVA LUSWATA, JA

I have had the opportunity to read in draft the judgment of my brother, Christopher Gashirabake, JA. I agree with him and have nothing useful to add.

Dated, signed and delivered at Kampala this ^{09th} day of ^{January} 2023


EVA K. LUSWATA
Justice of Appeal