

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 547 OF 2006

MULINDWA DANIEL JOSEPH:::::::::::::::::::::::::::::PLAINTIFF

VERSUS

KABUGA BETTY:::DEFENDANT

BEFORE: HON MR JUSTICE RUBBY AWERI OPIO

JUDGMENT:

The plaintiff brought this suit as the administrator of the estate of the late Jane Lusajjalubi Nalule vide Administration Cause No. HCT -00- AC-1590 of 2005. The deceased was his biological mother and registered owner of land comprised in Kyadondo Block 244 plot 1808 at Kisugu. On the 13th November 1995 the defendant fraudulently lodged a transfer form dated 18th September 1998 purporting that the deceased had executed the same in her favour allegedly after payment of shs.3,000,000/= (Three million). The plaintiff being administrator of the said estate brought this suit for:

- (a) A declaration that the piece of land comprised in Kyadondo Block 244 plot 1808 measuring 0.10 hectares at Kisugu, Kampala belongs to the estate of the late deceased.

- (b) An order that the certificate of title in the names of the defendant be cancelled.
- (c) An order that the certificate of title be transferred in the names of the plaintiff as the administrator of the estate of the deceased.
- (d) General damages for fraudulent transfer and costs of the suit.

At the hearing the matter proceeded ex-parte because although she never filed her defence, she was served with hearing notices to enable her proceed as if she had filed a defence in terms of order. However, she never turned up. The plaintiff accordingly testified together with a handwriting expert.

Issues framed for determination:-

1. Whether the defendant fraudulently transferred title for land at Kisugu Block 244 plot 1808.
2. What remedies are available to the plaintiff?

Resolution of issue No. 1:-

The plaintiff testified that his mother at the time of her death had properties including land and a house thereon at Kisugu described as Block 244 Plot 108 measuring 0.10 hectares, which she had bought from one Nakibuuka Kiwanguzi on 1st December 1969 and became registered onto the title. The plaintiff testified further that around 1997 before his mother died, she intimated

to him that some unknown person had transferred her land fraudulently and yet she had never sold her land to anyone. When she realized that fraud she lodged a caveat onto the land on 7th April 1999 Instrument No. KLA 203485 (exhibit P1). The plaintiff confirmed that he knew the signature of the deceased and that the purported signatures on the transfer instruments were not those of the deceased.

Mr. Apolo Mutashwera Ntarirwa (PW2) a handwriting expert testified that he investigated the complaint and made his report on 31st May 2006 (exhibit PS). He testified that he compared the questioned documents with those from known sample signatures of the deceased on Sembule Investment Bank's identity cards issued on 2/7/1993 and 2/1/1997 and caveat forbidding registration of any change of names on Block 244 Plot 1808 dated 29th March 1999 where he observed several significant differences such as the letter design (e.g. letter N), the letter proportions, spacing; slop (for example the letter I stands differently on specimens and the final letter "e"). He concluded accordingly that the writer of the specimen did not write the questioned signatures on annexures "A" "B" "C" and "D". Therefore he concluded that the signatures on questioned documents and the specimens were by different writers and as such the only plausible conclusion was that the defendant forged the signatures of the deceased Lusajjalubi Nalule to get registered onto

the title.

Considering the above evidence, especially from the handwriting expert, it is my conclusion that the purported transfer of title by the defendant was done fraudulently by forging the deceased signatures. Accordingly, the first issue is answered in the positive.

Issue No. 2:-

It is clear from the evidence on record that the defendant forged the signatures of the deceased to get herself registered on the suit property. According to the case of ***Zebiya Ndagire Vs Leo Kasujja [1974] HCB 153*** where land transfer forms or certificate contained forgery of the signature of the plaintiff as vendor and transfer of the land to the defendant was obtained by fraud, the purported transfer and any relevant entry in the Register book were held to be void against defendant.

In ***Edward Musisi Vs Grindlays Bank (U) Ltd and other [1983] JCB 39***, it was held that a person who becomes a registered person through a fraudulent act by himself/herself or to which he or she is a party or with full knowledge of the fraud ceases to be a bona fide purchaser for value.

In this case the defendant became registered through a fraudulent act by

herself by forging the signature of the late Jane Lusajjalubi Nalule she was therefore a registered person through fraud under section 176 of the Registration of Titles Act. According her title is void under section 77 of the Registration of Titles Act. Therefore in terms of the decision in ***Kigozi Mayambala Vs Sentamu [1987] JCB 68***, having found that the certificate is null and void, it must be cancelled under section 285 of the Registration of Titles Act.

For the above reasons I make the following orders:-

- (1) The suit land comprised in Kyadondo Block 244 Plot 1808 measuring 0.10 hectare at Kisugu, Kampala belongs to the estate of the later Jane Lusajjalubi Nalule.
- (2) Certificate of title in the names of the defendant be cancelled having obtained it by fraud and therefore null and void.
- (3) Certificate of title be registered in the names of the plaintiff as the administrator of the estate of the deceased.
- (4) I decline to award general damages since the plaintiff had not been disposed of the property and has been renting the same to tenants.
- (5) The plaintiff is awarded costs of this suit.

RUBBY AWERI OPIO JUDGE

20/8/2007.

22/8/2007:-

Denis Onek for plaintiff present. Court:-

Judgment read.

OCHEPA ARUTU

ASSISTANT REGISTRAR/FAMILY

22/8/2007.