

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

H.C.C.S. NO.25 OF 1996

EFURAIMU KASHANGO .....PLATNTIFF

VS

1. STEPHEN TABAARO)

2. EFURAIMU NGINGO) .....DEFENDANTS

**BEFORE: THE HON. MR. JUSTICE P K MUGAMBA**

**JUDGMENT**

The plaintiff instituted this suit against the two defendants in 1996 seeking the following reliefs:

- (a) a declaration that the land in dispute belongs to him;
- (b) a finding that the registration of the land in dispute into the defendant's names was fraudulent and an order for the cancellation of the same;
- (c) general damages for trespass and unlawful taking of land;
- (d) costs of the suit.

It was agreed at the scheduling conference that a title to land known as LRV 1481 Folio 17, Bushenyi Block 10 Plot 645 does in fact exist and that it is in the names of the defendants who have it. The parties proceeded to agree the following issues for resolution:

- 1. Whether the plaintiff has land/customary interest in the title of the defendants.
- 2. If so, whether the registration of such interest was fraudulent.
- 3. Remedies available
- 4. If any of the remedies is damages.

The case for the plaintiff briefly is that he had inherited land from his deceased father which he held under customary holding. In the course of time the defendants had applied for a lease and the land the defendants had been granted included some of the land which the plaintiff claimed under customary tenure. The plaintiff seeks to have the defendant's title cancelled because they had fraudulently caused the plaintiff's land to be included in their title and because they had not followed proper procedure to secure the grant and registration under the Registration of Titles Act. Needless to say the defendants dispute the above allegations.

It was the evidence of the plaintiff that at one time he and his father before him used to utilize the land in issue. It was the evidence of the plaintiff that he had not used the land in issue for quite some time partly owing to an order of court at Kagango for him to desist from using the land. Unfortunately no evidence of such order was available to this court. He testified however that he had no developments to speak of on the disputed land. In *Marko Matovu and 2 others vs Mohammed Sseviri & Anor* [1979] HCB 174 the Court of Appeal for Uganda observed that there is no definition of customary tenure but that it is generally accepted that where no bibanja do exist as evidence of customary rights customary tenure may be established by the cultivation only of seasonal crops or the grazing of cattle and related construction of wells to water cattle. No evidence was advanced by the plaintiff that at the time the land in issue came to be included in the defendant's leasehold he had any developments let alone a kibanja on the land. It appears to me from the evidence that what historical claim the plaintiff might have had to the land in issue was communal land which was open to be offered to whoever might apply to have it for a leasehold. Respectfully I do not find the plaintiff to have shown he had land or customary interest in the title of the defendants.

The second issue concerns whether there was fraud. In *Robert Lusweswe v G. W. Kasule & Anor* HCCS No. 1010 of 1983 (unreported) Odoki J, as he then was noted:

'Therefore while the cardinal rule of Registration of Titles under the Act is that the Register is everything, the court can go behind the fact of registration in cases of actual fraud on the part of the transferee.'

Indeed in the case of Matovu & 2 others vs Sseviri, already cited, the Court of Appeal held that if a person procures registration to defeat an unregistered interest on the part of another person of which he is proved to have knowledge, then such person is guilty of fraud. It has also been held that fraud must be strictly proved and the plaintiff must show that the defendant dishonestly dealt with the plaintiffs land as to have it included in his lease. See Sipiriya Kyamuresire vs Justus Binkaculika HCCS No. 254 of 1992 (unreported). To drive the point home the Supreme Court in Ronald Kayara v Hassan Ali Ahmed SCC Appeal No. 1 of 1990 opined that the law requires a higher standard of proof of fraud than in ordinary civil cases.

I have anxiously gone through the evidence of the plaintiff and his witnesses. I have also looked at the particulars of fraud borne by the plaintiff. With respect I find it nowhere proved that there was fraud in the transaction leading to registration let alone that the defendants, particularly the first defendant, were party to any fraud. My answer to the second issue is therefore in the negative.

All in all I find the plaintiff has not proved his case to any credible standard. It is dismissed with costs to the defendants.

P. K. Mugamba

**Judge**

27<sup>th</sup> March 2008