

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 14 of 2009

ADMINISTRATOR GENERAL SUING

THRU FRED NAGOWONYE - ATTORNEY

..... PLAINTIFF

VERSUS

1. **ABEDI MUSAJJAWAZA MUVULE** }
2. **STEPHEN KIGGWE** } **..... DEFENDANTS**

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA.

1. Introduction

The plaintiff through his lawyers Muhumuza – Laki, Twesigire & Co. Advocates brought this suit against the 1st and 2nd defendants jointly and severally seeking a declaration that the several dealings perpetrated by or at the instance of the defendants on the suit land belonging to the estate of the Late Yona Katula comprised in **Kyadondo Block 130 plot 42** were fraudulent, unlawful and null and void. The plaintiff sought *inter alia*, an order that the land comprised in **Kyadondo Block 130 plot Nos. 58 and 60** now registered in the names of the 1st and 2nd defendants respectively is still part of the estate of the late Yona Katula. The plaintiff also sought an order that the registration of the 1st and 2nd defendants respectively on the said plots N0s 58 and 60 be cancelled and the name of the Late Yona Katula be restored thereon.

2. Facts of the plaintiff's case

It is the plaintiff's case that the late Yona Katula passed away in 1964 leaving land at Buwanuka, Kyadondo comprised in Mailo Register Volume 304 Folio 14. In or around 1990 the 1st and 2nd defendants procured the land to be re-registered as Kyadondo Block 130 plot 42 which was sub-divided at the instance of the defendants into Plot N0s 58 and 59. Plot 59 was further sub-divided into three plots, N0s 60, 61 and 62. Plot 58 was

immediately transferred into the 2nd defendant's names and shortly thereafter into the 1st defendant's names. Plot 60 was registered in the names of the 2nd defendant and the status quo remains to-date.

The dealings were discovered by the plaintiff after obtaining Letters of Administration to the estate of the late Yona Katula in 2008. The plaintiff contends that the dealings could not have lawfully taken since neither the defendants nor any other person had obtained Letters of Administration or probate to the estate of the late Yona Katula by 1990 when those dealings were engaged in. The plaintiff further contends that the dealings were fraudulent and ought to be nullified.

None of the defendants filed a defence. When the suit came for scheduling, Counsel for the plaintiff applied for an order allowing the suit to proceed *ex parte* which the court granted.

3. Issues

At the trial, Counsel for the plaintiff, Mr. Augustine Twesigire framed the following issues:-

1. whether the suit is time barred
2. Whether the dealings were perpetrated by the defendants.
3. Whether the dealings with the land of the estate of Yona Katula were fraudulent.
4. Remedies.

4. Evidence adduced by the plaintiff in formal proof of his case

It is important to note that the 2nd defendant, who did not file a defence, opted to give evidence (as PW1) in support of the plaintiff's case. In this regard, I do appreciate the 2nd defendant's Christian values. He testified before me on oath and I observed that he believes in the truth. One could see that he did not want to die in sin. Obviously such upright people ought to be recommended. He is a living example the right thinking members in our today Uganda. That said and done, the plaintiff adduced the following evidence.

“PW1, Stephen Kiggwe (2nd defendant) gave evidence that I do not have personal knowledge of the late Yona Katula because he died way back in 1964 before I was born. I am the biological son of the late Ibrahim Kakoba who was a nephew and customary heir of the late Yona Katula. When Ibrahim Kakoba died in 1986 I succeeded him as customary heir.

Some time around 1990 my late Uncle one Alkardi Kiwanuka came to my home in Najjembe in the company of one Musajjawaza Muvule alias Ssali and they told me that my late grandfather Yona Katula left land in Buwanuka, Kyadondo which, I, as the grandchild and customary heir of the late Yona Katula’s heir was entitled to inherit. They also told me that Masajjawaza Muvule alias Ssali could held me to recover that land. They brought me to Kampala and took me to different offices which I cannot remember. In one of the offices which they told me was the land office they made me to sign several documents which they told me were necessary for the recovery of my grandfather’s land at Buwanuka. I did not know or understand the documents I signed because I am illiterate. After signing the documents I went back to Najjembe, Kyaggwe.

After about three years, Abedi Musajjawaza Muvule alias Ssali brought me two land titles. One of the titles was plot 60 and bore my names. It was 3.14 acres. The other title was in the names of Yona Katula and was plot 61, 62. It was 16 acres. He told me that he had taken a share of the land to recoup the money he had used in recovering the land and for the role he had played in getting me the land titles. He did not tell me how many acres he had given himself.

In 2006 I decided to sell off the land which was registered in my names together with the one registered in my grandfather’ names. The prospective buyers advised me to first obtain Letters of Administration to the estate of the late Yona Katula. I applied to the

Administrator General for Certificate of No Objection. I was asked to attend a meeting at the Administrator General's Office where I furnished the information on how I got the land titles.

I later learnt from the lawyers that the Letters of Administration to the estate of late Yona Katula had been granted to the Administrator General. The lawyers also told me that the Administrator General was going to investigate the affairs of the estate especially matters to do with the deceased's land. Early this month I was informed by Fred Nagawonye that I was required to come to court to give evidence in this case.

PW2, Robert Bogere gave evidence that I do not know the 1st defendant. I know the 2nd defendant. I came to know the 2nd defendant in early 2007 when he was following up his application for a certificate of No objection in respect of the estate of the late Yona Katula.

On the 30th November 2006, the 2nd defendant filed an application with the Administrator General's office for a certificate of No objection to enable him proceed to apply for Letters of Administration to the estate of the late Yona Katula. The application was accompanied by a declaration in Lieu of a death certificate sworn by the 2nd defendant confirming that the late Yona Katula died in 1964. The applicant subsequently obtained a proper Death Certificate which he also submitted as proof of death of the late Yona Katula. The application was registered as SR11/1257.

In his application the 2nd defendant declared that the late Yona Katula died intestate, that he was childless and a widower. The application also stated that he left 16 acres of land at Buwanuka, Kyadondo Block 130 plot Nos. 61 and 62.

When I cross-checked the information with the Succession Register, I discovered that the late Yona Katula had died testate leaving 42.10 acres of land at Buwanuka registered as mailo Register volume 304 Folio 4. The Succession Register also revealed that subsequent to the death of Yona Katula 2 Certificates of Succession had been issued by the Administrator General to two beneficiaries under the deceased's will, who received their shares of the land leaving 34.10 acres. Having noted the discrepancy in respect of deceased's land as declared in the 2nd defendant's application vis-à-vis what was reflected in the Succession Register I advised the Administrator General that it was necessary to investigate and establish the actual acreage of the land belonging to the deceased's estate. I also proposed to the Administrator General that the Administrator General should not issue a certificate of No objection to the 2nd defendant, but rather that the Administrator General should apply for Letters of Administration so as to be able to have sufficient control over the estate of the late Yona Katula. The Administrator General consequently applied for Letters of Administration which were granted on 18th October 2008.

After obtaining Letters of Administration by the Administrator General I proceeded to the Land Registry and carried out a search which revealed the following:

MRV 304 folio 14 had been re-registered as Kyadondo Block 130 plots 42 measuring 34.1 acres. There was a Mutation Form (sub-division form) signed by one Kyaggwe Stephen on 5th June 1990 purportedly authorizing a survey to be carried out for Yonasa Katula.

There was on the Register an AREA SCHEDULE FORM indicating that Kyadondo Block 130 plot 42 was subdivided into 2 plots as follows:

1. Plot N0. 58 measuring 14.96 acres (6.054 hectares) in the names of Yonasa Katula.
2. Plot N0.59 measuring 7.435 hectares – residue by balance.

On the same AREA SCHEDULE FORM it was indicated that plot 59 was further subdivided into 3 plots as follows:

1. Plot 60 measuring 3.14 acres (1.272 Hectares), in the names of Yonasa Katula.
2. Plot N0s 61, 62 measuring 6.163 hectares – residue by balance.

The register further revealed that the subdivisions were followed by dealings with the land of the estate of the late Yona Katula as follows:

1. On 14th June 1990, Plot 58 measuring 14.96 acres was transferred into the names of the 2nd defendant under Instrument N0. 141215. On the 11th July it was transferred from 2nd defendant to the 1st defendant under Instrument N0.141660. A transfer instrument signed by the 2nd defendant was on the register.
2. On the same day of 14th June 1990 the names of the Late Yonasa katula on the register of plot 60 were cancelled and replaced with the names of the 2nd defendant.
3. The residue by balance i.e. Plot 61, 62 was registered in the names of Yona Katula (deceased). The transaction was, however back –dated to read 13th March 1964, MRV 304 Folio 14.

The dealings with the land of the estate of the late Yona Katula were unauthorized and unlawful because since the demise of Yona Katula no one (not even the 2nd defendant) had obtained probate or Letters of Administration to the estate.

PW3, Fred Nagawonye gave evidence that I knew the late Yona Katula. He was an Uncle of my father so I am his grandson. Yona Katula died in 1964. He left a will copy of which is with the

Administrator General. He was a resident of Buwanuka Kiremezi village, Magigye Parish, Busukuma Sub-county, Busiro, and Wakiso.

The late Yona Katula left land at Busukuma, Wakiso District. Initially the land was 42.10 acres but subsequent to his demise two beneficiaries of the will by the names of Nalwoga and Nankya were given their share by the Administrator General leaving 34.10 acres a balance of 42.10 acres.

I know the 2nd defendant. He is my cousin. He is the son and heir of the late Ibrahim Kakoba. The late Ibrahim Kakoba was my uncle. Before his death he was the heir to the late Yona Katula.

Sometime around 1993 the 2nd defendant gave me two land titles to keep for him. One of the titles was for Kyadondo Block 60 and was in his names. The other one was for Kyadondo Block 130 plot 61 and 62. It was in the names of the late Yona Katula.

When I asked him where he had got the land titles from he told me they had been brought to him by Musajjawaza Muvule alias Ssali, the 1st defendant. He told me that the land title were of our grandfather's land at Buwanuka, Kyadondo. The 2nd defendant told me that that 1st defendant processed the titles but took part of our grandfather's land in return for the service he had rendered in processing the titles. I accompanied the 2nd defendant to the Administrator General's Office when the 2nd defendant applied for a Certificate of No objection. After holding several meetings in the Administrator General's office. I was advised by the Administrator General to lodge caveats on Kyadondo Block 130 Plots 58, 60, 61 and 62 because he suspected that the estate had been cheated of some of the land by the 1st and 2nd defendants. I lodged the caveats.

The Administrator General also gave me Powers of Attorney to file this case which I did. Recently I was notified by my lawyers that I was required to come to court to give evidence in this case.”

5. Arguments

All the above pieces of evidence were not challenged by the defence. More so, the plaintiff's case is strengthened and confirmed by the evidence of 2nd defendant who testified in this case as PW1. PW1 (2nd defendant) testimony is of eye witness. It is direct evidence in all aspects and purposes. Therefore, the plaintiff's evidence is believable as truthful against the defendants. The evidence of PW1 clearly shows that all the dealings in the suit land were perpetrated by the 1st defendant. The 1st defendant in his fraudulent schemes took advantage of the ignorance of the 2nd defendant.

Consequent to the above, I will deal with the issues the way they were presented and argued by Counsel for the plaintiff:

5.1 whether the suit is time barred

It is the plaintiff's case that the dealings with the suit land of the estate of the late Yona Katula were perpetrated in 1990. This is supported by the testimonies of PW1, PW2 and PW3. The witnesses' testimonies are reinforced by documentary evidence, namely, the Mutation Form (Annexure "C" to the plaint) which was signed by the 2nd defendant on 5th June 1990, the Transfer Instrument for Plot 58 (Annexure "E" to the plaint) which was registered on 11th July 1990, the entries in the Certificate of Title for Plot 58 (Annexure "G" which are dated 14th June 1990 and 11th July 1990 and the entry in the Certificate of Title for Plot 60 (Annexure "H" which is dated 14th June 1990. Section 5 of the Limitation Act, Cap. 80 provides:-

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action arose”

According to Section 6 and 11 of the Limitation Act the accrual of the cause of action is from the date of dispossession of the person seeking to recover the land. In this case the

dispossession of land was in 1990 which is about 18 years preceding the date of filing this case thus raising the issue of the limitation period.

In the plaint the plaintiff pleaded that the dealings with the suit land were fraudulent. The plaint spells out the particulars of fraud attributed to the 1st and 2nd defendants. It is further pleaded that the fraudulent dealings were discovered in 2008 after the plaintiff obtained Letters of Administration to the estate of the late Yona Katula. The grant of Letters of Administration (Annexure "A" to plaint) is indeed dated 10th January 2008 and was obtained in High Court Administration Cause NO. 1628 of 2007. It is also the evidence of PW2 that after obtaining the grant he proceeded to investigate the discrepancy in the information supplied by the 2nd defendant vis-à-vis the records in the Succession Register. The fraud was discovered in the course of PW2's investigations. Section 25 (a) and (b) of the Limitation Act Cap.80 provides, *inter alia* that **where the action is based upon the fraud of the defendant the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have recovered it**. In this case, therefore the plaintiff discovered the fraudulent dealings in 2008 and could otherwise not have been able to discover it before that.

I have perused the plaint and on the face of it, it appears that this suit is time barred. However, for the foregoing reasons given hereinabove, it is therefore, my finding that this suit is not time barred.

5.2 whether the dealings complained of were committed by the defendants

The 1st and 2nd defendants did not file defences. The plaintiff's claim is therefore not controverted. The 2nd defendant (PW1) in his testimony gave a detailed account showing how the 1st plaintiff manipulated him into the dealings in the suit land.

PW1, the 2nd defendant admits in his testimony that he signed documents in the land office where he was taken by the 1st defendant. He does not deny his signature on the Mutation Form and on the Transfer Form for plot 58 the suit land.

Further, PW1 (2nd defendant) in his testimony implicates the 1st defendant who told him (2nd defendant) that he (1st defendant) had helped the 2nd defendant to recover the suit land

and that he (1st defendant) had paid himself by taking a share on the suit land. PW3 confirmed that Plot N0. 58 which was formerly part of the land of the late Yona Katula is now registered in the 1st defendant's names. Plot 60 is registered in the 2nd defendant's names. These facts are not denied by the 2nd defendant.

Its my finding therefore that the dealings complained of were perpetrated by the 1st defendant who had a superior knowledge over that of the 2nd defendant. The 2nd defendant did not know at the time that what he was doing was wrong. He acted the way he did in honest belief.

5.3 whether the dealing with the suit land were fraudulent

In the plaint the plaintiff pleaded that the dealings with the suit land by the defendants were fraudulent. According to the testimonies of PW1, PW2 and PW3 the late Yona Katula died in 1964. The granted Letters of Administration was subsequently made to the Administrator General in 2008. It is therefore clear that in 1990 when the dealings complained of were perpetrated neither the defendants nor any other person had legal authority to deal with the deceased's estate. The 1st defendant had no authority to sign a Mutation Form which paved way to the subdivision of the suit land from the original Kyadondo Block 130 plot 42 to Plot N0s 58 and 59 and then subdividing plot 59 to plot N0.60, 61 and 62. Also the transfer executed by the 1st defendant in respect of Plot 58 in favour of the 2nd defendant was not legally authorized. The registration of Plot 60 into the names of the 1st defendant had no legal sanction and actually was criminal. Section 11 (1) of the Administrator General's Act, Cap 257 provides:

“When a person diesleaving property within Uganda, any person who, without being duly authorized by law or without the authority of the Administrator General takes, possession ofor otherwise intermeddles with any such propertycommits an offence.”

The testimonies of PW1, PW2 & PW3 are proof that the dealings were not only illegal but also fraudulent especially on the part of the 1st defendant. PW1 (2nd defendant) testified that he was brought from his home to Kampala by the 1st defendant and was made to sign several documents in the land office which he did not understand. The 2nd defendant

concedes that the signatures on the Mutation Form and Transfer Instrument of plot 58 are his. He also testified that the land titles for plot 60 and plot 61 and 62 were brought to him at his home by the 1st defendant. He further testified that the 1st defendant informed him that he (1st defendant) took a share of the land to recoup his expenses for recovery of the land that the processing of the titles. The fraud must have been committed by the 1st defendant who took advantage of the illiteracy and low level of understanding on the part of the 2nd defendant. “**Fraud**” was defined in the case of **Waimiha Sawmilling Co. Ltd (1926) AC 101 at P.106** thus:

“means actual fraud, dishonesty of some sort Fraud may be established by a deliberate and dishonest trick “ At page 107: “.....the act must be dishonest and dishonesty must not be assumed.....”

The uncontroverted testimony of PW1 (2nd defendant) is sufficient proof that there was actual fraud committed by the 1st defendant which defendant resulted in the dispossession of the deceased’s estate of the suit land now comprised in Plot 58 and Plot 60 Kyadondo Block 130.

Although the transfer Instrument for Plot 58 was executed by the 2nd defendant in favour of he 1st defendant the latter (1st defendant) can not claim to be a bona fide purchaser because in the first place he did not purchase the land, and secondly he fraudulently procured the registration of the land (Plot 58) in his names himself purporting that it was his reward for the recovery and registration of the 2nd defendant’s land. In considering all the aforesaid, it is clear that while the 2nd defendant’s acts were unlawful the acts of the 1st defendant were both unlawful and fraudulent.

6. Remedies available

Finally, after resolving the above three (3) issues in favour of the plaintiff, the plaintiff is obviously entitled to all remedies prayed for in the plaint. The plaintiff has proved his case on a balance of probabilities, which entitles him to the remedies as claimed in the plaint.

7. Conclusion

In conclusion, judgment is entered in favour of the plaintiff in the following terms and orders:

1. (a) That the dealings complained in the suit land of were fraudulent, wrongful, unlawful and null and void.
(b) That the said fraudulent, wrongful unlawful acts were committed by the 1st defendant. The 2nd defendant is exonerated of the wrong doing in the suit land.
2. That Kyadondo Block 130 Plot N0. 58 and 60 are still part of the land of the estate of Yona Katula.
3. That the defendants' names on Plot 58 and 60 respectively be struck out of the Register Book by Commissioner for Land Registration and also the name of the late Yona Katula be restored by the same Commissioner both in the register book and on the said Certificates of Titles. And immediately thereafter the suit lands to be registered in the names of the Administrator of the estate of the Late Yona Katula, the plaintiff.
4. That the defendants are to pay to the plaintiff mesne profits in respect of Plot 58 and 60, a sum of ten million Uganda Shillings (10, 000,000/=) for the 19 years.
5. That the 1st and 2nd defendants surrender the suit properties to wit plots 58 and 60 to the plaintiff within 30 days from the date of this judgment, or else be evicted thereafter.
6. That the 1st defendant shall meet the costs of this suit.

Dated at Kampala this 30th day of July 2010.

JOSEPH MURANGIRA
JUDGE