

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

CIVIL SUIT NO. 84 OF 2011

TUCKER MUBIRU ::: PLAINTIFF

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff, Tucker Mubiru brought this suit against the Attorney General of the Republic of Uganda in his representative capacity for acts of the Registrar of Titles and other officials in the Land Registry acting within the course and scope of their employment for fraudulently transferring the suit property (land) belonging to the Plaintiff's father measuring 9.0 acres comprised in Block 265 Plot 25 at Bunamwaya.

Facts constituting the Plaintiff's cause of action were stated in paragraphs 2-4 of the amended plaint:

“2. The facts constituting the Plaintiff's cause of action against the Defendant which arose on the 6th day of September 2010 are as follows:-

(a) On the above mentioned date the Plaintiff who is an administrator of the estate of his father the late Latima Nkolo Kasozi discovered in the land

Registry that part of the deceased land measuring 9.0 acres comprised in Block 265 Plot 25 land at Bunamwaya had been fraudulently transferred by the Registrar of Titles in connivance with other officials in the Registry to third parties.

(b) The Registrar of Titles and other officials in the Land Registry being agents/servants of Government were acting within the course and scope of their employment and therefore the Plaintiff holds the Attorney General vicariously or their acts.

Particulars of fraud by the said officials in the Land Registry:

(a) Transferring the deceased's land to third parties without his authority or that of his administrators.

(b) Falsifying the records in the Land Registry in respect of the deceased land comprised in Block 265, Plot 25 at Bunamwaya.

3. The Plaintiff's suit is brought under the provisions of Section 5 of the Civil Procedure and Limitation (Miscellaneous provisions) Act Cap 72 Laws of Uganda on the grounds of disability.

Particulars of Disability:

(a) The Plaintiff since March 2008 had gone to the Registry of Lands to conduct a search in respect of the above mentioned land but he was always informed by the officials thereat that the records had gone missing and could not be traced.

(b) It was not until 6th September, 2010 after enormous pressure and threat by the Plaintiff to refer the matter to the Directorate of Land Affairs office of the President that finally the Registrar of Titles produced the records for inspection by the Plaintiff.

(c) It was on the above mentioned date (i.e.) 6th September, 2010 that the Plaintiff discovered the fraud that had been perpetrated on his late father's land by the officials at the Land Registry.

4. By reason of the foregoing the Plaintiff has suffered loss and damage of which the Defendant is held liable. The Plaintiff has suffered loss of special damages in the sum of Shs.2,880,000,000/= (two billion eight hundred eighty million only) being the amount marked value of the suit land.”

The Attorney General denied the claim in toto. In the alternative but without prejudice the Attorney General contended that if at all the above land was transferred then it was lawfully transferred. Lastly it was contended that the suit was barred in law having been filed out of limitation period and should be struck out.

Issues for determination:

(1) Whether the Plaintiff's land was fraudulently transferred.

(2) Whether the suit is barred by the principle of limitation.

(3) Remedies available to the parties.

The Plaintiff filed sworn witness statement of himself and that of N. K. Ssali who did the valuation of the suit property.

In his statement the Plaintiff testified that his late father Latima Nkolo Kasozi was the registered proprietor of land comprised in Kyadondo Block 265 Plot 25 at Bunamwaya measuring 12.1 acres. The Plaintiff stated that by the time their father died he had not sold this land or any part of it to third parties. The Plaintiff also testified in his evidence and cross-examination that himself and the other administrators of the estate have never sold this land or any part of it to third parties.

The Plaintiff in his statement further stated that since March, 2008 he had gone to the Registry of Land to conduct a search in respect of their late father's land but was always informed by the officials at the Registry that the records had gone missing. It was not until 6th September, 2010 after exerting pressure and threatening to refer the case to the President's office. It was on this date that the Plaintiff discovered that fraud had been perpetrated on their late father's land by the Registrar of Titles and other officials at the Land Registry by transferring part of the deceased's land measuring 9.0 acres to third parties without the authority of the Plaintiff or that of the other administrators.

Lastly the Plaintiff admitted in cross-examination that the suit land was not in his father's will.

N. K. Ssali Pw₂ who was engaged to do valuation survey of the suit land testified inter alia that the original suit land comprised in Kyadondo Block 265 Plot 25 at Bunamwaya measured 12.1 acres out of which the suit land measured 9.0 acres and the balance of land occupied by the Plaintiff (Tucker Mubiru) was 3.1 acres. He stated that he carried out valuation and established the market value of the suit property at 2,800,000,000 (two billion eight hundred eighty million only).

The Defendant did not adduce any oral evidence but relied on documents from the Registry.

Resolution of issues:

(1) Whether the Plaintiff's land was fraudulently transferred by the Registrar of titles.

The Plaintiff alleged the following particulars of fraud against the Defendant:-

- (a) Transferring the deceased land to third parties without his authority or that of his administrators.
- (b) Falsifying records in respect of the deceased land comprised in Block 265 Plot 25 at Bunamwaya.

It was the contention of the Plaintiff that by the time of his father's death he had not sold this land or any part of it to third parties. The Plaintiff's belief was because he had not seen any sale agreement to that effect.

It was not the Plaintiff's case that his late father or any other person had informed him that the land had not been sold. The Plaintiff did not inform Court that he had discussion with his father concerning the suit property. On the other hand he admitted that the suit land was not in his father's will.

It is trite law that fraud must be proved strictly, the burden being heavy that on balance of probabilities generally applied in Court matter: See **Kampala Bottlers v Damanico (U) Limited, Civil Appeal No. 22 of 1992.**

In the instant case the Plaintiff must not just show that his father's land was fraudulently transferred. He must also show that the Registrar of titles was aware of and actively participated in the fraud. In other words fraud must be traced to the home (office) of the Registrar of Titles.

The specific allegations of fraud is contained in the Plaintiff's witness statement at page 2 paragraph 2 where he stated ***"I discovered that fraud had been perpetrated on my father's land by the Registrar of Titles and other officials at the Land Registry by transferring part of the deceased's land measuring 9 acres to third parties without my consent or that of other administrators."***

I must point out that the claim that other administrators did not consent is hearsay and inadmissible because they did not come to Court to say as much. On the Plaintiff's lack of consent according to **exhibit D₁** which is a transfer form part of the property was transferred from David Ssejaku Nalima to F. M. J. Walugembe Ssalongo on 2nd July 1960 forty nine years before the Plaintiff obtained Letters of Administration. It therefore follows that the Plaintiff did not need to consent as Mr. Walugembe was a registered proprietor of the suit property as long ago as 1960. Therefore the allegation that the Registrar transferred the title without obtaining the Plaintiff's consent or that of the other administrators is a redundant allegation to say the least as the estate only went into administration on 17/7/2009, forty nine years later. The Plaintiff has totally failed to establish fraud and the nexus of the learned Registrar of Titles to the said fraud.

There is also the issue that the property was not in the will of the deceased. One wonders how a person would leave out titled property from his or her will. Counsel for the Plaintiff submitted that there was no law that failure of a testator

to name any of his property in his will he ceases to be owner thereof. I am not convinced that an ex-Budonian could fall in the above oversight.

It is also on record according to **N. K. Ssali Pw₂** that the Plaintiff's original land was 12.1 acres out of which the suit land was 9 acres and the balance of land occupied by the Plaintiff was 3.1 acres.

The crux of the case is that part of the suit land was transferred to F. M. J. Walugembe and other transferees to wit: J. B. Kyononeka and Remigius Kyoneneka and Others. These are known transferees who are said to have developed the land massively. Why has the Plaintiff neglected to investigate their registration instead of faulting the Registrar of Titles for some acts which were done in 1960? Seeking compensation over two billion? In view of the above circumstances I cannot resist the conclusion that the Plaintiff is on a fishing expedition. There is no evidence of fraud. Allegations of fraud against the person of the learned Registrar of titles should be made with concrete evidence and not as part of a fishing expedition. In the premises, I find that the Plaintiff has not satisfied the evidentiary burden placed on him. There is no scintilla of evidence of fraud. But even if such evidence existed it was not directed to the Defendant.

Issue No.2: Whether suit is barred by principle of limitation.

Section 3(1) of the Civil Procedure and Limitation (Miscellaneous provisions) Act Cap 72 provides:

“No action founded on tort shall be brought against:-

(a) The Government

(b) A local authority or a scheduled corporation, after the expiration of two years from the date on which the case of action arose.”

The Plaintiff's claim is based on fraud. It is trite law that time begins to run either from the date of the alleged fraud or when it came to the knowledge of the Plaintiff. The Plaintiff alleged that he came to know of the fraud in 2010.

The following facts are worth noting:

(a) **Exhibit D₁** shows that the land was transferred into the name of F. M. J. Walugembe on 2nd July 1960.

(b) **Exhibit D₁** further shows a copy of land title Kyadondo Block 265 Ploy 5647 Registered in the names of John Batuma and Remigius Kyanoneka on 24th January 1980, thirty two years before the plaint was brought.

(c) The area schedule of **Exhibit D₁** shows Plot 5647 was the last subdivisions and it occurred in 1980.

(d) The very first subdivision created Plot 1189 in a period before the date of the Instrument numbers were put on the titles. Page 21 of **Exhibit D₁** shows title in the name of F. M. J. Walugembe. The title was caveated by Latima Kasozi but the same lapsed.

From the above evidence it is important to note that Latima Kasozi became aware that F. M. J. Walugembe was registered proprietor well before 1980. The late Latima caveated Plot 1189 long before it entered the names of John Batuma and Remigius Kyanoneka. His caveat then lapsed. It was never put back on the property nor was any law suit filed for the recovery of the suit land from 1960 until 2009 when the estate went into administration. No disability has

been pleaded for that period. Even the nature of disability pleaded by the Plaintiff does not constitute a disability in law because it does not explain the source of disability why from 1960 up to 2009 nothing was done and yet the fraud had been detected. I accordingly find it irrelevant and incredible. It is even more incredible given the fact that the Plaintiff's Valuation Report showed that 9 acres of land not occupied by the Plaintiff or his family is abundantly developed with various residential houses of different shapes and sizes. The Report indicates that the Plaintiff has been occupying the balance of 3.1 acres from 12.1 acres originally owned by the late Kasozi. It would not be wrong to assume that the Plaintiff had been aware of those developments. I think it would even be absurd to suggest that those various developments began coming up around 2010. According to **Exhibit D₁** scores of different people have been in occupation and use of the suit property not to mention various caveators and banks that mortgaged the property on various dates show that the Plaintiff did not suffer any disability at all. I would think that the Plaintiff was aware of the legal status of the occupants and developers that was why he feared to confront them. The Plaintiff made the above concession during cross-examination.

It is therefore my conclusion that at best this matter is fifty two years old and by any measure it is time barred and it is accordingly dismissed with costs.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

5/11/2012.

13/11/12

Judgment delivered in the presence of:

(1) Mr. Lumweno Nasser for the Plaintiff.

(2) Mr. Karuhanga Elison (SA) for the Defendant.

Ms. Aidah Mayobo – Court Clerk.

HIS WORSHIP FESTO NSENGA

ASSISTANT REGISTRAR

13/11/12

3:10 P.M.

/nmg