

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 631 OF 2007

HERBERT BAKAZE MUKASA SALONGO.....PLAINTIFF

VERSUS

- 1. SARAH NANOZI**
- 2. LUWERO DISTRICT LAND BOARD**
- 3. MIREMBE JOYCE**
- 4. LUYIIRA ROGERS.....DEFENDANTS**

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE
JUDGMENT

This suit was brought by the Plaintiff against the Defendants jointly and/or severally for cancellation of title deeds, specific performance of a contract for a lease, general and special damages for trespass to land and breach of contract, mesne profits, an eviction order, interest and costs.

The Plaintiff's case is that he is the registered proprietor of all land comprised Leasehold Register Volume 2319 Folio 18, Bulemeezi Block 563 Plot 8 land situated at Burunda, Bulemeezi, Luwero District as owner of a 44 year lease commencing on 1st December 1991. During or around November 2001, without any claim of right the 1st Defendant fraudulently applied for, processed and acquired a different certificate of title over the same piece of land under Leasehold Register Volume 2939 Folio 2, Bulemeezi Block 563 Plot 8 being the same 124 hectares to which the Plaintiff is the registered proprietor. The Plaintiff was also the registered proprietor of another adjacent parcel of land comprised in LRV 1211 Folio 8 Bulemeezi Block

563 Plot 6 and 7 for an initial five years term which expired on 1st July 1986. On or about 29th November 1989, the Plaintiff made a formal application to the Uganda Land Commission (ULC), by then being the body in whom the reversion vested, for the extension of the said lease in respect of plots 6 and 7 to full term, and he paid all the assessed dues/fees. The 2nd Defendant, instead of extending the said title, fraudulently procured a full term lease over the said parcel of land in favour of the 1st Defendant in total disregard of the Plaintiff's application for lease extension.

The 1st Defendant was served by substituted service but he did not file a defence upon which judgment was entered against her in default on 16th May 2008 and the matter was set down for formal proof. On 29th May 2011 the Plaintiff and the 3rd and 4th Defendants entered into a consent judgment where the said Defendants granted vacant possession of the suit premises to the Plaintiff. On 30th June 2011 the 2nd Defendant did not appear in court when this matter was called for hearing though his Counsel was served and he acknowledged service by endorsing his stamp on the hearing notice. There is an affidavit of service to that effect on the court record. The hearing of the case against the 2nd Defendant therefore proceeded *ex parte* on application by the Plaintiff's Counsel.

The Plaintiff was directed to file sworn witness statements which he did, and the annexures to his statement were marked as exhibits in their respective order as prayed by the Plaintiff's Counsel. Counsel for the Plaintiff filed written submissions on the matter.

Issues

The Plaintiff framed issues for resolution as follows:-

- 1. Whether or not the Plaintiff's title deed to plot 8 is valid.***
- 2. Whether or not the 1st Defendant's title deed to plot 8 is valid.***
- 3. Whether or not the Plaintiff is entitled to be issued with a full term leasehold title to plot 6 and 7.***
- 4. Whether or not the 1st Defendant's leasehold title to plot 6 and 7 is valid.***
- 5. Whether the 1st and 2nd Defendant committed fraud in the circumstances.***
- 6. Whether the 2nd Defendant acted lawfully when they offered plots 6, 7 and 8 to the 1st Defendant.***

7. Whether the Plaintiff is entitled to the remedies sought.

Resolution of Issues

Issue No. 1: Whether or not the Plaintiff's title deed to plot 8 is valid.

It is the evidence of the Plaintiff as per his witness statement that he is the registered proprietor of all that land comprised in all land comprised LRV 2319 Folio 18, Bulemeezi Block 563 Plot 8 land situated at Burunda, Bulemeezi, Luwero District as owner of a 44 year lease commencing on 1st December 1991. He attached a certified copy of the certificate of title to the land as annexure **A** which was marked as exhibit **P1** by this court. The Plaintiff also states in his sworn witness statement that during or around November 2001, the 1st Defendant illegally applied for, processed and acquired a different certificate of title over the same piece of land under Leasehold Register Volume 2939 Folio 2, Bulemeezi Block 563 Plot 8 being the same 124 hectares to which the Plaintiff is the registered proprietor. He annexed a certified copy of the 1st Defendant's title as annexure **B** to his statement which court marked exhibit **P2**.

Section 59 of the Registration of Titles Act, cap 230, provides that a certificate of title is conclusive evidence of ownership of the land and the person named in that title as the proprietor. Section 48 of the same Act provides that instruments purporting to affect the same estate or interest are entitled to priority according to the date of registration.

It is clear from the evidence adduced by the Plaintiff, which is not disputed by the Defendants, that the Plaintiff's lease, having been registered on 6th January 1995 was earlier than that of the 1st Defendant which was registered on 22nd November 2001. Thus the Plaintiff's title takes priority under the Registration of Titles Act.

Issue number 1 is therefore answered in the affirmative.

Issue No. 2: Whether or not the 1st Defendant's title deed to plot 8 is valid.

Having found in issue no. 1 above that the Plaintiff's title takes priority over that of the 1st Defendant which was issued later in time, it follows that the said 1st Defendant's title is not valid under the Registration of Titles Act.

Issue no. 2 is therefore answered in the negative.

Issue No. 3: Whether or not the Plaintiff is entitled to be issued with a full term leasehold title to plot 6 and 7.

The Plaintiff stated in his sworn statement that was also the registered proprietor of another adjacent parcel of land comprised in LRV 1211 Folio 8 Bulemeezi Block 563 Plot 6 and 7 for an initial five years term which expired on 1st July 1986. He attached to his statement a certified copy of the expired title deed as annexure **C** which this court marked as exhibit **P3**. He also stated that on or about 29th November 1989, the Plaintiff made a formal application to the Uganda Land Commission (ULC), by then being the body in whom the reversion vested, for the extension of the said lease in respect of plots 6 and 7 to full term. He subsequently made a number of reminders, certified copies of which he attached to his statement as annexures **D**, **E** and **F**, which this court marked as exhibits **P4**, **P5** and **P6** respectively. He stated that the process of extending the lease was delayed by the ULC and subsequently by the transfer of the reversion from the ULC to the 2nd Defendant. The 2nd Defendant subsequently granted the extension to the Plaintiff. Annexures **H** and **I** to the statement, which this court marked as exhibits **P8** and **P9** respectively support this statement. The Plaintiff further testifies that consequently, the Commissioner Lands and Surveys instructed the Commissioner Land Registration to prepare the necessary title for plots 6 and 7 as per annexure **J** to the statement which this court marked exhibit **P10**. The Plaintiff stated that he paid the assessed dues/fees as per annexures **K** and **L** to his statement which this court marked as exhibits **P11** and **P12** respectively.

Paragraph 3 of the lease agreement embedded in exhibit **P3** required the Plaintiff to notify the ULC in writing and to pay the reserved rent and observe the covenants if he wished to renew the lease. Upon doing this, the lease would be renewed for a further term of 44 years. The evidence adduced by the Plaintiff, which is not disputed, shows that this was done by the Plaintiff, and that indeed, the 2nd Defendant subsequently granted the extension as per exhibits **P8** and **P9**. There is no evidence that the same was ever cancelled or withheld by the 2nd Defendant.

In my opinion, on basis of the evidence adduced above, the Plaintiff is entitled to be issued with a full term leasehold title to plot 6 and 7. Issue number 3 is therefore answered in the affirmative.

Issue No. 4: Whether or not the 1st Defendant's leasehold title to plot 6 and 7 is valid.

Issue No. 5: Whether the 1st and 2nd Defendant committed fraud in the circumstances.

Issue No. 6: Whether the 2nd Defendant acted lawfully when they offered plots 6, 7 and 8 to the 1st Defendant.

Issue numbers 4, 5 and 6 were jointly addressed by the Plaintiff's Counsel. I will also address them jointly.

In paragraph 10 of his plaint the Plaintiff pleaded that 1st and 2nd Defendants acted fraudulently in procuring the issuance of the certificate of title over the same piece of land under Leasehold Register Volume 2939 Folio 2, Bulemeezi Block 563 Plot 8 being the same 124 hectares to which the Plaintiff is the registered proprietor. He stated that the 2nd Defendant, instead of extending the Plaintiff's lease, procured a full term lease in favour of the 1st Defendant. He contended that the 1st and 2nd Defendant acted fraudulently in procuring the 1st Defendant's said certificate of title in the following particulars:-

- (a) Made application for a lease over land in respect of which there was already a pre existing lease still in force in favour of the Plaintiff.*
- (b) Granted and signed a lease agreement over land in respect of which there was a subsisting lease in favour of the Plaintiff.*
- (c) Obtained a full term lease without prior "initial term lease" in favour of the 1st Defendant.*
- (d) Created a new lease over the same piece of land without first terminating through lawful means, or at all, an existing lease in favour of the Plaintiff.*
- (e) Granted/obtained a lease over land without an inspection having been conducted and/or after a callous inspection thereof.*
- (f) Granted/obtained a concurrent lease over the land without giving the Plaintiff an opportunity to be heard.*
- (g) Granted/obtained the said leasehold for purposes of defeating the Plaintiff's title to the land and or dispossessing him of it.*

The Plaintiff also pleaded in paragraph 16 of his plaint that the 1st and 2nd Defendants personally or through their agents were fraudulent when they procured a full term lease over land comprised in LRV 1211 Folio 8 Bulemeezi Block 563 Plot 6 and 7 in the following particulars:-

- (a) Applied for/granted a lease in favour of the 1st Defendant over land in respect of which full term extension had already been given to the Plaintiff.*
- (b) Procured/granted full term lease in favour of the 1st Defendant that was not preceded by an initial term lease.*
- (c) Entertained an application for a lease from the 1st Defendant and or which fraudulently misrepresented the land to have been available for leasing, whereas not.*
- (d) The 1st Defendant fraudulently misrepresented to the 2nd Defendant that the land was vacant and available for leasing whereas not.*
- (e) The 2nd Defendant accepted and entertained an application from a fictitious person.*
- (f) The 2nd Defendant granted the lease to the 1st Defendant without first inspecting the land and or after having callously done the inspection.*
- (g) The grant of the lease to the 1st Defendant was made for purposes of maliciously depriving the Plaintiff of enjoyment of the full term extension.*

In **Kampala District Land Board & George Mitala V Venancio Babweyaka & 3 Ors Civil Appeal No. 2 of 2007** fraud was held to include some act of dishonest dealing in land or sharp practice intended to deprive a person of an interest in land. In **Fredrick Zaabwe V Orient Bank & Ors SCCA No. 4 of 2006** fraud was defined to include anything calculated to deceive whether by a single act or combination of acts or suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture. In **Matovu & 2 Ors V Sseviri & Anor [1979] HCB 174** it was 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 had knowledge, then such person is guilty of fraud. It was held in **Kampala Bottlers Ltd V Damaniko (U) Ltd [1990 – 94] EA 141** that fraud must be attributable to the transferee, either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. In **J. W. Kazoora V Rukuba Civil Appeal No. 13 of 1992**, it was held that allegations of fraud must be specifically pleaded and proved. The degree of proof required is one of strict proof, but not amounting to one beyond reasonable doubt. The proof must, however, be more than a mere balance of probabilities.

In the instant case the evidence as adduced by the Plaintiff is clear that the 2nd Defendant was aware of the grant of the lease extension of plots 6 and 7 to the Plaintiff whom it had directed to pay all the necessary fees. However it went on to issue a title to the 1st Defendant in total disregard of the Plaintiff's title to the land in addition to his being in possession of the same. In my opinion, fraud has been proved against the 1st and 2nd Defendants jointly and severally to the requisite standards.

In the premises issue numbers 4 and 6 are answered in the negative, and issue number 5 is answered in the affirmative.

Issue No. 7: Whether the Plaintiff is entitled to the remedies sought.

The Plaintiff prayed for an order of cancellation of all title deeds for plots 6, 7 and 8 now registered in the names of the 1st Defendant.

In **Costa Bwambale & Anor V Yosofati Mate & Ors [2001 – 2005] HCB 76** the Court of Appeal held that to order for cancellation of title, it must be proved that the second Appellant had knowledge actual or constructive about the interests of any of the Respondents and ignored it. It also held that a title issued in bringing land under the operation of the Registration of Titles Act cannot be impeached because of irregularities. Once land has been brought under the RTA, it cannot be de registered except for fraud. That is the legal position as provided for under section 59 of the Registration of Titles Act. Also see **Kampala Bottlers V Damaniko, supra**.

In this case fraud has been proved against the 1st and 2nd Defendants jointly and severally to the requisite standards. Section 77 of the Registration of Titles Act provides that any certificate of title procured or made by fraud shall be void against all parties or privies to the fraud. It is a finding of this court that the 1st Defendant's title to plots 6, 7 and 8 were procured by fraud. They are therefore void under section 77 of the RTA. This would justify cancellation of the said title under section 77 of the RTA.

The Plaintiff states in his witness statement that he incurred losses and expenses in asserting and protecting his rights and interests on the suit land for which he claimed special damages for the following:-

- a) **Costs for lodging a caveat on the two titles.....U. Shs.300,000/=**

- b) *Costs for seeking an order of mandamus.....U. Shs.500,000/=*
- c) *Costs of attempted re opening boundaries.....U. Shs.1,000,000/=*
- Total.....U.***
- Shs.1,800,000/=***

The Plaintiff also prayed for mesne profits from the date of issue of the 2nd Defendant’s titles for plots 6, 7 and 8, that is 22nd November 2001 until judgment in the amount of U. Shs.60,000,000/=

It is trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering (**Assist (U) Ltd V Italian Asphalt & Haulage & Anor HCCS No. 1291 of 1999**, unreported, at p.35, Kiryabwire J). Damages must be pleaded and proved. The quantum of special damages ought to be proved and properly assessed by court. Loss of rental income is assessed on the basis of the value of the premises at the time. The Landlord should aver in his pleading what he alleges is the annual value of the premises and must be prepared to prove it (**George Kasedde Mukasa V Emmanuel Wambedde & Ors Civil Suit No. 459 of 1998** unreported). As regards general damages the law is that they must be pleaded and proved (**Moses Kizige V Muzakawo Batolewo [1981] HCB 66**).

The Plaintiff claimed special damages of U. Shs.1,800,000/= against the Defendants. The figure of U. Shs 1,800,000/= which is the total sum of the itemized costs of lodging caveats for the two titles, seeking an order for mandamus and attempted re opening of boundaries is not substantiated by any documentary evidence like receipts or other cogent proof of payments of the money sought to be claimed. This would have enabled court to make an assessment or quantification of the said damages. In that respect, on basis of the authorities cited, I am not able to award the special damages. Regarding the Plaintiff’s claim for mesne profits the Plaintiff did not allege and or testify on the annual value of the premises. Loss of rental income is assessed on the basis of the value of the premises at the time. The Plaintiff merely prayed for mesne profits of U. Shs.60,000,000/= from the date of issue of the 2nd Defendant’s titles for plots 6, 7 and 8, that is 22nd November 2001 until judgment. No indication is given as to how the amount was arrived at. It is not enough merely to state figures. One must prove them as well. For this reason, and on basis of the authorities cited, I am not able to award mesne profits to the Plaintiff.

The Plaintiff also seeks general and exemplary damages in the sum of U. Shs.300,000,000/= and U. Shs. 100,000,000/= respectively. He pleaded in paragraph 14 of his plaint that he has suffered great inconvenience, loss, and frustration of efforts to re open his boundaries due to the Defendant's behavior. His Counsel submitted that the 2nd Defendant is a government agency created by the Constitution and the manner in which it renewed the Plaintiff's leases in favour of the 1st Defendant was fraudulent and high handed, and that exemplary damages against it would be appropriate in the circumstances. Exemplary damages are not awarded for every wrongful act of an officer of state.

On general damages, inconvenience was held to be a form of damage in **Assist (U) Ltd V Italian Asphalt & Haulage, supra**. In the instant case, the Plaintiff cannot be without remedy of an award of general damages where it has been proved to this court that the 2nd Defendant fraudulently and illegally awarded leases to the 1st Defendant in respect of land to which the Plaintiff already had running leases and or had received an offer for renewal of the same. The Plaintiff must have clearly suffered inconvenience. The land in question is registered land, located in Bulemeezi, Luwero District. I would award him general damages of U. Shs.150,000,000/= to be paid by the 1st Defendant.

On exemplary damages, considering that the 2nd Defendant is an agent of government and the acts committed by it against the Plaintiff were done arbitrarily and fraudulently to the prejudice of the Plaintiff. It was in total disregard of the Plaintiff's fundamental property rights which should be protected under the Constitution. I would award U. Shs.15,000,000/= to be paid by the 2nd Defendant.

On eviction, it is evident that the 3rd and 4th Defendants have granted vacant possession of the suit premises to the Plaintiff as per a consent judgment between themselves and the Plaintiff filed on 4th July 2011. An eviction order in the circumstances would be uncalled for as it has been overtaken by events namely the consent judgment. The Plaintiff however prayed for mesne profits and costs. In my opinion, even the order for costs as against the 3rd and 4th Defendants would also be uncalled for as it has also been overtaken by events, namely the consent judgment where the said parties agreed that each party bear their own costs.

In that respect therefore I find that the Plaintiff is entitled to the remedies sought as follows:-

- a) *The certificates of title of land comprised in Bulemeezi Block 563 Plot 8, LRV 2939 Folio 2 registered in the 1st Defendant's names; and of land comprised in Bulemeezi Block 563 Plots 6 and 7, LRV 2939 Folio 3 also registered in the 1st Defendant's names be cancelled by the Commissioner for Land Registration.*
- b) *The 2nd Defendant should complete the extension to full term of the lease comprised in Bulemeezi Block 563 Plots 6 and 7, LRV 2939 Folio 3 in favour of the Plaintiff.*
- c) *The Plaintiff is awarded general damages of U. Shs.150,000,000/= to be paid by the 1st Defendant.*
- d) *The Plaintiff is awarded exemplary damages of U. Shs.15,000,000/= to be paid by the 2nd Defendant.*
- e) *The costs of the suit are awarded to the Plaintiff.*

I so order.

Dated at Kampala this 23rd day of March 2012.

Percy Night Tuhaise

JUDGE.