

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
CIVIL SUIT NO. 068 OF 2022
(Formerly MSD Civil Suit No.067 of 2020)

HECTOR MUGAGGA MUSOKE :::PLAINTIFF

VERSUS

1.TAREMWA ANDREW

2.MUTEBI BEN

3.NALWEISO HAFSA

4.UGANDA LAND COMMISSION

5.COMMISSIONER LAND REGISTRATION ::::::::::::::::::::::::::::::::::::::DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] The Plaintiff's suit against the Defendants is for a permanent injunction, cancellation of title for land comprised in **Buyaga Block No.35, Plot No.1 land at Bulambika, Bunyoro** (Kibaale District) and Re-registration of the same in the names of the Plaintiff, mesne profits, vacant possession, a declaration that the Plaintiff is the lawful owner of the suit land, general damages and costs of the suit.
- [2] It is the Plaintiff's case that the suit land was originally owned by a one, the late **Yozefu Mulekeawoze Mwasamayinja** who bequeathed it to his son, **Zakaliya Musoke**, the Plaintiff's grandfather. That on the 25/8/1957, the Buganda Lukiiko issued a certificate of succession to **Zakaliya Musoke**, the grandfather of the Plaintiff. That the Plaintiff on his part, he applied for letters of administration to the estate of his late father **Musoke Zakaliya Hector**, son of the late **Zakaliya Musoke**.

- [3] That upon obtaining the letters of administration for the estate of his late father, the Plaintiff embarked on the process of locating the estate property and that is when he discovered that the 1st Defendant who is not related to his family had fraudulently forged letters of Administration to the estate of **Zakaliya Mulibanga Musoke** and was able to fraudulently process the registration of the suit land into his names and then purported to sell the same to the 2nd and 3rd Defendants who also purported to sell the same to the 4th Defendant. That the Plaintiff further discovered and established that the letters of Administration relied upon by the 1st Defendant did not originate from Kagadi Magistrate's court where it was purportedly issued from.
- [4] The Plaintiff contended that the 5th Defendant acted fraudulently when it sanctioned transfer of the suit land into the names of the 1st Defendant using forged letters of Administration and without verifying the authenticity of the same from the issuing court.
- [5] The Defendants were duly served with the summons to file a defence, including effecting service of court process by substituted service but none of the Defendants filed a Written Statement of Defence (WSD). As a result of the above, the Plaintiff successfully applied for a default judgment before the Registrar and the matter was fixed for formal proof under **O.9 r.6 CPR**.
- [6] This suit is however for recovery of land lost through fraud, cancellation of certificate of title, damages etc. **O.9 r.6 CPR** under which the D/Registrar of this court entered a default judgment in favor of the Plaintiff provides for judgments upon a liquidated demand. This suit is not a claim for liquidated demand. It follows therefore that the default judgment was entered in error. The suit ought to have been fixed for hearing under **O.9r.10 CPR** so that it proceeds as if the Defendants had filed a defence. In the premises, I set aside the D/Registrar's order of the default judgment in favour of the Plaintiff and substitute it with an order under **O.9 r.10 CPR** that would permit the suit to proceed as if the Defendants had filed a defence.

Burden and Standard of proof

[7] According to **S.103 of the Evidence Act**, the burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. It is trite law that the standard of proof in civil cases is on a balance of probabilities and the burden of proof lies on the plaintiff to prove his or her case on the balance of probabilities, **Sebuliba Vs Co-op Bank Ltd [1982] HCB 130**.

Issues for determination

[8] **Mr. Wamimbi**, counsel for the Plaintiff filed written submissions as permitted by this court wherein he proposed the following issues for determination by this court. They are;

1. *Whether there was fraud on the part of the defendants in dealing with the suit land.*
2. *What remedies are available.*

Issue No.1: Whether there was fraud on the part of the defendants in dealing with the suit land.

[9] In suits where there are allegations of fraud, it is the law that fraud must be specifically pleaded and strictly proved by the person alleging it. The standard of proof in allegations of fraud is slightly higher than in ordinary civil suits because of the fact that allegations of fraud are more serious in nature, **Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No.22 of 1992**.

[10] In his bid to prove his case, **Hector Mugagga Musoke** (PW1) testified that the suit land was originally owned by a one **Yozefu Mulekeawoze Mwasamayinja** who bequeathed it to his son **Zakaliya Musoke**, the Plaintiff's grandfather. The WILL of the late **Yozefu Mulekeawoze** dated 15/9/1043 is on record as **P.Exh.1**. According to the WILL, the said **Zakaliya Musoke** was given among others land described as **558**

acres comprised in title deed No.21653, Vol.327 Folio 8 located in Bulambika village, Sebadu, Buyaga Sub county (in the present Kibaale District). Counsel for the Plaintiff submitted that a one **Zakaliya Mulibanga Musoke**, processed and was registered as proprietor of the suit land on 17/5/1952 under **Instrument No.105515** as per the certificate of title admitted on record (as part of the set of **P.Exh.5**). That upon the death of **Zakaliya Mulibanga Musoke**, his son **Musoke Zakaliya Hector**, father to the Plaintiff, applied for letters of administration of his estate but died before administering the estate. It is then that upon his death, the Plaintiff, his son, applied and obtained letters of administration of his estate. That after obtaining the letters of administration of the estate of his father **Musoke Zakaliya Hector**, the Plaintiff embarked on the process of locating the estate property and that is when he discovered that the 1st Defendant who is not related to his family, had fraudulently forged letters of administration to the estate of **Zakaliya Mulibanga Musoke**.

Plaintiff's interest and claim

- [12] The evidence on record as per the Plaintiff (**PW1**) is to the effect that he derives his interest in the suit land from his father **Zakaliya Musoke Hector** who derived interest of the land from his father **Zakaliya Musoke** who lastly derived his interest in the land from **Yozefu Mulekeawoze Mwasamayinja**, the original owner.
- [13] The Plaintiff explained in his evidence that the late **Yozefu Mulekeawoze** had bequeathed the suit land to his son **Zakaliya Musoke** as per the WILL dated 19/09/1943 (**P.Exh.1**) who passed on his interest to the Plaintiff's father **Zakaliya Musoke Hector** and then to himself.
- [14] The Plaintiff and his counsel however do not explain how **Zakaliya Mulibanga Musoke** also a son to the late **Yozefu Melekeawoze** as reflected in the WILL (**P.Exh.1**) comes into the lineage of ownership of the land traced from the late **Yozefu Mulekeawoze**. 2ndly, upon close scrutiny of the suit land described as **Buyaga Block 35 plot No.1 land**

at **Bulambika** (P.Exh.5), I find that it is registered in the names of **Zakaliya Mulibanga Musoke**. There is no evidence or anything to suggest that the title originates from or has roots with the late **Yozefu Mulekeawoze**, the alleged original owner. There is no evidence adduced by the Plaintiff that connects to the suit land to the late **Yozefu Mulekeawoze**, the Plaintiff's great, great grandfather.

[15] In short, there is no evidence adduced by the Plaintiff that connects or links the suit land that he is seeking to recover, to his great, great grandfather **Yozefu Mulekeawoze**, from whom his father **Yozefu Zakaliya Musoke Hector** traces his interest.

[16] Counsel for the Plaintiff appear to have confused the relationship of **Zakaliya Mulibanga Musoke** and **Zakaliya Musoke Hector**. It is not correct that **Musoke Hector** is a son of **Mulibanga Musoke**. There is no evidence that **Mulibanga Musoke's** interest in the suit land have anything to do with those of the Plaintiff and his late father **Musoke Hector**.

Authenticity of letters of Administration HMA A.C No.12/2015.

[17] It is the evidence of the Plaintiff that when he obtained letters of administration in respect of the estate of his late father **Zakaliya Musoke Hector**, he embarked on the process of locating the estate of his great, great grandfather **Yozefu Mulekeawoze** and this is when he discovered that the 1st Defendant who is not related to his family had fraudulently forged the Grant to the estate of **Zakaliya Mulibanga Musoke**. To prove that the Grant was forged, he adduced evidence of verification letter dated **28/11/2020** from the Magistrate of Kagadi Magistrate Grade 1 court where the Grant was purportedly issued from, See **P.Exh.6**. According to the verification letter (**P.Exh.6**), the letters of Administration relied upon by the 1st Defendant to process registration of the suit land into his names did not originate from the court that purported to issue it.

- [18] The verification letter (P.Exh.6) however fell short of disclosing whether the Grant is a forgery and or whether it was fraudulently obtained. Nowhere is it disclosed in evidence that the impugned grant is a forgery or a suggestion that the signature of the issuing Magistrate thereon in October 2015 was forged. Secondly, though the impugned grant was annexed to the pleadings, it was never tendered and exhibited in evidence as per **S.61 of the evidence Act** which require documents adduced in court to be proved through primary evidence. Pleadings and attachments thereto have never amounted to evidence unless they are conceded to as such by the opposite party and admitted as exhibits by court, **Kamugira Vs National Housing Construction, HCCS No.27/2008.**
- [19] Secondly, the verifying officer of **P.Exh.6** does not disclose as to which specific records he was referring to that did not reflect the file. This court is not told whether a search was carried out in the Administration causes register and that the grant was found missing and or that the signature of the judicial officer who endorsed it on **28/10/2015** where it was accordingly issued is authentic or not. In my view, I find **P.Exh.6** alone, without more, insufficient proof that the Grant was a forgery or fraudulently obtained.
- [20] In conclusion, I find that it is apparent on record that there is no evidence adduced by the Plaintiff that he is a beneficiary and or administrator of the estate of the late **Zakaliya Mulibanga Musoke**, the original owner of the suit land as per **P.Exh.5** (the certificate of title). The late **Yozefu Mulekeawoze Mwasamayinja** from whom the Plaintiff traces his interest was never the original owner of the suit land. His land is described in the WILL as **558 acres comprised in title deed No.21653, Vo.327, Folio 8 located in Bulambike village, Sabadu Buyaga Sub county**, which he bequeathed to **Zakaliya Musoke**. No evidence was led by the Plaintiff to link or connect it with the suit certificate of title in the names of the late **Zakaliya Mulibanga Musoke**. In brief, I find that there is no evidence that the Plaintiff has any interest in the suit land.

[21] This court having found that the Plaintiff has not proved any interest in the suit land, it follows that he lacks locus standi to complain about the management of the estate of the late **Zakaliya Mulibanga Musoke** and or how the estate suit land was acquired by the 1st Defendant.

[22] As a result of the foregoing, I find that the Plaintiff has failed to prove his allegations of fraud against the Defendant to the required standard which is slightly heavier than in ordinary cases. The fact that the Defendants did not file a defence did not relieve the Plaintiff of his burden to prove his allegations to the required standard. In the premises, I find that the Plaintiff has failed to prove his case on the balance of probabilities. The suit is accordingly dismissed.

Dated at Hoima this 29th day of November 2023.

Byaruhanga Jesse Ruggyema
JUDGE.