

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
CIVIL SUIT NO.186 OF 2021
(CONSOLIDATED WITH CIVIL SUIT NO. 198 OF 2021)

GRACE HENRY KAMANYIRO::::::::::::::::::::PLAINTIFF

VERSUS

- 1. BAMWEBAZE DEOGRATIOUS**
- 2. MUBIRU NORMAN**
- 3. COMMISSIONER LAND REGISTRATION::::::DEFENDANT**

BEFORE HON.LADY JUSTICE CHRISTINE KAAHWA

JUDGMENT

Background:

The Plaintiff brought this case against the 1st Defendant vide Civil Suit No.186 of 2021 and the 2nd Defendant vide Civil Suit No.198 seeking the declarations and orders that, The Plaintiff be declared the rightful owner of the land comprised at Mawokota Block 111 Plots 2457 and 2475, the transfer of the suit land into the Defendant's names was fraudulent and or illegal hence null and void , an order for cancellation of the Defendants' names on the certificates of title and be reinstated as the registered proprietor of the suit land. Consequently, Court Made an Order to consolidate the two suits.

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Brief facts:

The brief facts of this case are that, the Plaintiff is the registered proprietor of land comprised at Mawokota Block 111 Plots 2457 measuring 0.053 Hectares and Block 111 plot 2475 measuring 0.046 Hectares following his registration on the 28th day of March, 2007 Vide instrument No. MK083871. from that time, he took possession of the land and put the same under the custody of Alex Kakembo as a caretaker. However, he later discovered that on the 8th day of November, 2010, vide instrument No. MK0117307 and on 10th May 2007 vide instrument No. MK0101727, that the Defendants got illegally and or fraudulently registered on the suit land by the Registrar of titles respectively yet he has never personally and or through an authorized agent sold the suit land to the Defendants and the whole transaction was tainted with fraud which the Defendants were aware of.

The Plaintiff contends that all his signatures on all the incidental documents to the registration were forged by the Defendants as the Defendants' purport to have secured his signature when he was permanently resident of the United States of America and that he does not know how the defendants got photocopies of his passport attached on the transfer forms.

1st Defendant's Case:

The 1st Defendant on the other hand is currently the registered Proprietor of land and developments comprised in Kyaggwe Block 111, Plot 2457 land at Mawoto which has four rental units

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and he has been so since 8th November, 2010 after buying it from the Plaintiff's representative a one Alex Kakembo whom the Plaintiff had entrusted to take care of the suit plot and had given him the duplicate Certificates of Title, duly signed transfer forms and passport photographs which were given to the 1st Defendant by Alex Kakembo upon payment of the purchase price of Ug. Shs.7,500,000/= [Uganda Shillings Seven Million, Five Hundred Thousand]. The 1st Defendant used the transfer forms, Certificate of Title and the passports he received from Alex Kakembo to transfer the land into his names and Alex Kakembo as defense witness number 2 confirmed this. That the Plaintiff had acquiesced the sale by giving Alex Kakembo a duplicate Certificate of Title, duly signed transfer forms and passport photographs.

2nd Defendant's Case:

The 2nd Defendant, also allude to the fact that he is the registered owner of land and developments in Kyaggwe Block 111, Plot 2475 at Mawoto and that he bought the suit property from the Plaintiff's representative, a one Alex Kakembo at cost of Ug. Shs.6,500,000/= [Ugandan Shillings Six Million and Five Hundred Thousand only] he was given original Certificate of Title, duly signed transfer forms and passport photographs by Alex Kakembo whom the Plaintiff had entrusted to take care of the suit property.

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Representation:

The Plaintiff was represented by Mr. Tonny Tumukunde while the Defendants were represented by Mr. Evans Tusiime.

Hearing of the Case:

The parties were given timelines to file Trial bundles, witness statements and a Joint Scheduling memorandum which they did. For the Plaintiff filed one witness statement and the Defendants filed 4 witness statements each for the defendants, Kakembo Alex and Margaret Nakaweesa.

This matter was scheduled on the 23rd January 2023 and was earlier consolidated on the 3rd November, 2022.

All the witnesses mentioned above presented their testimony in court and were cross examined.

Issue:

The following issues were framed for Court's determination as indicated in the Joint Scheduling Memorandum.

1. Whether the first and second Defendants fraudulently or illegally acquired Titles for the land comprised in Kyaggwe Block 111 Plots 2457 and 2475?
2. What remedies are available?

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However, when the parties filed submissions Counsel for the Defendants raised a preliminary objection contending the Plaintiff's case was time barred. The objection is contained in para 3 of the WSD.

This Court therefore will reframe the issues are as herein below:

1. Whether the Plaintiff's suits are time barred?
2. Whether the first and second Defendants fraudulently or illegally acquired Titles for the land comprised in Kyaggwe Block 111 Plots 2457 and 2475?
3. What remedies are available?

Issue 1: Whether the Plaintiff's suits are time barred?

Counsel for the Defendants raised a preliminary objection as regards the Plaint filed in court on 24th April, 2021, they submitted that the Defendants purchased the suit land in January and August 2007 respectively. That from 2007, the twelve years' limitation on actions for recovery of land had expired in August 2019 which was two years before this case was filed in Court.

To this end Counsel for the Defendants submitted that Section 5 of the Limitation Act Cap 80 provides that, 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 accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

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And as already submitted, 12 years expired in August 2019. The Defendants Counsel relied on the case of **M&D Timber Merchant and Transporters Ltd Vs Hwan Sung Ltd (Miscellaneous Application No.796 of 2015)** in which Court upheld Section 5 of the limitation Act to find the suit time barred by statute. In the same case, court cited with approval the case of **Re: Mustapha Ramathan Civil Appeal No.25 of 1996** the Court of Appeal held that statutes of limitations are not concerned with merits. They are by their nature strict and inflexible enactments. Their overriding purpose is interest *republicae Ut fins litum*, meaning that litigation shall automatically be stifled after a fixed length of time, irrespective of the merits of a particular case. Once the axe falls, it falls, and a Defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.

Counsel for the Defendants contended that he is mindful of the provisions of the Section 25 of the Limitation Act Cap 80 where by in cases of fraud, time does not run until the person institutes the right claim has learnt and or discovered the alleged fraud or could have discovered it with reasonable diligence.

Counsel argued that it is the duty of the Plaintiff to plead and prove when he or she learnt or discovered the fraud. The Defendants told court that after the purchase in 2007, they took possession of the land and transferred the titles into their names

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where the Plaintiff had been registered as proprietor in the year 2007.

In paragraph 5(d) of the plaint, the Plaintiff pleaded that "the Plaintiff's attention to this fraud was recently drawn after requesting for the inventory of Block 111 Kyaggwe Block from Lands in Mukono through the former lawyers of Mushagara Associated Advocates and Legal Consultants. See letter annexure "C" which reads;

"To the land Registrar Mukono MZO

Re: Block 111 plots 5306, 5307, 5379, 2468,3341, land at Kyaggwe, Mukono

We act for and on behalf of our client Dr. Grace Henry Kamanyiro on whose instructions we address you as hereunder.

Our client is desirous of accessing physical and certified copies of all necessary documents on the land title above land files.

We pledge to pay the requisite fees.

We so pray.....

Mushagara Associated Advocates & Legal Consultants"

It is Counsel's submission that the suit plots are Block 111 Plots 2475 for Mubiru Norman and 2457 for Deo Bamwebaze. Therefore, the alleged letter does not relate to the suit plots as none is indicated in the said letter and the Plaintiff pleaded no other evidence to prove to court that he did not know of any alleged fraud in respect of the suit Plots. That in any event, what was needed in the said letter was very clear and has nothing to

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do with the alleged fraud as is pleaded and contained in what the Plaintiff has presented before Court in the plaint. Counsel reiterated that the case before Court does not fall within the exceptions to the provisions of Section 25 of the limitation Act and prayed that the Court be pleased to find the suit in favour of the Defendants.

Plaintiff's submissions

On the issue of Preliminary Objection as to the plaint filed in Court on 18th August 2021 it was submitted for the Plaintiff that at page 5 of the 1st and 2nd Defendant's written statements of defence, is to the effect that the Defendants purchased the land in January and August 2007 respectively and that is 12 years making the suit barred by the law of limitation. The Defendants cited section 5 of the Limitation Act Cap 80 which provides that no action shall be brought by a person for recovery of land after the expiration of 12 years from the date on which the right of action accrued to him or her, or if it first accrued some other person through whom he or she claims, to that person.

In furtherance of the submission Counsel asserted that whereas the above law is right, the same law gives exceptions to the defence of limitation as raised by the Defendants and this suit is one of a kind which falls under the exceptions provided for in section 25 of the limitation Act which provides that:

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"Where, in the case of any action for which a period of limitation is prescribed by this Act, either the action is based upon the fraud of the Defendant or his or her agent or of any person through whom he or she claims or his or her agent, the period of limitation shall not begin to run until the Plaintiff has discovered the fraud."

He fortified his argument by relying on the case of **Patrick Lyamulemye Vs Stephen Kwiringira and 3 others HCCS No.0118 of 2019** that the period of limitation is hinged on the time when the Plaintiff discovers the fraud or mistake. That it therefore follows that the law on limitation for cases based on fraud is that time begins to run from the moment the fraud is discovered.

Counsel affirmed that the Plaintiff discovered the fraud in 2021, when he had returned to the country and discovered that his legal interest in the land was now in the names of the 1st and 2nd Defendants and he then swiftly instituted this suit. That the issue as to when time begins to run is a factual one and that the Plaintiff has demonstrated to this Court when he got knowledge of the fraudulent transactions and that since the Plaintiff discovered the fraud in 2021, he is therefore not time barred.

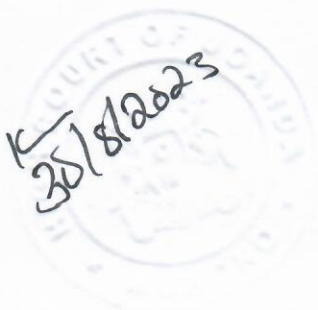
The Defendants contend that suit is time barred since the plaint which was filed on the 18th day of August, 2021 and yet the causes of action began in 2008 and 2007 respectively.

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Counsel for the Plaintiff argued that this matter was filed on 18th August 2021. When the Plaintiff returned to Uganda and discovered that his legal interest in the suit land was now in the names of the 1st and 2nd Defendants. Perusal of the Plaintiff's plaint and particularly paragraph **5(a-j) the cause of action for recovery of the land seeks to impute fraud against the 1st and 2nd Defendant. In particular, he also states that the fraud was brought to his attention recently through his former lawyers of Mushagara and Associated Advocates. He attached a copy of the letter dated 7th May 2021.** The Plaintiff in his witness statement and in cross examination stated that he had learnt about the possession of the 1st and 2nd Defendant recently around 2020. He further stated that in regard to Mubiru the 2nd defendant he does not know where the physical plot of land is located.

Analysis and Resolution:

The legal exemptions in Section 25 of the Limitation Act must be pleaded and proved by the Plaintiff. In the instant case it is clear that the Plaintiff is a resident of Maryland in the USA. He also stated that he comes to Uganda once or twice a year for a period of 2 weeks. The Defendants in their testimony also did not state that they had informed the Plaintiff that they had bought those plots nor did they contact him through the phone or his known email address.



The Court in **Hamman Ltd and another versus Ssali and another (Supra)** when interpreting section 25 of the Limitation Act had this view;

".. the main thrust of the provision is essentially that in actions founded on fraud, the limitation period does not begin to run until when the Plaintiff invariably aware, or could have reasonable diligence been aware of the fraud. This must be pleaded so that the court should reckon with the period the plaintiff was unaware of the fraud in computation of the time."

I agree with the submissions of both Counsel on the law of limitation as espoused in section 5 and 25 of the Limitation Act and the cases cited in support of their various cases. It is clear that the Section 5 of the said Act no person can recover land after the expiration of 12 years. However, the exceptions to this rule are found in Section 25 of the Act which the Plaintiff relies on and contends that the land was acquired by fraud and that he came to learn of the fraud in 2020 and 2021.

The evidence presented on behalf of the Defendant does not show when the Plaintiff became aware of the registration of the Defendants. No evidence was led that showed that the Plaintiff knew of the claims of the Defendants and took no action to assert his rights. This Court is satisfied that the Plaintiff was not aware that the suit land had been possessed by the Defendants and he learnt of the possession in 2020. It would therefore not be necessary for him to plead any exemption since the fraud was brought to his attention in 2020.

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I therefore find that the suit against the 1st and 2nd Defendants is not barred time and I will therefore proceed to determine the two issues as proposed by the parties.

Issue 2: Whether the first and second Defendants fraudulently or illegally acquired Titles for the land comprised in Kyaggwe Block 111 Plots 2457 and 2475?

Submissions for the Plaintiff:

Counsel submitted that the defendants got registered on the suit lands fraudulently and or illegally and therefore are not bonafide purchasers for value without notice. That the registration of Titles Act protects registered proprietors against impeachment and ejectment. Section 59 of the RTA provides that: *"No certificate of title issued upon an Application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the Application or in the proceedings previous to the registration of the Certificate, and every Certificate of Title issued under this Act shall be received in all courts as evidence of the particulars set forth in the Certificate and of the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person named in the Certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the Certificate is seized or possessed of that estate or interest or has that power"*. Counsel submitted that it follows therefore that the registered proprietors title stands valid and can only be

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defeated where it proved that such title was procured through fraud.

He relied on the provisions of Section 176 to the effect that:- No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases—

(a)

(b)

(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

Section 77 of the RTA is to the effect that any Certificate of Title, entry, removal of the incumbrance, or cancellation, in the Register Book, Procured or made by fraud, shall be void as against all parties or privies to the fraud.

The Supreme Court in the case of **Fredrick J.K Zaabwe V Orient Bank Ltd & Others SCCA No.4 of 2006** defined fraud as the intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It went on further to state that it's a false representation of matter of fact, whether by words or by conduct, by false or misleading allegations, or by

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concealment of that which deceives and is intended to deceive another so that he can act upon it to his legal injury.

In furtherance of his submission, he argued that in all cases involving fraud, fraud must be attributed to the transferee and quoted the case of **Kampala Bottlers Ltd Vs Damanico (U) Ltd SCCA No.22 of 1992**, where Court held that fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in Civil Matters. That the party must prove that the fraud was attributed to the transferee, it must be attributed either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

Counsel for the Plaintiff submitted that PW1 testified that he was at all material times the registered proprietor of the suit lands having acquired his registration thereon on the 28th day of March, 2007 vide instrument No.MK083871 and he adduced evidence in Court that he trusted his Nephew Alex Kakembo with already signed transfer forms for purposes of settling squatters on his land at a prorate of 40-60%. And it was the testimony of the Plaintiff that the Defendants were not squatters and or tenants on his land and that the same was known to them. They dealt in the land with Alex Kakembo yet they knew that he was not an authorized agent of the Plaintiff. The Plaintiff maintained his stand during cross examination that the Defendants got the Agreement for Sale of land from Alex Kakembo and did not pay

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any consideration to him and that the authorization given to Alex Kakembo did not specifically allow him to sell any of the Plaintiff's land and worse receive payments from any buyers and that Alex Kakembo never remitted the said monies to him.

It was contended for the Plaintiff that at the time the Defendants dealt with the land, he was permanently resident in the United States of America and none of them ever contacted him even when the said letters of authorization on which the transaction was based had the Plaintiff's contact and email.

That during cross examination, DW1 Mr. Deogratiuous Bamwebaze merely confirmed that PW1 promised to sign the transfer forms when he met him at his home in Kiwanga around 2007. He also confirms that he knew the Plaintiff as the rightful owner of the suit land and he did not deal with the Plaintiff but rather dealt with Alex Kakembo. DW1 further confirms that the Plaintiff was not there to prove the availability of the land but rather relied on Alex Kakembo to purchase the land.

Counsel asserted that DW1 by his own testimony confirmed that he did not undertake the necessary due diligence before purchasing this land. That it can also be inferred that he had notice of the true ownership of the land but at his own peril and to his detriment purchased the suit land regardless of the signs that the transactions were tainted with fraud. The 1st Defendant testified that he met the Plaintiff in his home in Kiwanga together with Festo Turinawe. He states that he knew at that time that the land belonged to the Plaintiff and not the Defendant but

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instead transacted in the land having known that the Plaintiff had flown out the country. He chose to deal with Alex Kakembo and not the Plaintiff and therefore acquiesced in the fraud.

Counsel submitted that DW2 during cross examination confirmed that he was aware that the suit land belonged to the Plaintiff in Kiwanga and inspite of that knowledge he went ahead and relied on the purported letter presented by Alex Kakembo as authority to sell off the Plaintiff's land. The Defendant admitted that the lawyer they went to, a one Advocate Sebagala, did not show to him any proof of instructions to the Plaintiff. Counsel concluded that whereas the land belonged to the Plaintiff, the Defendants never consulted the Plaintiff during the transaction yet his contact details were on the said letters of authorization presented by the said Alex Kakembo.

DW2 further testified that he decided to enter into the transaction because he knew Alex Kakembo was related to the Plaintiff.

On the other hand, DW3 Alex Kakembo, confirms that he did not own the suit land but he was merely appointed a care taker over the same. He also confirms that the purported letter didn't give authority to sell off the Plaintiff's suit lands. During cross examination, DW3 was taken through a trail of his email and he confirmed to this court that none of the above had a specific provision authorizing him to sell the Plaintiff's land. He sought relief in an email PEX6 to prove to Court that he sent the money

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to the Plaintiff, however the email does not in any way prove any evidence of deposit of the said money, he didn't have any receipts or deposit slips to show the same.

Counsel implored Court to reach the conclusion that the defendants had notice of this fraud and did not acquire good Title since it was tainted with fraud.

Purported Authority to Deal with the suit Land:

In regard to the above it was submitted that, whereas the Defendants relied on the purported authority that had been given to Alex Kakembo to purchase the Plaintiff's land, it is imperative to note that all instrument which have the effect of causing a change in the land register book must be meet the test laid down under Section 146 of the RTA

Section 146(1) of the RTA is to the effect that: -

(1) The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act.

(2) Every such Power of Attorney shall be registered in accordance with the Registration of Documents Act, and if so, registered within four months after the date thereof shall be presumed to be in force at the time of its registration unless a revocation of that power of attorney has been previously

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registered under that Act; but nothing in this subsection shall diminish the force and effect of any Power of Attorney if registered after the expiration of that period of four months.

It follows that any authority given by a proprietor of land to a third party to undertake any dealings in such land should conform to the provisions of Section 146 of the RTA. The law provides for dealing inland of any registered proprietor where one has authority through power of Attorney. Section 146(1) of the RTA provides that the proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act.

A Donee of a power of attorney acts as an agent of the donor and for the donor. He cannot use the Power of Attorney for his own benefit. For a power of attorney to be called a binding power of attorney, it must be duly registered with the registrar of documents as required by Section 146(2) of the RTA and must be signed in Latin Character. Once registered, a power of attorney should be construed strictly and the instrument will not bind the parties unless it conforms with section 146 and 148 of the RTA. The rationale of section 148 of the RTA requiring signature to be in Latin character is to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign (**see Fredrick J.K Zaabwe Versus Orient Bank & others**

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**SCCA No.4 of 2006, Grace Henry Kamanyiro Kakembo Vs
Alex Kakembo HCCS No.199 of 2018)**

Counsel for the Plaintiff submitted that from the evidence adduced by PW1, coupled with falsehoods of DW1, DW2, DW3 and DW4 no evidence has been led by the Defendants to controvert the Plaintiff's evidence, to this the Plaintiff submitted that the Defendants fraudulently registered their interests in the suit land and with the prior knowledge of the Plaintiff's registered interest in the suit land and therefore are not bonafide purchasers for value without notice. Plaintiff's counsel prayed that the first issue is answered in the affirmative.

Defendants submissions in reply:

Contrariwise, Counsel for the 1st and 2nd Defendants submitted that the 1st and 2nd Defendants legally and bonafidely acquired titles for the land comprised in Kyaggwe Block 111 Plots 2457 and 2475 respectively and have since 2007 been in possession and developed their respective land.

That it is the evidence of the 1st and 2nd Defendants that they purchased their land from Alex Kakembo (DW3) as an agent of the Plaintiff who had the authority to sell the land. Alex Kakembo states in paragraph 3 of his witness statement that the Plaintiff always allowed him to sell land and whenever he sold, he would receive commission for the land sold and he would send the balance to the Plaintiff.

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Counsel submitted that the Plaintiff did not dispute at the trial that he would give pre signed transfer forms, duplicate Certificate of Titles and passport photographs to Alex Kakembo in order to conduct transfers on his behalf whenever out of the country. The Defendants produced email message marked as exhibit D7 between Alex Kakembo and the Plaintiff dated 26th day of September, 2007, where Alex Kakembo wrote to the plaintiff *"that out of the Plots we graded opposite St Micheal, I sold 2 Plots at Ug. Shs.12,000,000/= [Uganda Shillings Twelve Million] and gave Ug. Shs.1,000,000/= [Uganda Shillings One Million] to the brokers and also retained Ug. Shs.1,000,000/= [Uganda Shillings One Million] leaving a balance of Ug. Shs.10,000,000/= [Uganda Shillings Ten Million]"*.

DW3 Alex Kakembo told Court that those are the Plots which he sold to the 1st and 2nd Defendants and that the 1st Defendant bought on the 16th day of August 2007 while the 2nd Defendant purchased on the 25th day of January, 2007. It is Counsel's submission that the Plaintiff admitted during cross examination that the signatures on the transfer forms in which the 1st and 2nd Defendants derive their titles were not forged, that it is the Plaintiff who signed on the transfer forms, the photographs on the transfer forms were also his and there was no forgery. The Plaintiff instead testified that the transfer forms were used for a wrong purpose.

Additionally, Counsel submitted that the question to ask was whether the Defendants had any reasons to doubt dealing with

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Kakembo who had the Certificate of Title, transfer forms and passport photographs. That the Defendants after purchase, received their Titles and have had their land for over twelve years from the date of their purchase until the Plaintiff sued. That had the Plaintiff not waived his rights over the land and acquiesced in the process of title possession and transfer forms, the Defendants would never have purchased knowing the land was titled. The Plaintiff told Court that he comes on an average of once a year to the country, that irrespective of this schedule, he never questioned any of the Defendants as far as their possession of the land is concerned.

Counsel invited Court to take into consideration the provisions of Section 114 of the Evidence Act Cap 6 which provides that;

"When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing"

Counsel opined that the conduct of the Plaintiff was that he gave Titles and passport photographs and signed transfer forms and to Alex Kakembo. That this conduct by the Plaintiff made the 1st and 2nd Defendants to believe that Alex Kakembo had the authority to sell to them their respective plots of land on behalf of the Plaintiff. After the purchase they transferred their respective Titles, took possession and developed their Plots until

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the year 2021 when the case was filed in Court. The Plaintiff who testified that he would be in the country twice a year never raised any questions as to the possession and ownership of the Defendants. More so the Plaintiff chose not to sue Alex Kakembo whom he had given the Certificates of Title, transfer forms and photographs or cause any criminal prosecution. To this extend the Defendants' Counsel submitted that the Defendants were bonafide in their transactions and Alex Kakembo confirmed receipt of their money and actually went ahead to testify, while in Court that he sent the money to the Plaintiff and that the Plaintiff had authorized him to sell the suit plots.

Additionally, Counsel contended that the Plaintiff wished to create a story that the two defendants did not fall in the category of Bibanja Owners that were not entitled to take Titles but Alex Kakembo told court that they had graded part of the land where they were selling Plots to willing purchasers and its where the defendants bought. The Plaintiff did not exhibit in Court any inventory or list of Bibanja owners that Kakembo was authorized to deal with. That had the Plaintiff not given Kakembo the Titles, the Defendants would never have purchased the suit plots, therefore he acquiesced in the process by which the Defendants purchased and he is estopped from seeking to claim the suit land from the Defendants. Learned counsel for the Defendants contended that the Plaintiff is precluded from denying the fact that Alex Kakembo had the authority to sell the Plots of land to the 1st and 2nd Defendants.

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Paragraph 6 of DW4's witness statement a one Nakaweesa Margaret who doubles as the Chairperson of Kiwanga, Kasokoso, Goma division, Mukono Municipality where the suit land is located states that on several occasions, Alex Kakembo sold land on behalf of the Plaintiff and the Plaintiff had introduced Kakembo to her as his agent. That an email sent by the Plaintiff addressed to Alex Kakembo dated Friday 10th November, 2006, on page of the attachment. The Plaintiff was inquiring about the two Plot buyers and also asked Alex Kakembo to send the balance which is proof that he was acting on behalf of the Plaintiff and they were in business of selling Plot of land.

Learned Counsel for the Defendants cited the case of **Kampala Bottlers Ltd Vs Damanico (U) Ltd SCCA No.22 of 1992** to the extent that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters. It was further stated that the party must prove that fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

Counsel for the Defendants concluded that the Plaintiff had not discharged his burden of proving fraud and also failed to attribute the fraud to both Defendants. He contended that the Plaintiff failed to prove that the Defendants forged his signatures on the transfer forms and Certificate of Title but instead he

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admitted that the transfer forms were signed by him. He drew the attention of Court to the cross examination where the Plaintiff changed the fraud story and stated that he accuses the Defendants of using the transfer forms without any authority but not forgery.

Counsel for the Defendants prayed that Court find in favor of the Defendants as they were bonafide purchasers and the conduct of the Plaintiff made them to believe the transactions were genuine. The Plaintiff is estopped and acquiesced in the process by which the Defendants purchased and now own the respective suit Plots. The learned Counsel for Defendant reiterated that there was no fraud proved against the Defendants and or any illegality.

Plaintiff's Submissions in rejoinder:

In rejoinder, the Plaintiff's Counsel maintained his position that the Defendants got registered on the suit land fraudulently and or illegally hence they are not bonafide purchasers for value without notice. In regard to the submission of the 1st and 2nd Defendants at page 3 that they purchased the suit land from Alex Kakembo who had lawful authority to sell the suit land; that the Plaintiff had acquiesced in the conduct in the manner that the sale had been conducted and the defence of estoppel he rejoined as hereunder;

A. Authority to sell:

Counsel reemphasized the import on Section 146 of the RTA which allows a third party to deal in land belonging to a

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registered proprietor upon getting the authority which passes the test thereunder.

The letter of authority marked as DEX4 and DEX5 respectively relied upon by each of the Defendants was neither attested to by any witness nor registered as required by law.

B. Knowledge of fraud by the 1st and 2nd Defendants

In regard to the defence that the Plaintiff is estopped by conduct Counsel submitted that in principle, registration tainted with fraud does not give rise to the doctrine of estopped and relied on the case of **Kampala District Land Board and Chemical Distributors Vs National Housing and Construction Corporation Civil Appeal No.2 of 2004**, where the Court affirmed that the doctrine of estoppel does not apply where a party impeaches another's title through fraud. In the instant case the Plaintiff contends that the Defendants fraudulently acquired titles to his land. That therefore the Defendant's defence of estoppel does apply in the circumstance.

In response to the Defendants claim that the Plaintiff acquiesced when he left the possession of the suit land to the Defendants for over 12 years, yet he once in a while came to the country, Counsel for the Plaintiff relied on the case of **Nabirye and 2 Others Vs Kizito & 2 others Civil Appeal No.27 of 2014** and submitted that acquiescence is an equitable doctrine developed by the Courts to temper with the rigidity of the law. That Plaintiff's case is that the Defendants' Titles to the suit land were defeated on account of fraud.

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The Plaintiff relied on the decision of **Ibanga Taratizio Vs Faustina Civil Appeal No. 0004 of 2017** for the proposition that fraud as an exception to the doctrine of acquiescence. It was affirmed that acquiescence which will deprive a man of his legal rights must amount to fraud. A man must not be deprived of his legal rights unless he acted in such a way as would make it fraudulent for him to set up those rights.

Counsel opined that section 176 of the RTA, a registered proprietor is protected against ejectment except in certain cases, including fraud and unless there is rigidity in the Application of Section 176 of the RTA, acquiescence cannot be used to impeach a title of someone where the impeachment is but on account of fraud.

The Plaintiff's Counsel again contended that the Defendants testified that they knew the Plaintiff as the owner of the suit land. But nonetheless even where there were facts to instigate them to conduct further investigations over Alex Kakembo's authority to sell the suit land, they chose not to do so for fear of confirming their worries. For instance, the wording of the purported authority alone would give notice to a reasonable man that it didn't pass as authority to sell. That during cross examination, DW4, a one Nakaweesa Margret the LC1 of Sagalankoko Kasokoso, confirmed that she knew the Plaintiff and that his family owned land and also confirmed that Alex Kakembo had never owner land in the area, that most people come to her office

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after purchasing land. For example, DW1, Mubiru Norman's trial bundle is a Sale Agreement between him and Alex Kakembo dated 25th January, 2007 and its stated;

"2 Mode of payment

The consideration shall be paid by the purchaser to each of the vendors as follows:

a) Ug.Shs.6,000,000/= (Uganda Shillings Six Million only) has been paid to the vendor immediately before execution hereof receipt whereof the vendor acknowledges" Counsel interpreted this clause to mean that most people go to the office of the Chairperson after purchasing the land in conformity with the testimony of the LC1.

That other inference to be made from the wording of the Sale Agreement is that Alex Kakembo purports to be the vendor and nothing thereunder denotes that he was acting on the authority of the Plaintiff. The mode of payment should as well have been a pointer; Counsel argues that the Defendants never exercised prudence to request to deposit payments of the suit land to the Plaintiff's account even where they had knowledge of his ownership.

Counsel for the Plaintiff relied on the case of **David Sejjaaka Nalima Vs Rebecca Musoke Civil Appeal No.12 of 1985** citing with approval Lord Lindley in *Assets Co. Ltd Vs Mere Roihi* & others said: -

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"Further it appears to their Lordships that the fraud which must be proved in order to invalidate the Title of a registered proprietor for value whether he buys from a person claiming under a Title certified under the Native Lands Act must be brought to the persons whose registered Title is impeached or to his agents. A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out the fraud had he been more vigilant and had made further inquiries which he omitted to make does not itself prove fraud on his part. But if it be shown that his suspicions were aroused and that he abstained from making inquiries for fear of learning the truth, the case is very different and fraud maybe properly ascribed to him."

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The Plaintiff's Counsel further rejoined that, it is inferred from the 1st and 2nd Defendants conduct that their suspicions were aroused from the beginning of the dealings with DW3 Alex Kakembo but they feared to learn the truth from the Plaintiff himself and hence could not derive good title. It's the Plaintiff's Counsel's prayer that this Honorable Court disregards this defense and find that the same cannot benefit the 1st and 2nd Defendants as they acquired their interest by fraudulent means and therefore the Defendant is not bound by the defence of acquiescence.

Analysis and Resolution:

The Court is in Agreement with position of the law in regard to fraud as correctly stated in the cases of **Fredrick Zaabwe supra and Kampala Bottlers supra and the various provision of the statutes as cited by both Counsel.**

The Supreme Court in the case of **Fredrick J.K Zaabwe V Orient Bank Ltd & Others SCCA No.4 of 2006** defined fraud as the intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It went on further to state that it's a false representation of matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he can act upon it to his legal injury.

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Fraud must be attributed to the transferee. In **Kampala Bottlers Ltd Vs Damanico (U) Ltd SCCA No.22 of 1992**, the Court held that fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in Civil Matters. That the party must prove that the fraud was attributed to the transferee, it must be attributed either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

Black's law Dictionary defines fraud at page 660 (6th Edition) as

"An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another....., it's a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and renders all surprise, trick, cunning dissembling and any unfair way by which another is cheated...."

Section 101 (1) of the Evidence Act Cap 6 provides that where a party desires Court to give Judgement to any legal right or liability depending on the existence of the facts must prove the existence of those facts.

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The burden of proof therefore lies with the Plaintiff who has a duty to furnish evidence, whose level of probity is such that a reasonable man, might hold more probable the conclusion which the Plaintiff contend, on a balance of probabilities. (see **Sebuliba versus Cooperative Bank Ltd (1982) HCB 13; Oketcha versus Attorney General Civil Suit 0069 of 2004.**

Fraud if proved vitiates all transactions and thus must be specifically pleaded and proved to a level higher than the ordinary Civil Suit, see **Fam International Ltd and Ahmad Farah versus Mohammed (1994) KALR 307.**

In the instant case the particulars of fraud against the 1st and 2nd Defendant are set in paragraphs 5 I-IX of both complaints and briefly are that;

- i. The Defendants forged or caused the forging of the Plaintiff's signature to and transferred the suit land
- ii. The Defendants willful and/inadvertent act of transacting in the Plaintiff's land without his knowledge consent and approval
- iii. The Defendants fraudulently obtained a Certificate of Title, with the knowledge that the Plaintiff, the owner and registered proprietor at the time was in the USA.
- iv. Attaching the plaintiff's passport photos without his consent
- v. Using or caused to be used the Plaintiff identification documents to transfer his land without his approval.

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- vi. Transacting with another person not the Plaintiff in the above suit land
- vii. Defendants failure to inspect the suit land and make proper inquiries from the occupants thereon.
- viii. Procuring registration to defeat the Plaintiffs existing interest
- ix. Obtaining registration of the suit property belonging to the Plaintiff

Appraisal of the evidence:

The Plaintiff, PW1 relied on PExh1 a Certified copy of a Land Title for Block 111 Plot 2475. The Title shows that he was registered as proprietor on the 28/03/2007 under instrument number MK08387.

The Plaintiff claimed that he did not authorize the registration of 1st and 2nd Defendants on his land. In his witness statement he stated that he had come to learn of the fraud in 2020 or 2021. He contested all the documentation that was used in the transfer of his title and stated that the signatures on the transfer forms were forged and he was not aware of how the Defendants came to possess his photographs. The Plaintiff, states that he got to know about the Defendants' interest on his land recently in the 2020 and 2021 respectively. It's the Plaintiff's case that he is not permanently resident in Uganda and that he comes to Uganda annually, that by the time he left Uganda, he appointed Alex Kakembo to act as his agent through a letter dated 2nd March, 2003 authorizing him to administrate, survey, and fence the land

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and to watch out for squatters or deal with them in consultation with Mr. Fredrick Sentomero, the Plaintiff's Attorney. That upon discovery of the Defendants' claim on the Plaintiff's suit plots through a letter which was addressed to the Registrar of lands Mukono Zonal office, where he got transfer forms in his name, signed Consent to transfer and his photographs, he instituted this suit. During cross examination PW1 conceded that that the signatures on the transfer forms were his. He admitted signing transfer forms and leaving them with Alex Kakembo for purposes of settling Bibanja holders who wanted to buy themselves off. He stated that Kakembo had no authority to dispose of his land and that the only authority he had was limited to the letter of authority.

It's the Plaintiff's case that Alex Kakembo and the 1st and 2nd Defendants used this opportunity to defraud him of his land since the transfer forms were readily available with Alex.

The 1st Defendant DW1, Bamwebaze Deogratiuous in his evidence in chief stated that his friend Festo had bought land from the Plaintiff through Alex Kakembo and at that time DW1 was present during that transaction where the Plaintiff promised to give the transfer forms to Alex to deliver them to Festo. That because of that background and relationship between Alex and the Plaintiff, Dw1 approached Alex Kakembo and expressed interest in the land. When DW1 got money he approached Alex Kakembo DW3 since he had seen him with the Plaintiff and had no doubt an Agreement was made in Bugolobi at his office and money was paid to DW3 Kakembo in cash and the rest was to

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be paid after delivery of the title. The Title was delivered after 3 months, balance was paid and that the transfer forms were also given to him alongside the Title. He has now built a house and was surprised when in August 2021 he was served with Court documents.

During cross examination DW1 stated that he did see PW1 signing the transfer forms; PW1 was the rightful owner though he dealt with Alex Kakembo; that the Plaintiff was not present when he went to appreciate the land; he did not get in touch with the Plaintiff during the process of buying land; he was not shown any letter of authority from the Plaintiff to Alex Kakembo

The 2nd defendant in his witness statement stated that he met a one Mr. Mudiima in 2007 who took him and handed him over Kakembo Alex who was responsible for the land; that Kakembo Alex told the 2nd Defendant that he was an agent of Plaintiff. Kakembo took him to the Plaintiffs lawyers where an Agreement was made and money was paid in cash. That letter they went to LC1 who confirmed that the land belonged to the Plaintiff but Kakembo Alex had responsibility over it. That letter the LC1 confirmed that Alex Kakembo had authority over it and also signed the Agreement. That he was given transfer forms with a certificate of title by Alex Kakembo.

During cross examination DW2 Mubiru; 2nd Defendant; stated that he had never met the Plaintiff. Kakembo never gave him a land title in his (Kakembo Alex) names he however was shown a letter of authority. He did not retain a copy of the letter.

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Alex signed the agreement on behalf of the Plaintiff. He was taken to a lawyer called Sebagala who did not show him any authority from the Plaintiff to receive money or conduct any transaction. DW2 stated that he did not have any receipt for the money he had paid or any deposit slip that the Plaintiff had been paid.

On the other hand, the Defendants stated that the Plaintiff had permitted and entrusted his authorized agent a one Kakembo to deal with all his land in Mawoto, whom he gave the Certificate of Titles, his original Certificate of Title duly signed transfer forms and passport photographs which the 1st and 2nd Defendants used to transfer the said Plots into their names in 2007 and 2008 respectively.

They also stated that Kakembo was a known agent of the Plaintiff in Mawoto and they knew him as his Nephew.

It is pertinent for this Court to determine whether Alex Kakembo had been given authority to sell the land to the 1st and 2nd Defendants by the Plaintiff. The Court has had the opportunity to peruse the letter of authority DE4 and for clarity lay it out;

"HENRY G. KAKEMBO

Address though not seen clearly

March 02, 2003

RE: AGENT

TO: Whom it may Concern.

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I, Grace henry Kamanyiro Kakembo of Mawotto, Kiwanga, Kyaggwe, appoint Mr. Alex Kakembo to be my agent in Kiwanga. He has my permission to administrate, survey and fence the lands and to watch out for squatters or deal with them.

He may do so in consultation with Mr. Fredrick Sentongo, my attorney, who can clarify the legal aspects of any action if need be. For further information, I can be reached at the above address or numbers".

This Court is of the view that the authority or permission given to Alex Kakembo was to administrate, fence, survey and watch over squatters or deal with them. The letter further states that the duties or permission given was to be exercised in consultation with Mr. Fredrick Sentomero who was the Plaintiff' attorney who would clarify on any legal aspects of any action if the need arose. The letter of authority further lays out the Plaintiffs contact and email address for any further information.

The evidence before Court does not point out to the fact that Alex Kakembo was given a Power of Attorney but rather a letter marked D4 appointing Alex Kakembo as an agent of the Plaintiff as seen above.

S.146 (1) and (2) of the Registration of Titles Act "empowers a proprietor of any land under the operation of the Act or of any lease or mortgage to grant a Power of Attorney to any person to act for him/her in dealing with the land. The Power of Attorney has to be registered."

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This letter does not confer Powers of Attorney to the said Alex Kakembo but rather appoints him as the Plaintiff's Agent to handle the activities as specifically spelt out in the letter. Courts have established that "*a Power of Attorney should be construed strictly and the instrument will not bind the parties unless it complies with S 146 and 148 of the Registration of Titles Act.*" – See **Frederick J.K. Zaabwe vs. Orient Bank Ltd and Others SCCA 04/2006.**

It follows therefore that no transaction could be legally conducted by the said Kakembo outside the parameters of that letter.

The Defendants also contended by the testimony of Kakembo Alex in his witness statements both dated 9th May 2022 in paragraph 3 and 4 thereof stated that on 2nd March 2003 the Plaintiff appointed him as his agent to administer and look after, fence and survey the land but with time he allowed me to sell the land and whenever I sold the land I was given a commission for the land sold and send him the balance or use it as directed or instructed.

There was also an attempt by Mr. Alex Kakembo that he got authority to sell the Plaintiff's land through emails and phone conversations, however the said emails exhibited and marked as D5 and D6 do not in any way allude to the same. Therefore, in the absence of any other written authority to the contrary, Alex Kakembo cannot be held to have acted with the authority of the Plaintiff. This makes any dealings with him by the Defendants

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null and void and fraudulent in nature. Hence watering down the Defendants claim that they are bonafide purchasers for value without Notice.

Although the Defendants would wish that the said letter be taken as a written authority to Alex Kakembo to deal with the land, S.146 (1) Registration of Titles Act only authorizes "**a proprietor of the land to give such power of Attorney to deal with the land.**"

It seems to me that the permission or authority given was to administrate, fence, survey and watch over squatters, but not to sell land.

Exhibit D1 is a Sales Agreement which is between the plaintiff and Deogratious Bamwebaze was executed in manner wherein Alex Kakembo appeared as the vendor and signed on behalf of the Plaintiff, this document is suspect looking at the manner in which it was drafted, the name of the Plaintiff is not properly spelt and one would wonder who was the brainchild of the said Agreement. There is again on court record a Sales Agreement Marked "A" where Kakembo Alex is referred to as the vendor and selling the suit land to Mubiru Norman in this particularly he does not purport to act on behalf of the Plaintiff but on his own behalf as the proprietor of land comprised in Kyaggwe Block 111 Plot 2342 at Mawoto and I will deal with this one first.

It is the evidence of Nakaweesa Margaret DW4, the LC1 Chairperson of Kiwanga, Kasokoso Nsagalankoko during cross

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examination that she knows Alex Kakembo and that he does not have land in the area. DW2, Mubiru Norman produced evidence during cross examination that he knows that the Plaintiff had land in Kiwanga though he had not met him, he also testified that the Alex Kakembo did not give him a Title in his names much as he sold to him land as the registered proprietor, DW2 further testified that he did not ask Alex or Mudiima to take him to the Plaintiff neither did he ask for his domestic number. Much as DW2 testifies that Alex Kakembo showed him a letter which was given to him by the Plaintiff, he does not have a copy of it, that Alex took him to a Lawyer where he made the payment from and he did not ask the Lawyer if had any specific authority to deal with the land, aside from that, DW2 was never given a receipt but he attempts to rely on the Sale Agreement between him and Kakembo.

From the foregoing, it appears to me that, if the 2nd Defendant bought anything from Alex Kakembo, he must have bought that land knowing that the Sale could be challenged as due authorization for Kakembo was not shown to him and furthermore he had not discussed with the Plaintiff the intention to transact. The Plaintiff as the original owner and registered proprietor of the land was never involved in the sale and transfer transaction. There is believable evidence proving that from the multiple signed transfer forms that were left in the possession of Alex Kakembo whom the 2nd Defendant dealt with were diverted to satisfy this fraudulent transaction. If the 2nd Defendant is to get remedies if any then he would have joined Alex Kakembo as

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a party or taken out a third party action. What is unsettling is that the Defendants do not seem to see or discern the fallacy of their actions which in my view may infer that they dealt with Kakembo with the knowledge that he was not representing the Plaintiff. The letter of authorization does not in any way authorize Kakembo to deal with the land in the manner that he did.

The failure by the 2nd Defendant to make reasonable inquiries or conduct due diligence or the purchaser's ignorance or negligence to do so amounted to fraud taking into account the circumstances of the case. Like it has always been said, Land is not vegetables to be bought from unknown sellers like tomatoes Land is a valuable property and all buyers are expected to make exhaustive investigations about the land and the sellers before buying.

Taking into account the narrative of the 1st Defendant, Mr. Bamwebaze Deogratiuous who asserts that he met the Plaintiff at his home in or about 2007 or 2006 when he was with Festo and Alex, that at that time, he did not see or witness the Plaintiff signing transfer forms. He testified that he knows the Plaintiff as the rightful owner but he dealt with Alex Kakembo, that Alex did not show him the letter which gave him authority to deal with the Plaintiff's land and neither did he receive any proof that money had reached the Plaintiff, that he got registered on the land in 2010 and that since he got the transfer forms from Alex, the Plaintiff should question Alex.

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This now brings me to the question as to whether Alex Kakembo was permitted by the plaintiff to sell his land.

The Agreement for Sale executed by the parties, that is the 2nd defendant and Alex in this case and the purported letter of authority show that the registered proprietor of the suit land Alex Kakembo not Grace Henry Kamanyiro Kakembo, the purported author of the authority to sell.

The second transaction between the 1st Defendant, much as it purports to include Grace Henry Kamanyiro Kakembo as the Proprietor, it was again signed by Alex Kakembo as the vendor. Therefore, the purported written authority did not comply with the provisions of S.146 (1) of the Registration of Titles Act and thus was not validly executed. It did not therefore give Alex Kakembo and the Defendant lawful authority to deal with the land. It therefore goes without saying that, without a valid power of Attorney from Mr. Grace Henry Kamanyiro Kakembo, Alex Kakembo cannot be said to have been his agent and hence he had no powers whatsoever to sell the Plaintiff's land. The best he could do was to watch over squatters, survey, fence and administrate over the land, all this was in consultation with the Plaintiff's lawful attorney and the plaintiff himself.

In the premises I find that the Defendants fraudulently registered their interest in the Suitland and with prior knowledge of the Plaintiff's registered interest in the land.

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Issue 2: what remedies are available?

Plaintiff's Counsel submitted that section 33 of the Judicature Act Cap 13 grants this Honorable Court power to grant any party to cause or matter the remedy they are entitled to in respect of any legal claim properly brought before it. That the Defendants got registered as proprietors on the suit land fraudulently and therefore, the Plaintiff prays that this Honorable Court exercises its inherent powers to award the remedies sought in the pleadings.

The Plaintiff prayed for cancellation of the Defendants' names from the duplicate Certificates of Title and reinstatement of the Plaintiff's names on the same. That fraud renders the Titles and the whole transaction void. Section 177 of the RTA gives powers to the Commissioner to cancel a Certificate of Title or any entry relating to that land.

Counsel prayed that the Registrar of Titles cancels the names of the Defendants on the Certificates of Title on the basis of the fraud.

Defendants submissions:

Counsel for the Defendants submitted that its true as already admitted by the Plaintiff during cross examination that Alex Kakembo is his Nephew and caretaker abused his trust and yet its him that had given him the signed transfer forms, Certificate of Title and passport photographs.

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This Court takes note of the fact that Plaintiff actually stated under cross examination that both him and the Defendants were cheated by Alex Kakembo.

The Defendants' Counsel submitted that its only just, fair and equitable that the appropriate remedy was for Kamanyiro to sue his nephew for compensation if at all he didn't receive the money received by Alex Kakembo from the defendants at purchase or cause his prosecution which option he chose not to take yet it is him that he had given the Titles, transfer forms and passport photographs. That the Defendants have greatly developed the land and operate their businesses from there especially the 1st Defendant.

1. A declaration that the Plaintiff is the lawful registered proprietor of the lands comprised in Kyaggwe Block 111 plot 2457 land at Mawoto.
2. A declaration that the 1st Defendant fraudulently and illegally registered himself as the registered proprietor on the land comprised in Kyaggwe Block 111 Plot 2457.
3. An order of Permanent Injunction restraining the Defendants whether by themselves or agents, successors, assigns or person claiming any interest from him from trespassing, selling, encumbering, transferring, developing the suit property and or in any way interfering with the Plaintiff's ownership of land comprised in Kyaggwe Block 111 Plot 2457. This order is so granted as prayed.

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4. An order for cancellation of the 1st and 2nd Defendants' Certificate of Title.

Having found that the registration of the Defendants was procured by fraud, I will therefore invoke the provisions of the law under **Section 177 of the Registration of Titles Act** which provides that. *"Any Certificate of Title, removal of encumbrance(s) or cancellation, in the Register Book procured or made by fraud, shall be void as against all parties or privies to the land"*.

Consequently, the 1st and 2nd Defendants' Certificate of Titles for land comprised in Block 111 Plot 2457 and Block 111 Plot 2475 are accordingly void. The law under **Section 177 of the Registration of Titles Act**, further empowers this Court to direct the Commissioner to cancel such a Certificate of Title. The Court so directs.

5. An order that the 1st & 2nd Defendants surrender all the Titles in respect of the above land. This is so granted.
6. An order of vacant possession against the Defendants, their successors or otherwise over the entire portion of encroachment.

7. General damages:

It is trite law that general damages be awarded at the discretion of Court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Defendant.

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It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the Defendant's actions. I find that the Plaintiff has not discharged his duty to prove damages and inconvenience suffered as a result of the Defendants' actions. I therefore decline to award general damages.

8. Mense Profits:

Section 2(m) of the CPA defines Mense profit as '*those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.*'

Having carefully considered the Plaintiff's evidence, its established that there is no evidence of the profits which the occupants of the suit premises actually received. In the premises, I find that the evidence on record does not sufficiently justify a claim for mesne profits. I therefore disallow the said claim.

9. Costs if the Suit:

Section 27(2) CPA provides that costs are awarded at the discretion of Court and follow the event, unless the court directs otherwise. The same was mentioned in the case of Jennifer **Rwanyindo Aurelia & A'nor v. School Outfitters (U) Ltd., C.A.CA No.53 of 1999.**

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In the instant case, I see no justifiable reasons as to why the Plaintiff should be denied costs and I accordingly award costs to the Plaintiff.

Dated at Mukono this.....^{30th} day of August 2023.



CHRISTINE KAAHWA

JUDGE