

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
CIVIL SUIT NO. 54 OF 2012
RUTEBE FARMERS COOPERATIVE SOCIETY LTD:PLAINTIFF
VERSUS
MUHANGUZI GEORGE & 22 OTHERS:DEFENDANTS
BEFORE: HON LADY JUSTICE JOYCE KAVUMA

JUDGMENT

Introduction.

[1] The Plaintiff cooperative society brought this suit against the defendants jointly and severally for declarations that the entries into the names of the 1st defendant and the subsequent entry of the 2nd to 22nd defendants on land comprised in Leasehold Register Volume 1038 Folio 22 Sheema Block 17 Plot 1 land at Rutebe, Kyangyenye, Sheema District (*hereinafter referred to as the suit land*) measuring approximately 86.5 hectares was fraudulent.

The plaintiff further sought for cancelation of the above entries into the names of the 1st to 22nd defendants, an order against the 23rd defendant to rectify the register, vacant possession, general damages and the costs of the suit.

Background.

[2] The brief facts of this case are that the 2nd to 9th defendant together with other deceased persons who are represented by 10th to



22nd defendants applied for and were granted a leasehold certificate of title as tenants in common in equal shares on the 16/11/1978. Subsequently, in 1987, the said leasehold was transferred to Rutebe Farmers' Co-operative Society Ltd as the proprietor and further transfer on 26/04/1994 back to the defendants. In 2012, several transfers were made in respect of the representative of the deceased person which eventually led to the registration of the 1st defendant as a proprietor of the suit land. The plaintiff society claim that they became aware of the transfer made on 26/04/1994 in 2012 and immediately brought the instant suit against the defendants.

Representation

[3] At the commencement of hearing this matter, the plaintiff society was represented by M/s Tumwesigye, Baingana & Co. Advocates whereas the defendants were represented by M/s Ngaruye Ruhindi Spencer & Co. Advocates except for 9th, 12th and 18th defendants who were represented by M/s Ahimbisibwe & Agaba Co. Advocates. Both counsel filed written submissions which are on record.

Both parties filed a joint scheduling memorandum and agreed on the issues below;

- 1. Whether or not the transfer of the suit land from the names of the original owners to the names of the plaintiff was fraudulent.*



2. *Whether the transfer of the suit land from the names of the plaintiff to the names of the 2nd to 22nd defendants on the 26th April, 1994 under instrument No. 262749 was fraudulent or not.*
3. *Whether the transfer of the suit land from the names of the 2nd to 22nd into the names of 1st defendant on the 15th March, 2012 under instrument No. 464617 was fraudulent.*
4. *Whether the 1st defendant is a bonafide purchaser for value without notice of the fraud, if any.*
5. *What remedies are available to the parties.*

Standard and Burden of proof

[4] It is a cardinal principle of the law that the plaintiff bears burden of proof in civil cases as stated in **Section 101 of the Evidence Act** and the case of **Sheikh Hussein Mayanja Vs Mubiru Christopher Kisiringiri HCCS 129 of 2010**. The standard of proof is also well settled in civil cases to be on balance probabilities. However, since the plaintiff in this case alleges fraud, the burden of proof is higher than on balance probabilities but not as high as in criminal cases. See the case of **Ratilal Gordhambhai Patel Vs Lalji Makanji (1957) EA 355**

Preliminary objection

[5] Counsel Ngaruye Ruhindi for the defendants raised a preliminary point of law in his submissions that the instant suit was statute barred as



per Section 5 of the Limitation Act and the case of Omunga Bakhit Vs Agrasiela Alias Daktar HCCA 05/2010. Counsel submitted that the plaintiff brought this suit 18 year after the land was transferred in the names of the former owners in 1994.

Counsel contended that the plaintiff in his plaint did not plead sufficient cause that prevented him from bringing a suit against former owners after transferring the land into their names in 1994.

[6] In reply counsel for the plaintiff submitted that the issue of limitation was not raised as an issue for determination. That such preliminary point of law was supposed to be raised at the beginning of the hearing even before other issues were framed.

On the merits of preliminary point of law, counsel submitted that Section 5 of Limitation Act must be read together with Section 25 of the same Act. Counsel maintained that the plaintiff only discovered about the fraud in 2012 when he heard that some members were receiving proceeds of the sale of the suit land.

Resolution.

[7] I have carefully considered at the pleadings, submissions and case law cited by both counsel.

Counsel for the plaintiff submitted that this is not one of the issues that were framed for determination. However, looking at the amended written statement of defence filed on the court record under paragraph 4 the defendants averred that the plaintiffs suit is barred in law.



Clearly, the defendants had put the plaintiff on notice that they would raise a point of law. Objections which are purely points of law can be raised at any stage of the proceedings. It is not a rule of law that such objections must be handled at the beginning of the trial.

The mere fact that an objection was not framed as an issue for determination cannot be the basis rejecting the same because it be can raised at any time. Thus in the case of **Tororo Cement Co. Ltd Vs Fronkina International Ltd SCCA 2 of 2001**, the Supreme Court noted that though it is proper and good practice to aver in the opposite party's pleadings that the pleadings by the other side are defective and that at the trial a preliminary point of objection would be raised. But failure to so plead does not in my opinion bar a party from raising the point. *(Emphasis mine)*

Accordingly, I have not found any bar to counsel raising a point of law at any stage of proceeding simply because it was not handled at the beginning of the trial.

[8] On the merits of the objection, **Order 7 rule 11 (d) of the Civil Procedure Rules (CPR)** provides that a plaint can be rejected on the grounds that the suit appears from the statement in the plaint to be barred by any law. See also **Anold Vs Central Electricity Generating Board (1988) AC 288**. The statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is that litigation automatically stifle after a fixed length of time irrespective of the merits



of a particular case. See the case of **Hilton Vs. Steam Laundry [1946] 1 KB 61** at page 81.

Section 5 of the Limitation Act Cap 80 is to the effect 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.

Counsel for the defendants contend that the cause of action arose in 1994 when the certificate of title was transferred from the plaintiff's name to the names of the original 21 registered owners.

[9] For the purposes of counting the limitation period, the party seeking to repossess the land must be aware of the defendants' entry on the suit land and using it to the exclusion of the owner. See **Rains Vs Buxton (1880) 14 Ch. D.** In normal circumstances the instant suit would be statute barred considering that it was brought after the lapse of 12 years given by the Act however, the plaintiff pleaded fraud which according to the pleadings was discovered in the year 2012 after some members received money from the sale of the suit land.

The above sale raised members suspicion and upon inquiring from the land office, it was discovered that there was a transfer and change in ownership in 1994.

According to **Section 25 of the Limitation Act** where 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 or the mistake, or could with reasonable diligence have discovered it.

[10] From the perusal of the pleadings and the evidence on court record, it is clear that the plaintiff discovered the change in transfer and ownership after they made inquiries which was in 2012. Therefore, the limitation period would start running from that particular year. The instant suit was filed in 2012 well within the prescribed 12-year limit and I therefore find that the instant suit was filed within time. The objection raised by counsel has no merit and the same is hereby overruled.

Counsel Agaba Jadson for the 9th, 12th, and 18th defendants also raised a preliminary point of law and submitted that the plaintiff did not have a cause of action against his clients. That throughout the plaintiff's evidence, he never mentioned 9th, 12th, and 18th defendants to have participated in fraud. He prayed that the plaintiff's claim be dismissed with costs.

Counsel for the plaintiff did not rebut the above submissions in relation to a cause of action in his rejoinder.

[11] A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. See the cases of Cooke vs Gull LR 8E. P 116 and Read v Brown 22 QBD P.31. It should



be noted that a cause of action is shown if the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. See the case of *Auto Garage Vs Motokov (1971) EA 514* See also *Ismail Serugo Vs KCC & Anor Constitutional Appeal No 2/1998*, *Al Hajji Nasser Ntege Sebagala Vs AG & 6 Ors SCCA No 1/200* *Major General Tinyefuza Vs AG SCCA 1/1997* and *Tororo Cement Co. Ltd Vs Fronkina Ltd SCCA 2/2001*.

It has been held that in determining whether a plaint discloses a cause of action or not, court must only consider and look at the averments contained in the plaint and its accompaniments. See the case of *Kapeka Coffee Works Ltd & Anor Vs NPART CACA 3/2000*.

A careful perusal of the plaint specifically paragraph 4 of the amended plaint, it is clear that when the land was transferred from the names of the plaintiff, it was registered in the names of the defendants including 9th, 12th and 18th defendants.

The said defendants have caused transfer into the names of the 1st defendant thus, the 9th, 12th and 18th defendants received a benefit from the same land the plaintiff is claiming and sold the same to the 1st defendant. Therefore, in order to resolve issues pertaining the disputed land, all parties who have interest in the outcome of this matter must be parties to the dispute.

In the premises, the plaintiff has a cause of action against the 9th, 12th and 18th defendants. The objection is thus overruled.



[12] Turning to the merits of this matter, in respect of issue 1 on whether the transfer of the suit land from the names of the original owners to the names of the plaintiff was fraudulent or not.

Plaintiff evidence

The plaintiff society led evidence of **PW1 Paul Rwamushanga** who stated that the 2nd to 22nd defendants in 1978 acquired a five-year lease of the suit property and they were registered on the certificate on the title as tenants in common in equal shares under instrument No. 203605. That the said lease was supposed to expire in 1983 unless it was extended for 49 years. The witness stated that the defendants did not have money to have lease extended for the 49 years and decided to register the plaintiff society to raise funds to renew the said lease and the defendants' names appear on the plaintiff's bye-laws as its founding members. That the said certificate of title was duly transferred from defendants' individual names into names of the plaintiff cooperative society in 1987.

When cross examined, PW1 stated that he is the chairperson of the plaintiff cooperative society since 2012 having been elected by members at an extra ordinary meeting. Further that in 1983, seven days before expiry of the title, they called other willing people to join and buy shares so that the title could be extended to 49 years. PW1 further stated that they raised money and the title was extended in the names of the cooperative society for 49 years in 1987. He admitted that DW2 was in the army until 1983 and his wife signed for him on all those documents



including the transfer form with his authorization. That the plaintiff did not pay anything to the original member for the said transfer.

[13] **PW2 Kaninga Valeriano** testified that after registering the plaintiff society, the defendants duly transferred the suit land from their individual names into the names of the plaintiff cooperative society in 1987 with the intention of raising more money by selling shares to other people who wished to become members of the Cooperative Society. PW2 further stated that by the time he became the Chairperson of the plaintiff society, it had already acquired the suit land and he was tasked to process the extension of the lease which he did under Instrument No. 213146. That the members of the plaintiff society thereafter started utilizing the land by growing crops and grazing animals on the suit land. They further planted eucalyptus and pine trees for both commercial purposes and environmental protection.

When cross examined, he stated that he knew how that land was got because he was there and that the original owners had formed a group however the government banned groups and advised them to form a cooperative society. Further, when cross examined by Counsel Agaba Jadson, the witness like PW1 stated that 10th, 12th and 18th defendants were not involved in fraudulently transferring the title from the name of the plaintiff to those of 2nd to 22nd defendants.

[14] On the other hand, the defendants denied the claim and adduced evidence of **DW1 Rwakakuto George** who stated that he has never been a member of the plaintiff's cooperative society and that by the time



plaintiff was incorporated, he was in the army serving. He denied that the handwriting and signature in his name that appears on the plaintiff's constitution is a forgery. DW1 further stated that they were granted a 5-year lease over the suit land as tenants in common and after obtaining the said certificate of title, he joined the army in 1979. That upon retirement from the army in 1992, he returned to his village in Kangole and discovered that the suit land was fraudulently transferred to the plaintiff society. Further that it is not true that they had no money to pay for the extension of lease from 5-year lease to a lease of 49 years. That the suit land was being utilized by the original owners and no members of the plaintiff society were utilizing it. DW1 further stated that after discovering that the land was transferred, he started the process of transferring it back the certificate of title from the plaintiff society to the names of the original members. When cross examined, DW1 stated that he has never been the Chairperson of the plaintiff society. Further, he admitted signing transfer forms transferring land from the plaintiff society to the original owners and that he did not forge anything concerning the transfer of the title to the original 21 owners.

[15] DW2 Tungutyo John stated that he was misled by a one Rwamushanga Paul to sign documents not knowing that the said documents would in the process deprive him of his interest in the suit land. That his name was not included anywhere to qualify as a member of the plaintiff society and that he did not pay membership fees. DW2 denied the fact that they did not have any money to pay for the



extension of the lease. That the process of transferring the land from their names to that of the plaintiff society was fraudulently entered on the certificate of title, as the 2nd defendant and a one Begumisa Lawrence did not sign on those documents. That it is not true that the original owners sold some shares to the members of the plaintiff society and that they have neither sold any shares nor received any consideration from the plaintiff society. That as an acting chairperson of the plaintiff society in 1993, he conducted a meeting and the original members demanded that certificate of title be transferred back to their names after it was discovered that the certificate of title was transferred to the plaintiff society. When cross examined, he stated that Rwakakuto George was once a leader and that he had no position in 1994. That he is the one who signed land transfer forms and stamped them. Further that Rwakakuto George wrote and put a stamp as a Vice Chairperson. That in transferring back the certificate of title, they agreed with cooperative officer to transfer back title into their names. DW2 further stated that on the transfer forms, they used cooperative society stamp because they were also members.

[16] **DW3 Begumisa Lawrence** stated he has never been a member of the plaintiff nor did he consent that the certificate of title which he owned jointly with the other defendants be transferred from their names to the name of the plaintiff society in 1987. DW3 stated that the transfer of the certificate of title to the name of the plaintiff was fraudulently done in 1987 by the agents who included Rwamushanga Paul. That he has never sold any of his shares to the members of the



plaintiff society and has never received any consideration from the plaintiff for part of any of his shares. That in 1993, he attended a meeting and demanded that their land should be transferred from the name of the plaintiff society back to their names. That the Chairperson of the said plaintiff society then wrote to the commissioner land registration explaining the circumstances under which their certificate of title was fraudulently transferred in the names of the plaintiff society. That the commissioner at his own volition transferred the certificate of title back to their names as tenants in common. When cross examined, DW3 stated that he listed himself among the 20 people that had applied for a lease in 1978 however the title does not have his name.

[17] **DW5 Tumusiime Deogratius** stated that he is the administrator of the estate of late Tindikahwa Andereya, the 16th defendant. That in 1992, he was acting as the secretary of the plaintiff society. In 1993, the defendants conducted a meeting and in that meeting it was decided that the land should be repossessed by the former owners who had acquired it in 1978 because their certificate of title was transferred in the name of the plaintiff fraudulently. That in 1994, the land in dispute was transferred from the name of the plaintiff society to the names of the former owners now defendants by the commissioner and the defendants had no control over the actions of the commission land registration. When cross examined, he stated that he has held the position of secretary manager of the society up to date. That he assumed position in 1992 and that at that time, the Chairperson was Tungutyo John and before him, there was Rwakakuto George as the Chairperson.



That apart from being secretary manager, he also had shares in cooperative and as manager of the society the society's property was not known to him.

The rest of the defendant's testimonies was not different from the above detailed evidence in support of their case.

Submissions

[18] Counsel for the plaintiff submitted that the registration of the suit land in the names of the plaintiff was done on 29/05/1987 under Instrument No. 230764 and that it was lawful. Counsel stated that the said transfer was witnessed by a one Kabebaze Deus, an official from the Ministry of Lands. According to counsel for the plaintiff, the defendants did not have enough money to obtain extension of lease and thus this led to the formation of plaintiff cooperative society to enable it through its members to pool resources together to extend the lease. Counsel contended that most of the 1st proprietors of the plaintiff society names appear as subscribers to the bye-laws of the plaintiff. Thirdly, that according to the evidence of PW2, Kaninga was elected Chairperson when the plaintiff cooperative society was already formed and was only tasked with the duty of extending the lease. The plaintiff disputes allegations of fraud and contends that the defendants consented to the transfer by affirming their signatures on the instrument before the registrar of titles who witnessed it.

[19] Counsel for the defendants Ngaruye Ruhindi in reply submitted that the defendants' land was fraudulently transferred into the names



of the plaintiff society. Counsel relied on the evidence of Rwakakuto George which was to the effect that by the time the land was transferred, DW2 was already in the army and he did not sign on the transfer form. The said transfer form was signed by the wife, Medius Rwakakuto who also signed on the bye-laws. Counsel further relied on the list of members exhibited by the plaintiff society which indicated that out of 21 original members, only 15 members were members of the plaintiff cooperative society. Counsel further submitted that there was no proof adduced by the plaintiff like minutes of the meeting where the original members agreed to have their certificate of title transferred into the names of the plaintiff. Counsel relied on the case of **Kampala Bottlers Ltd Vs Damanico (U) Ltd SCCA No. 22/1992** to buttress his point. Counsel contended that once an illegality or fraud once brought to the attention of courts of law cannot be let to stand. For this he relied on the case of **Johnson Katebarirwe Vs Senoga Godwin t/a Platium Associates HCCR No. 12/2017**. He concluded his submissions by stating that the certificate of title was fraudulently transferred from the names of the original owners to the plaintiff society and that the plaintiff society did not get a good title.

[20] In brief rejoinder, counsel for the plaintiff society submitted and refuted that DW1 Rwakakuto George could not have joined NRM army in 1979 because it was Amin's time. More so, he submitted that being in army could not have stopped him from going back home to participate in the activities of the cooperative society. Counsel further submitted that the 2nd defendant denies being a member of the plaintiff



in his witness statement however, he admitted being chairperson under cross examination. Counsel stated that some names were not on the list of subscribers to the memorandum, because the first 15 members were to have the cooperative society registered and later other members joined.

Resolution

[21] I have carefully considered the pleadings, the evidence on court record, submissions and the authorities relied on by both counsel for the parties. The gist of the first issue originates from the allegations by the defendants that the transfer of the suit land from their names to the plaintiff cooperative society was fraudulent.

It is not disputed that some of the defendants applied for and were granted a lease hold over the suit land in LRV 1038 Folio 22 Sheema Block 17 Plot 1 land at Rutebe for an initial period of 5 years which was renewable to a further 44 years. According to the lease granted by the Uganda Land Commission, Clause 3(1) provides that;

“If the lessee/s shall wish to renew the lease hereby granted for a further term of forty-four years from the expiration of the term hereby granted and shall not in less than one year before such expiration notify the commission in writing of their wish and shall pay the rent hereby reserved and perform and observe the several covenants on their part herein contained up to the termination of the lease hereby granted, then commission will demise the said



land to the lessee/s for a further term of forty four years subject to the performance and observance of the same covenants as are herein contained except this sub clause and subject to the payment of such rent as the commission may in its absolute discretion re assess provided that such re assessed rent shall itself be subject to re assessment in a like manner or at any time after the expiration of the first five years and each tenth year of the said term thereafter”r.

[22] From the above clause, it is clear that the lessees were obliged to apply for a renewal of the lease atleast in not less than one year by notifying the commission in writing before the expiration of the initial 5-year lease. There is no evidence or proof of such application seeking for renewal of the said lease as had been agreed by both the lessor and the lessees.

It is important to note that at the time when some of the defendants acquired the certificate of title to the suit land, the law that was in place was the *Land Reform Decree 1975* which declared all land in Uganda public land to be administered by Uganda Land Commission (*ULC*) in accordance with the *Public Lands Act of 1969* subject to such modification as were necessary to bring into conformity with the Decree. Accordingly, ULC was the lessor in the instant case.

The plaintiff's witnesses claimed that the defendants (original owners) did not have the money to renew so they formed a society where they raised the money and registered the society on 22/11/1983.



[23] It should be noted that the lease was granted on 05/10/1978 and to some of the defendants got registered on the certificate of title on 16/11/1978. It is interesting to note that by the time the plaintiff society was registered on 22/11/1983, the lease held by some of the defendants had already expired. Subsequently, the plaintiff society lodged an application with the registrar of titles to transfer the said land on 04/08/1986 and the same was approved on 29/05/1987. This was 4 years after the period for extension had elapsed.

Suffice to say the extension granted to the plaintiffs for a further 44 years was irregular as there is no proof of minutes of Uganda Land Commission extending the said lease. The Registrar of Titles only acts on the instructions given by the Uganda Land Commission and executes the same in accordance with the said minute extending the lease. This was not the case in the instant matter where the Registrar of Titles purportedly extended the lease with no prior instructions per the Court record.

[24] It is trite law that when a lease expires, the land automatically reverts to the to the lessor. It is also well established that when a lease for a definite term has been terminated by effluxion of time, it means the stage has been reached when the lessee or tenant has no longer any legal right on the property and is merely a trespasser. See Dr. Adeodanta Kekitiinwa & 3 Ors Vs. Edward Maudu Wakida, CACA No 3 of 2007. See also Olango Vs Too-rom Civil Appeal No. 39 of 2019.



In a nut shell, at the time the plaintiff society purported to have applied and granted extension of the said lease, there was no subsisting lease and there was nothing to extend. Additionally, there was no application for renewal of the said lease which would have created a new contract or relationship between the lessor and the lessee. The above point was not raised by any of the parties or their counsel knowingly or unknowingly but it was fundamental and central to the determination of this matter. This point alone would dispose of this whole suit as the lease being disputed over had expired and the lease being non-existent, no rights could arise therefrom.

[25] Be that as it may, I have looked at the evidence of parties and submissions in regard to the first issue, the question in controversy is whether there was fraud committed by the plaintiff society and some of its members to transfer the land from the original members to the plaintiff society. There are acts and omissions listed by the defendant and from evidence that needs due consideration. These are forgery of signatures, some members not signing the transfer forms, members not receiving payments for their shares and members not consenting to the said transfer. I will deal with each of the above in the course of this judgment.

Fraud in land transactions has been extensively discussed by this court and superior courts. Fraud has been held to mean actual fraud or some act of dishonesty. (See Kampala Bottlers Ltd vs Daminico (U) Ltd Supreme Court Civil Appeal No. 22 of 1992).



In Lagen Majorie vs James Okot Okumu High Court Civil Appeal No. 74 of 2016), this court rightly observed that;

“A title may be vitiated by fraud, error or illegality manifesting itself at any stage of the whole process leading to and including the final registration and issuance of title. Illegality in the transaction voids the title irrespective of the fact that the transferee may not be at fault. Fraud within the context of transactions in land has been defined to include dishonest dealings in land or sharp practices to get advantage over another by false suggestion or by suppression of truth and to include all surprise, trick, cunning, disenabling and any unfair way by which another is cheated or it is intended to deprive a person of an interest in land, including an unregistered interest (see Kampala Bottlers Limited v. Damanico Limited, S.C. Civil Appeal No. 22 of 1992; Sejjaaka Nalima v. Rebecca Musoke, S. C. Civil Appeal No. 2 of 1985; and Uganda Posts and Telecommunications v. A. K. P. M. Lutaaya S.C. Civil Appeal No. 36 of 1995). In seeking cancellation of title on account of fraud in the transaction, the alleged fraud must be attributable to the transferee. It must be brought home to the person whose registered title is impeached or to his or her agents

(see Fredrick J. K Zaabwe v. Orient Bank and 5 others, S.C. Civil Appeal No. 4 of 2006 and Kampala Bottlers Ltd v. Damanico (U) Ltd., S.C. Civil Appeal No. 22 of 1992). The burden of pleading and proving that fraud lies on the person alleging it and the standard of proof is



beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases (see Sebuliba v. Cooperative bank Limited [1987] HCB 130 and M. Kibalya v. Kibalya [1994-95] HCB 80) ”[Emphasis added]

[26] Regarding forgery of signatures of some members on the transfer form by the plaintiff society, DW 15 in cross examination denied ever signing on the transfer forms. However, when he was shown the transfer Instrument No. 250764 dated 29/05/1987, he claimed to have signed the same and yet he denies signing the transfer Instrument dated 26/04/1994. This piece of evidence was at best contradicting as the DW 15 stated in examination in chief that he is one of the people who signed and caused the transfer back to the original owners in 1994. The above evidence could not be relied on and as such I find that there was no sufficient evidence that suggests that DW15's signature was forged.

[27] Furthermore, I find no evidence that Lawrence Begumisa was one of the 21 original members as the name that appears on the title that was exhibited in court is *ASA Begumisa* and not Lawrence Begumisa . The witness did not explain or state that he was ASA Begumisa and therefore his evidence is doubtful in that respect.

In resolving the issue that some members did not receive payments for their shares, I have closely looked at the transfer forms, it is indicated therein that the consideration for the transfer was the gift therefore there were no payments made as a basis for consideration.



For the administrators of the deceased members estates, their evidence that their late relatives did not consent to the transfer is no more than hearsay and their recollections of the events were not backed by any evidence.

[28] In respect of members not signing transfer forms, the main contention was that a one Rwakakuto George after obtaining certificate of title in 1978, he joined the army and did not consent to the transfer nor sign the transfer form. This was admitted by PW1 during cross examination that DW2 Rwakakuto George was in the army until 1983 and his wife signed for him on all those documents including the transfer form with his authorization. There was no evidence of any authorization or powers of attorney produced in Court permitting the DW2's wife to act as his signatory or to do any act for that purpose. Further she was not brought in Court as a witness to testify to that fact.

The original owners held certificate of title in dispute as tenants in common meaning that they held undivided shares but have quite separate interests and the only fact which brings them into co-ownership is that they both have shares in a single property which has not yet been divided among them. See East African General Insurance Company Ltd Vs E. Ntende and 5 Others [1979] HCB 27

It is of the essence of tenancy in common that owners can deal with the title to their shares but that possession is common to them and cannot be granted by one alone. See Mutual Benefits Ltd Vs Patel and Another [1972]1EA 496.



Whilst it is true in tenants in common that each individual can alienate their ownership rights without consent no one has the right to transfer one's share without his or her consent. Consequently, where the wife of DW2 purported to sign transfer forms on behalf of DW2 without his authorization or her testifying that she indeed signed on behalf of the husband, would leave this court in no doubt that the transfer of the said title to the names of the plaintiff society was done fraudulently. Accordingly, the first issue is answered in affirmative.

[29] The second issue is whether the transfer of the suit land from the names of the plaintiff to the names of the 2nd to 22nd defendants on the 26th April, 1994 under instrument No. 262749 was fraudulent or not?

It was the evidence of PW 1 that the defendants did not have money to have the lease extended for the 49 years and as a result they decided to register the plaintiff cooperative society. Subsequently, after registering the plaintiff society, the said defendants duly transferred the suit land from their individual names into the name of the plaintiff cooperative society in 1987 and the lease was extended for 44 years.

The witness further stated that the 2nd defendant, who was the then chairperson of the plaintiff's society and who was in custody of the certificate of title to the property, unilaterally and fraudulently caused the defendants to transfer the property from the names of the plaintiff society into the names of the 2nd to 22nd defendants without obtaining the resolution of the executive committee or general meeting of the



plaintiff. That the 2nd defendant did this after he had been voted out of the chairmanship of the plaintiff in 1994 due to his incompetence.

Counsel for the plaintiff society submitted that the transfer of the said land was obviously fraudulent. Counsel relied on the evidence of the PW1 to show that the 2nd defendant who had been the chairperson of the plaintiff society had in his custody the certificate of title and he unilaterally caused the transfer.

Counsel highlighted allegations of fraud as the plaintiff being a corporate body, there was no way an individual or group of individuals could lawfully effect its transfer to another person's name without a written resolution.

[30] Secondly, counsel contended that the 2nd defendant caused the transfer by signing on the transfer form on behalf of the plaintiff society as its chairperson, when actually he had been voted out of office.

Thirdly, counsel submits that the allegation in the defendant's joint written statement of defence falsely contend that their former chairperson transferring and then complained to the commissioner to cancel the transfer are falsehoods.

Fourthly, counsel complains of forgeries on transfer forms since some members had already died and others were indicated as dead while they were still alive. Counsel relied on **Section 77 of the Registration of Titles Act** and the case of **Zebiya Ndagire Vs Leo Kasujja (1974) HCB 153** for the preposition that where land transfer forms or certificate contained



forgery of the signature of the plaintiff as vendor and transfer of the land to the defendant was obtained by fraud, the purported transfer and any relevant entry in the register book were held to be void against the defendant.

Counsel Mugarura on the other hand submitted that the plaintiff never got good title because the certificate was for 20 people and the people who allegedly became members of the plaintiff were 15. That there is no proof that the five members never subscribed as a members of the plaintiff society. Counsel further submits that it's not the 2nd defendant who caused the transfer of the land back into the names of the defendants.

[31] The main contention from the evidence of PW1 and the submissions of counsel for the plaintiff is the fraudulent transfer of the suit land from the plaintiff's society back to the names of the defendants. I have looked at the Court record and indeed the said title was transferred in irregular manner. As stated by counsel for the plaintiff and the plaintiff's witness the transfer was done without any resolution or minutes empowering the defendants to do so. Interestingly, some of the members who were supposed to sign the said transfer forms were deceased and their names were just written on the said transfer forms.

The defendants denied any wrong doing and stated mostly in their witness statements that after a meeting which was conducted in 1993, they resolved that the certificate of title be transferred back into the names of the original owners.



Through their Chairperson they made a complaint to the commissioner land registration on how their certificate of title was fraudulently transferred into the names of the plaintiff without the knowledge and consent of some of the former owners and the commissioner land registration at his own volition transferred back the certificate of title into the names of the original owners.

Counsel for the plaintiff submitted that contrary to the above evidence, the commissioner land registration had no powers to cancel the plaintiff's registration. That such powers were vested in the High Court

[32] It is worth noting that under **Section 69 of the Registration of Titles Act Cap 205 (1964 Edition)**, the registrar had wide powers to do anything without referring the matter to court. See the case of **Estate of Magdalene Scott Nambi Vs Owalla's Home Investment Trust Limited & Anor (Civil Appeal No. 15 of 2017)**. Further that it would appear that the Registrar of Titles has power to cancel a certificate fraudulently or wrongfully obtained or retained. See: **Rurangaranga Edward Vs Mbarara Municipal Council & Ors Supreme Court Civil Appeal No. 10 of 1996**.

At that time the registrar had powers to correct errors and cancel a title that had been fraudulently obtained. This has since changed as stipulated under The Land Act 2004 as amended under **Section 91**. These powers are no longer available without recourse to court. The Supreme Court in case: **Estate of Madgalene Scott Nambi Vs Owalla's Home Investment Trust (EA) Limited** *Supra* where it was stated that the



absence of fraud in the new provision was deliberate. Therefore, the enactors of the Land Amendment Act of 2004 took away the authority of the commissioner to cancel a certificate of title obtained by fraud without referring the matter to the court. Court noted that commissioner's action is rightly limited to actions of 'errors' or 'illegalities'

[33] The above notwithstanding the Registrar did not carry out the transfer on the basis of complaint as the defendants would want this court to believe. The transfer was based on the assumption that the plaintiff cooperative society had authorized its officials to carry out the alleged transfer. Had the Registrar exercised his powers, then the transfer forms would not have been necessary.

Secondly, the Registrar was supposed to cancel the plaintiff's name and not effect transfer. From the transfer forms, it is clear they were based on the fact that the consideration was gift from the plaintiff to the 2nd to 22nd defendants. Under normal circumstances, the said transfer from the plaintiff's society to the defendants would be fraudulent however, it originated from an earlier fraudulent transaction as I have already in issue 1. Therefore, this issue must be answered in the negative.

[34] The third issue is *whether the transfer of the suit land from the names of the 2nd to 22nd defendants into the names of the 1st defendant on 15/03/2012 under instrument No. 464617 was fraudulent.*



Counsel for the plaintiff submitted that most of the signatures of the purported transfers were forged by the 1st defendant or with his knowledge, consent and approval. Counsel pointed out that one of the transferors by the names of Muhamira Festo had died in 1999 and yet his thumb print appears on the transfer forms. Further that a one Rwakatano Fabiano DW12 denied ever participating in the said transaction yet his signature appears on the transfer forms which he denied.

Counsel further contended that a one Mikiri Bwendero a son to Muhamira Festo was entered on the register as an administrator of the late Eliasafu Kahuma yet he had made a statement saying that he was not an administrator of the estate of the late Kahuma.

[35] According to counsel, the 1st defendant hand-picked a member from each of the 9 deceased family and facilitated them to apply for letters of administration from grade one magistrate at Bushenyi yet their estates was beyond the pecuniary jurisdiction of the said Court.

It was further contended by counsel that the sale agreement was not properly executed as some sellers did not append their signatures and others died before the sale agreement was executed. Counsel states that DW12 denied the signature as his which appears on the sale agreement and that he was misled by DW1 and DW2 when they asked for his passport photographs.



In reply counsel for the defendants submitted that the original owners of the suit land to the 1st defendant and in the witness of the 1st defendant among the original owners who were alive signed for themselves and those who had already died, the sale was conducted by the administrators or administratrix.

Counsel pointed out the different administrators who signed for the deceased. Counsel submitted that there was no fraud that was committed by the 2nd defendant and there was any fraud it was not with his knowledge and consent.

[36] It was held in David Sejjaaka vs Rebecca Musoke, SCCA No. 12 of 1985, that fraud must be attributable to the transferee, either directly or by necessary implication.

The 1st defendant led evidence that the land was sold to him by the defendants and the administrators of the deceased owners who transferred the suit land into his name.

The witness further contended that he did not commit any forgeries and that in case of Festo Muhamira, it was the son who signed for him. In respect of Rwakatano Fabiano, he stated that he participated in the sale and received part of the payment. That Asa Begumisa and Rwamutakitwa it was their daughters who signed/thumb printed on behalf of the estate.

When he was cross examined, he stated that he executed the written agreement and the date he bought the land the persons who did not



sign were absent but signed on the second agreement. In further cross examination he stated that the people who did not sign on the first agreement have not signed on the second agreement. The witness further stated that the name of Festo Muhamira is listed but he died in 1999 and the thumb print was put and witnessed by Ayebazibwe Makongo.

[37] It is clear from the above evidence that the 1st defendant was aware of the whole process leading to the transfer of the certificate of title that was eventually issued in his names. The witness also admitted that the thumb print was false and does not belong to Muhamira Festo. Perusal of the said agreement, it is indeed clear that some of the sellers did not sign the said agreement and then one wonders if at all they had agreed to sell why would they not append their signatures.

Secondly, the witness admitted that the thumb print on the transfer forms belonging to Muhamira Festo was false and does not belong to the said person as he had died at the time the transfer forms were executed. The explanation given by the witness was that the administrator of the estate of the late Muhamira Festo appeared on title is not satisfactory and defeats the purpose of the whole transaction.

Further, in respect of Rwakatano Fabiano he denied participating in the sale of the suit land to the 1st defendant that the signature which appeared on the transfer form against his name is not his. Regarding the administrators obtaining letters of administration from a grade one magistrate yet the estates of the said deceased persons were high than



the pecuniary jurisdiction of the said court. There has been no evidence that was adduced to suggest the said deceased estates were beyond the pecuniary jurisdiction of the said Court. The above submissions on that point were only speculative as no proof was provided.

[38] From the above evidence it is clear that there were forgeries made on the transfer forms and the sale agreement which has been admitted by the 1st defendant. The evidence points to dishonest dealings which the 1st defendant knew about and that constituted fraud as he intended to defeat the rights of some of the defendants. Accordingly, I would have found that the said transfer between the 2nd to 22nd defendant and the 1st defendant was fraudulent however like the 2nd issue it was based/originated from the fraudulent transaction which made the subsequent transactions pertaining the suit land void ab initio.

[39] The determination of this issue disposes of the fourth issue on whether the 1st defendant was a bonafide purchaser for value without notice of the fraud as the 1st defendant was aware of the said transactions and admitted to falsity of some of the signatures on the transfer forms. I have no doubt that the 1st defendant knew of the forgeries on the said documents and therefore he could not be a bonafide purchaser for value without notice.

In conclusion, as already held that by the time the plaintiff society purported to extend the said lease subject of this suit, there was no lease to be extended as it had already expired and there was no application to renew made as the lease agreement required under clause 3.



Secondly the entries made by the Registrar of Titles were irregular as he had no instruction from the Uganda Land Commission or its successor in title at the time, the District Land Boards. There was no minute acted upon to make that extension and there is none that was produced in court to prove that indeed there were instructions given to him.

[40] As I have already stated if the lease expires the title reverts back to the lessor who is Uganda Land Commission and the lessee becomes a trespasser. Therefore, the entries made on the said titles were null, void and illegal as the title had expired. Secondly, the transfer to the plaintiff cooperative society was obtained through fraudulent means which makes subsequent entries and transaction on the said certificate of title void ab initio.

From the foregoing, this suit is hereby dismissed with costs.

I so order.

Dated, signed and delivered on this 19th December 2023



Joyce Kavuma
Judge

