

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MASAKA**

**CIVIL SUIT NO. 27 OF 2017**

**EMMANUEL KOOGA ..... PLAINTIFF**

**VERSUS**

**SSEMWOGERERE FRED GERESOMU ..... DEFENDANTS**

**JUDGMENT**

*Before: Hon. Lady Justice Victoria N. N. Katamba*

**BACKGROUND**

The plaintiff instituted this suit against the defendant for a declaration that the latter fraudulently transferred the suit land into his name among other reliefs. The plaintiff is the Administrator of the estate of the late Anderea Mukasa of Nakatooke village, formerly Masaka District (now Lwengo District) under **Administration Cause No. 003/2005**. The deceased was the registered proprietor of the pieces of land comprised in **Buddu Block 310 Plot 17** measuring **14 acres (hereinafter referred to as the suit land)** and **Buddu Block 310 Plot No. 15** measuring **7 acres** at Nakatooke village, Kingo Sub-county, Masaka District.

The plaintiff claims that during the month of March, 2008, upon obtaining letters of administration, he visited the Land office in Masaka to secure the certificate of title and he was shocked to find that the same was registered in the name of the defendant. The plaintiff also claims that the defendant is not in any way related to the late Mukasa Anderea.

It is also the plaintiff case that the late Anderea Mukasa did not sell any of his pieces of land to anyone and could not have transferred the suit land to the defendant ten years after his unfortunate demise that occurred on 28<sup>th</sup> July, 1967. The Plaintiff also claims that his siblings and him have, been in continuous physical occupation of this suit land, notwithstanding, the defendant's transfer of the land in his names.

The defendant on the other hand states that he is a bona fide purchaser for value of the suit land, without notice of any fraud. His case is that he was approached by the late Anderea Mukasa at his work place who offered to sell him the land in 1976.

The defendant further claims that he executed a sale agreement with the late Anderea Mukasa for the suit land in an Advocate's Chambers. That a transfer instrument was prepared and duly witnessed at the Land Registry, subsequent of which he got registered on the land on 26<sup>th</sup> October 1976.

At the trial, both the witnesses to the said transaction and the Registrar of Titles at the time, who prepared the necessary documents, testified in favor of the defendant's alleged purchase of the suit land.

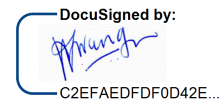
It is also the defendant's case that barely 4 months after acquisition of the certificate of title, on 17.02.1977, he mortgaged the suit land to the defunct Uganda Commercial Bank under instrument no. MSK51757. That unfortunately, as fate would have it, his original certificate of title got destroyed in the Bank Building during the 1979 Liberation war, which event prompted him to apply for a special certificate of title which was issued to him on **8<sup>th</sup> June 1988**.

The defendant further stated that on 25<sup>th</sup> January, 2001, he obtained a release of mortgage from Uganda Commercial Bank which was registered at Masaka Land Registry. For the whole of this period, nobody has ever challenged his ownership of the land nor his possession of the certificate of title to it. It is against this background that the defendant prayed to this Honourable court to dismiss this suit with costs to him.

**Representation:**

Ssozi Sharif, Counsel for the Plaintiff

Kawanga John Baptist, Counsel for the defendant



**Issues agreed to for trial in the Joint Scheduling Memorandum:**

1. Whether the defendant fraudulently transferred and registered land comprised in Buddu Block 310 Plot 17 into his name?
2. What remedies are available to both parties

**Submissions of the plaintiff:**

**On issue 1;**

The plaintiff submitted that the defendant committed acts of fraud during the procuring and registration of title as set out in paragraphs 7 and 8(a), (b), (c), (d) of the plaint.

He went on to define **fraud** as per the **Black's law dictionary, 6<sup>th</sup> Edition page 660** as *“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing or 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 so that he shall act upon it to his legal injury...”*

He cited **Section 176(c) of the Registration of Titles Act Cap 230 (“RTA” hereinafter)** which protects the registered proprietor of land from ejection save for cases of fraud. He relied on the case of **Kampala Bottlers Ltd v Damanico (U) Ltd SCCA No. 22/92**, to support his argument, that even when fraud is proved, it must be attributable directly or by implication, to the transferee.

The plaintiff submitted that all his witnesses testified that the Late Anderea Mukasa had never sold his land nor executed any transfer affecting his interest in it.

The plaintiff further submitted that whereas the transfer forms were made on **26<sup>th</sup>/10/1976**, the deceased had died much earlier on **28<sup>th</sup> July 1967**. The deceased could not have transferred the suit land while he was long dead. The plaintiff attached a short death certificate and death declaration form of the late Mukasa Anderea from Kitovu Hospital which was admitted on court record as **Exhibit. B**.

It was also submitted for the Plaintiff that the suit land comprises of their family burial ground and family house and that the late Anderea Mukasa was buried on the suit land. He attached photos of the grave yard with the tomb stone of the late Anderea Mukasa having words died in 1967 which was admitted on court record as **Exhibit Z**.

The plaintiff further submitted that even when the court visited the suit land, it found that it was the plaintiff and his family members who were in its possession of the suit land. The defendant

who claims to have bought the suit land is not even aware of its demarcation and has never made a search, a survey or taken possession of the same.

The plaintiff also submitted that when court directed the District Surveyor Masaka to open boundaries of **Plot 15 & 17 Block 310 Land at Bugando**, it was found that the plaintiff and his family are in possession of both plots. The surveyor also found that the suit land had a graveyard, the house of the plaintiff's family among other salient features which are not contested by the defendant (the Plaintiff **referred this court to the Survey report dated 5<sup>th</sup> Jan 2023 on court record**)

The Plaintiff also submitted that **PW2 (Ms. Tereza Nalusiba)** testimony corroborated that of the Plaintiff under paragraphs **4, 5, 6, 7, 8, 9, 10 & 11** of her witness statements.

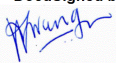
In addition to the above, the Plaintiff submitted that there is no proof that the defendant has ever opened up boundaries of Plot 17 Block 310. Had the Plaintiff made any attempts to open up boundaries, he would have encountered constructive notice that the occupancy was with the plaintiff and his family and that the late Anderea Mukasa was already dead and buried on the same land he claimed to have purchased.

In conclusion, the plaintiffs prayed to this Honourable Court to find that the defendant fraudulently transferred and registered the suit land into his name and therefore resolve this issue in the affirmative.

**On issue 2;**

The plaintiffs' plaint prayed for judgment in the following terms;

- a) Cancellation of the title for suit land now in the name of the defendant and have the same transferred into the names of the plaintiff
- b) A declaration that the said land belongs to the plaintiff and their family
- c) An order directing the Commissioner Land Registration to have the name of the plaintiff entered onto the title
- d) General damages
- e) Exemplary damages for the plaintiff and anguish occasioned
- f) Costs of the suit

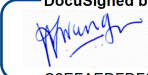
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The plaintiffs submitted that subject to **Section 176 and 181 of the Registration of Titles Act Cap 230 (hereinafter RTA Cap 230)**, the defendant be ejected from the Certificate of Title for fraud and this Honourable Court be pleased to order cancellation of his entry and order for the entry of the plaintiff as registered proprietor for the estate of the late Anderea Mukasa as the suit land and also for a declaration that the suit land belongs to the estate of the late Anderea Mukasa.

The plaintiff also prayed for exemplary damages. In further support of this prayer, the Plaintiff submitted that it is settled law that exemplary/aggravated damages are awarded for oppressive and arbitrary conduct and are punitive in nature. He submitted that the actions of the defendant were oppressive in nature and went ahead to pray for exemplary damages of shs. 30 million

The plaintiffs equally prayed for costs of the suit.

### **Defendants Submissions**

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The defendant in his defence raised two Preliminary objections that;

- a) The suit was barred by the **Limitation Act, Cap 80**
- b) The same suit had been filed in this very court as **Civil suit No. 46 of 2008** and was dismissed in 2016

He denied all the plaintiff's claims and stated that he was a bonafide purchaser for value without notice

The defendant submitted that the plaintiff having sued for recovery of land as Administrator of the estate of the late Mukasa Anderea under Letters of Administration granted in **Administration Cause No. AC- 003 of 2005** granted on 4<sup>th</sup> March, 2008; **Exhibit PEX 1**, his suit was time barred.

The defendant also submitted that according to the short death certificate, **Exhibit PEX2**, issued on 5<sup>th</sup> October 2017, by Dr. Opio Martin Otyale, Mukasa Anderea, died at Kitovu Hospital. That the date of death is not indicated herein and the cause of death is "Not established". That the Death Declaration Form F, indicates that the date of death is **28/07/1967**, but the time of death is not documented". The cause of death is "Not Established".

The defendant also submitted that in answer to **No. 12** of the **declaration of death form** which is to the effect that where the declaration is made more than a month thereof, one should indicate

why this death was not registered within the prescribed period; the answer is blank. That while these documents were issued on **5<sup>th</sup> October, 2017** they both bear a stamp of Kitovu Health Care Complex Medical Director of **10 October, 2017**. That this is also more than 9 years after the plaintiff was granted letters of administration in 2008 thus the authenticity of these documents is very much in doubt.

Based on the above criticism of the Plaintiff's documents that were adduced to prove when the Late Andrea Mukasa died, the defendant concluded that his alleged death is shrouded in mystery. That there is no indication that it was ever reported to anybody in authority. He relied on **Section 4(1) of the Administrator General's Act, Cap 157** to support this which requires the death of a person who dies in Uganda to be reported to the Administrator General with full particulars of what property he/she left in Uganda.

The defendants submitted that this is a suit for recovery of land comprised in Buddu Plot 17, by the plaintiff seeking cancellation of certificate of title for the land. **Paragraph 8(a)** of the plaint alleges fraud on the part of the defendant by purporting that the deceased executed transfer of land in favour of the defendant on **4/10/1976**, whereas the deceased was long dead". The transfer Exhibit **DEX 1** and the special certificate of title for Buddu Block 310 Plot 17, **Exhibit DEX 2**, indicate that Fred Geresomu Ssemwogere was registered on the land on **26.10.76**, which is more than 40 years before filing of this suit.

The defendant submitted that **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 12 years from the date on which the right of action accrued to him or her..."

The Defendant also cited **Section 6(2) of the Limitation Act** that provides that where any person brings an action to recover land of a deceased person, -the right of action shall be deemed to have accrued on the date of his or her death. That the plaint does not indicate when the late Mukasa Andrea died. A letter from **Nakatooke RC 1 –Kkingo Sub-county** dated **11-02-2005** annexed to the plaint indicates that Andrew Mukasa died on 27<sup>th</sup> July, 1967 and was buried on 30<sup>th</sup> July, 1967.

The defence submitted that a certificate dated **16/11/04** of Kitovu Health Care Complex signed by SR Dr. Anthony Nabukalu Ag. Medical Superintendent states "Mr. Andrea Mukasa from

Nakatoke according to our records at Kitovu Hospital he was operated on **19/7/67**, and died 9 days after the operation” is annexed to the plaint. This is 50 years before filing of this suit, which is thus barred by the Limitation Act. That **Section 29 of the Limitation Act** specifically states that the Act shall apply to land registered under the Registration of Titles Act.

The defendant cited the case of **Odyeki v Yokonani & 4 others (Civil Appeal No. 009 of 2017) [2018] UGHCCD 50 (11 October 2018)** in which, it was held that; with regard to actions for recovery of land, there is a fixed limitation period stipulated by **Section 5 of the Limitation Act**. This Limitation is applicable to all suits when the claim is for possession of land, based on title or ownership of proprietary title, as distinct from possessory rights.”

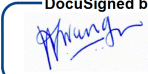
The Defendant also submitted that this court should consider the fact that his witnesses including the Registrar of Titles who prepared the necessary documents testified to the fact that the defendant became the duly registered proprietor of the suit land on 26.10.76.

The defendant argued that **Section 59 of the RTA, Cap 230**, vests ownership of land in the registered proprietor who in the instant case is none other than himself.

The defendant also criticized the plaintiff and Naluusiba Tereza as PW2 testimonies that they merely allege that “the defendant forged the signature of the deceased on the transfer forms and presented a forged transfer form to the Registrar of Titles” but they provided no proof of the alleged forgery.

In conclusion, the defendant submitted that the plaintiff failed to prove his case on a balance of probabilities in accordance with the provisions of **Sections 101 and 102 of the Evidence Act** and that the suit should be dismissed with costs.

#### **Plaintiff’s submission in rejoinder**

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On the preliminary objection raised by the defendant that the suit is barred under **Section 5 of the Limitation Act**, the plaintiffs argued that it is apparent in the plaintiff’s pleadings that this claim is based on fraudulent dealings on the suit land as against the defendant. That the pleadings on record set out particulars of fraud attributable to the defendant under **paragraph 8** of the plaint. That counsel for the defendant failed to appreciate the provisions of **Section 25 of the Limitation Act**.

The Plaintiff submits that according to **Section 25 of the Limitation Act**, fraud is an exception to the law of limitation and that the period of limitation does not begin to run until the plaintiff has discovered the fraud or mistake.


In support of the above argument, the plaintiffs relied on the case of **Madhivani International S.A v Attorney General C.A.C.A No. 48 of 2004** and **Polyfibre (U) Ltd v Matovu Paul & 3 Ors HCCS No. 412**, in which it was held that in considering whether a suit is barred by any law, court looks at the pleadings only, and no evidence is required.

The Plaintiff argued that according to paragraph 6 of the plaint, he only discovered the Defendant's fraud in the month of March 2008, after obtaining Letters of Administration to the said deceased's estate and went to the Land office in Masaka to secure the certificate of title to the said land.

The Plaintiff relied on the decision of court in **Hammann Ltd & Anor v Ssali & Anor HCMA No.449 of 2013**, which interpreted **Section 25 of the Limitation Act** thus, *"...the main thrust of the provision is essentially that in actions of fraud, the limitation period does not begin to run until such a time when the plaintiff is invariably aware, or could have with reasonable diligence been aware of the fraud. This must be pleaded, and it is premised on such a plea that court may exercise its power under Section 2 not to reckon with the period the plaintiff was unaware of the fraud in computation of the Limitation period..."*

In conclusion, the plaintiff submitted that the defendant's preliminary point of law is totally baseless and the same should be overruled. He reiterated his prayers in the pleadings.

**Determination by court;**

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I have carefully perused and considered the pleadings of the parties, the evidence on record and the submissions of the parties. Below are my findings on the issues for trial.

**On the Preliminary Objection:**

I agree with counsel for the plaintiff's submission that in matters involving fraud, the limitation period starts running from the time the party alleging fraud notices it as per **Section 25 of the Limitation Act** which was further interpreted in the case of **Hammann Ltd & Anor v Ssali & Anor HCMA No.449 of 2013**. **Section 25 of the Limitation Act supra** also brings out the key



point that in matters of fraud, the years start running from the time the fraud is noticed by the plaintiff as has been discussed above.

Accordingly, since the Plaintiff discovered the transfer to the defendant in 2008 and this suit was instituted in 2017, the twelve years had not yet lapsed. Secondly, there is overwhelming evidence on record that it is the Plaintiff and his family who are in actual possession of the suit land, and that the Defendant only has possession over the certificate of title to the suit land.

***Issue 1: Whether the defendant fraudulently transferred and registered land comprised in Buddu Block 310 Plot 17 into his name?***

I have had opportunity to call for and peruse the Plaintiff's administration cause file No. 003 of 2005 and discovered that the death of the Late Anderea Mukasa was reported in an affidavit in lieu of death certificate sworn on 4<sup>th</sup> February 2008, to have occurred on 29<sup>th</sup> July 1967. That the death occurred at his home at Nakatooke LC.1, Kasaana Parish, Kingo Sub-County, Masaka District but no death certificate was issued.

I have also had the benefit of looking at other documents that were relied on by the plaintiff in the application of his letters of Administration to the Estate of the late Anderea Mukasa hereunder;

The declaration sworn by the plaintiff, in 2004, while applying for letters of Administration to the estate of the late Anderea Mukasa, therein, it is stated that the deceased died in 1967 which is still the position in the plaintiff's pleadings.

Secondly, the letter from Nakatooke RC1-Kkingo Sub-county also indicates that the deceased was a resident of Nakatooke village and that he died on 29<sup>th</sup> July, 1967 and was buried on 30<sup>th</sup> July, 1967.

Lastly, the letter written from Kitovu Health Care Complex indicates that the late Anderea Mukasa from Nakatooke according to their records at Kitovu Hospital was operated on 19/7/1967 and died 9 days after the operation.

The above documents from Kitovu Hospital and other authorities all point to the fact that the Late Anderea Mukasa died sometime in 1967. Notwithstanding a few contradictions and omissions cited by the Defendant, this court is by and large convinced that the Late Anderea Mukasa died

sometime in 1967. I am therefore disinclined to believe that the Late Anderea Mukasa's death is shrouded in mystery as submitted by the defendant.

The above year of death (1967) of the former registered proprietor (Anderea Mukasa) to Buddu Block 310 Plot Nos. 15 and 17 land at Nakatooke, Masaka District makes it impossible for this court to believe that the said registered proprietor was in any way capable of executing a transfer to his land, post his year of death. To insist that he executed the transfer is to say that he rose from the dead to execute the same. This is incredible and not believable by the court or any one at all.

The defendant alleges that the purported transfer of land happened on the 26<sup>th</sup> /10/1976 whereas by this date, the deceased was long dead. Evidence on the court record shows that he died sometime in 1967. The event of Anderea Mukasa's death and the date of execution of a transfer to his land are 10 years apart.

According to the authority of **Kampala Bottlers Ltd v Damanico (U) Ltd SCCA No. 22/92, in cases where fraud is proved, it must be attributable directly or by implication, to the transferee.** In this case, the defendant being a beneficiary of the impugned transfer, I find that fraud has been attributed by implication to him as transferee.

In conclusion, I hereby answer issue 1 in the affirmative.

I also take Judicial notice under **S.56(1)k of the Evidence Act Cap. 6** of the name and signature of Mr. Ssembajjwe Henry (the Masaka District Staff Surveyor) which appear on the boundary opening survey report of Plots 15 & 17 Block 310 Buddu. The same was acknowledged by Counsel for the parties. It was reported in this document that the family of the Late Anderea Mukasa is in possession of Plot 17. That the said family occupies Plot 17 with its graveyard on which Anderea Mukasa is buried and that the deceased's old house on the suit land is still standing to date.

***Issue 2: What remedies are available to the parties?***

Having made a finding that the Defendant procured his registration on the suit land fraudulently, I hereby move to act under S.176 of the Registration of Titles Act to cancel the Defendant's registration on Buddu Block 310 Plots No. 15 and 17 land at Nakatooke, Masaka District.

The Plaintiff prayed for General damages for conversion and fraud.

General damages arise from the defendant's direct breach of a right originally enjoyed by the Plaintiff. I find that the Plaintiff has been inconvenienced by the impugned transfer and subjected to a measure of stress in his journey of rectifying the register. I hereby award him UGX. 20,000,000/= in General damages.

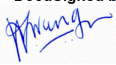
I do not find the Defendant's conduct to be oppressive because he did not deprive the Plaintiff and his family of possession and use of the land. I will therefore make no order as to exemplary damages.

The Plaintiff prayed for interest on General damages, I hereby award him an interest of 6 per cent per annum from the date of Judgment until payment in full.

I also award the Plaintiff costs of prosecuting the suit.


I so order.

Orders;

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- a) A declaration issues that Buddu Block 310 Plots 15 and 17 land at Nakatooke form part of the estate of the Late Anderea Mukasa to which the Plaintiff is administrator.
- b) An order for cancellation of the defendant's certificate of title to Buddu Block 310 Plots 15 and 17 land at Nakatooke issues.
- c) An order issues directing the Commissioner Land Registration to register Buddu Block 310 Plots 15 and 17 land at Nakatooke in the names of the plaintiff as Administrator of the estate of the Late Anderea Mukasa.
- d) An award of General damages of twenty million Uganda Shillings is hereby given to the Plaintiff for the inconvenience occasioned to him by the Defendant.
- e) The award of General damages in (d) above shall attract an interest of 6 % per annum from the date of Judgment until payment in full.
- f) Costs of the suit are awarded to the Plaintiff.

Dated and delivered at Masaka this 5<sup>th</sup> day of October, 2023

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**HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA**