

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA**

**CIVIL SUIT NO. 0008 OF 2008**

- 1. AKULLU LILIAN (Suing through her Attorney)**
- 2. LINDA OTIM OLET:..... PLAINTIFFS**

**VERSUS**

- 1. HON. BETTY AMONGI**
- 2. FRED OKAKA:..... DEFENDANTS**

**BEFORE: HON. JUSTICE ALEX MACKAY AJIJI**

**JUDGMENT**

The Plaintiff sued the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant for an order of the Defendant her agents and servants from the suit land, General and Punitive damages for trespass, Mense profits which shall be proved during the hearing, costs of the suit, interest on the decretal sum at 25% per annum from the date of judgment till settlement in full and permanent injunction restraining the Defendant and or her agents from trespassing on to the Plaintiff's land or interfering with it in any way.

The Plaintiff's facts of the suit are that the Plaintiff applied for a lease from the Land Administration Department in Lira in or about 1993 and was granted the same on the 8<sup>th</sup> day of December, 1993. That the plaintiff's lease was subsequently extended for a further 5 year term on or about the 3<sup>rd</sup> day of November, 2006. The same lease was further extended for a period of 49 years and obtained a certificate of title of the suit land on 11<sup>th</sup> day of July, 2007. That the Defendant trespassed on the suit land and constructed a house thereon despite several requests and demands that she vacates the suit land.



The Defendant in her written statement of defence denied the Plaintiff's claims and averred she purchased the suit land from Okaka Fred without the knowledge of any other person's interests therein and is therefore a bona fide purchaser for value.

## Counter-Claim

1. The 1<sup>st</sup> Defendant also filed a counter claim for a declaratory order that she is the rightful owner of the suit land, orders for a permanent injunction restraining the Plaintiff, her agents or persons claiming title under her from evicting, trespassing or interfering in any way with the Defendant's quiet possession, use and enjoyment of the suit land, cancellation of the certificate of title fraudulently obtained by the Plaintiff, interest and costs of the suit.
2. She averred that she is the rightful owner of land comprised in leasehold register Volume 3758, Folio 11, Plot No. 38, Erute Road, Central Division, Lira Municipality, Lira District, having bought it from Mr. Okaka Fred on or about the 22<sup>nd</sup> of December, 2005 at a cost of 6,500,000/= without any knowledge of any other person's interest in the same and was organizing to process a title in her name.
3. That the Plaintiff was not in possession of the suit land at the time of the Defendant's entry thereon nor had she any right to possession at that time. That what the Plaintiff has in his possession was a lease offer form dated the 8/12/1993 but not a lease as alleged in the plaint and that it was not possible to extend a lease when there was no lease in existence. The Defendant further averred that the Plaintiff fraudulently procured and obtained certificate of title for the suit land in or about 2007 in total disregard to her interest.

### The 2<sup>nd</sup> defendant's facts



- 1) The 2<sup>nd</sup> defendant denied all the plaintiff's allegations and averred that the suit land forms part of the estate of his late mother and also mother of the plaintiff, a one Betsy Olong and the 2<sup>nd</sup> defendant is the care taker and or intended administrator of the said estate. That the said sale was concluded with the consent of almost all the beneficiaries of the said estate, as the proceeds of the said sale was to take care of the welfare of the beneficiaries of the said estate.
- 2) He further averred that the Plaintiff fraudulently and for her own selfish gain procured a lease offer and eventually a certificate of title in her own names, to the detriment of the

beneficiaries. That at the time of selling the plaintiff was not the lawful owner of the suit and, and the suit land was under the 2<sup>nd</sup> defendant's care or custody for and on behalf of the beneficiaries of the said estate.

- 3) He also filed a counter-claim were he reinstated what he stated in the written statement of defence apart from the prayers.

#### Agreed Issues

- i. Whether the suit property originally formed part of the estate of the late Bensey Olong, mother of the plaintiff and 2<sup>nd</sup> Defendant
- ii. Whether the 1<sup>st</sup> defendant is a bona fide purchaser for value of the suit property
- iii. Whether the Plaintiff fraudulently obtained registration of the suit land in her names
- iv. Whether the 1<sup>st</sup> defendant is entitled to be indemnified by the 2<sup>nd</sup> Defendant
- v. What are the remedies available to the parties?

#### Legal Representation

Henry Kilama Komakech represented the Plaintiff whereas M/s Donge & Co. Advocates represented the 1<sup>st</sup> Defendant and M/s Acan & Co. Advocates represented the 2<sup>nd</sup> Defendant.

#### Evidence given in Court

**PW1 Linda Otim aged 32 years** told court that; "I know the plaintiff she is a daughter of my sister and the 2<sup>nd</sup> defendant is a brother to the plaintiff. I approached the 2<sup>nd</sup> defendant and told him not to sell the land of the plaintiff .....but the 2<sup>nd</sup> defendant went ahead and sold the land. We had a meeting and the plaintiff insisted she wanted to recover her land. The plaintiff insisted that the land be given back to her because ....given in payment of the purchase price was not in the name of the 2<sup>nd</sup> Defendant but into the names of Ochan who works in land and survey, Lira. The suit land belonged to the estate of the 2<sup>nd</sup> Defendant's mother and not the Plaintiff. I pray the land is found to belong to the Plaintiff. The plaintiff rent money to the mother for the land, the land was bought and trees were planted but were cut down by the defendants. The plaintiff applied to the municipality and land was given to the plaintiff and a title was acquired for the plot...."

**In cross-examination PW1** said; "the plaintiff lives in London for more than 10 years.....from 1993, Akullo Lilian came back to Uganda and wanted to start construction around 1995. The land

was surveyed on 28<sup>th</sup>/04/1994 and mark stones were put as she got the certificate of title. We were given a go ahead to develop the land. Exhibit P2 is an application for the whole land that plaintiff and 1<sup>st</sup> defendant constructed their buildings on. That by the time of lodging exhibit P2, part of land had been sold by second defendant to the 1<sup>st</sup> defendant. The plaintiff applied for the title where her house was, but she owned the whole land. By the time the plaintiff was given the certificate, the dispute had been settled. By the time of getting the title, the 1<sup>st</sup> defendant's house was completed."

**In re-examination PW1** said; "there was a meeting at land office chaired by the chairman district land board. It was attended by Mrs Engola, the first defendant was not there and the 2<sup>nd</sup> defendant came late. The purpose of the meeting was to ascertain whether land belonged to the plaintiff's mother or to 2<sup>nd</sup> defendant. Mrs Engola clarified that the land belonged to the Plaintiff and the title was issued to her in person...."

**PW2 Phillip Adonga** aged 32 years, a senior land officer, Lira District Local Government said; "the details in the file at the land office lira show that on 31/03/1993 Akullu Lilian through her agent Bensy Olang, applied for a piece of land on Eruse Road, Lira municipality for residential purposes on a standard land form No.1. Lira Municipality then the controlling authority approved the application premium at 150,000/= annual rent. The 150,000/= offer for two years, extended to 49 years, lease dated 12/08/1993. The plaintiff's first application expired in 1995 and there was need for a new application which is the 2<sup>nd</sup> application. There is no any other file reallocating this land to any other person. If Okullo Lilian had sold this land, there would be a sale agreement on the land office file but there is no such communication. I am aware the titled was processed in favour of the Plaintiff....."



**In cross-examination PW2** said; "As to the record the application of 2006 exhibit P2. The Application was differed to other dates. There is no approval endorsement on this form. On 03/11/2006 communication was made to Akullo Lilian that the application had been approved....."

### **Defence case**

**DW1 Betty Among** told court that; “I have seen Akullo at a meeting held by Hon. Sam Engola her elder brother to mediate her elder brother or to mediate the matter. It was around 2010. I know Okeke Fred, I knew him when he was transacting on a land matter with him plot 38 Erute Municipality. I have my house there since 2005. At the time I was an MP woman of Apac district and one of the chancellors then Hon Betty Nam, now LC.V told me she had found land in Lira Municipality. I went with her together with the surveyor and Mr Okeke showed me the plot. Both Okeke and the surveyor showed me the plot and explained to me the cost and that the plot was vacant with no encumbrances. Okeke indicated to me that since the plot had been allocated to his mother, he was willing to give it out. **The land was to be divided into two; He showed me the plot for his sister..... he did not mention to me the names of his sister.....** there was a mark stone. I called someone from land office who confirmed that there was no approval. I also went to Kampala to do a search to confirm and there was no title on the land. I knew Okeke as a brother to Sam Engola who confirmed that the land belonged to the mother of Okeke Fred and confirmed that Okeke was selling his portion. I then told my lawyer to draft the agreement. The size of the land is 67m x 67m width and 23m by 33 m. I constructed a house on it and while construction I did not receive any resistance from the plaintiff.

They called a family meeting which was attended by Hon. Engola, the sister and Okeke and his wife and they agreed that a family property cannot belong to her alone but for her and her brother Okek. I told her that if she wanted the plot again she will compensate me for the land and property on it at a market value. She instead decided to go to court”



- 4) **DW2 Sam Engola aged 60 years** said in his evidence in chief that; “Akullo Lilian is my sister. My biological sister, same father and same mother and Among Betty is my in law. Okeke Fred is my biological brother, same mother and same father. My late mother Beca Olong had 3 boys and 3 girls. ....my mother bought land in Adekokwok in the names of the 3 boys that’s; Sam Engola, Okaka Fred and Apenyo William. Then she bought another land which is plot No.38 Erute Road and made Okaka to be the one in charge as a boy who was with her at the time. This was municipal council land. She bought it direct from municipal council. I did not see any document showing that she purchased the land. This other land she shown to Okaka, I do not know whether she wanted to give Okaka but at the end, Lilian asked that since you didn’t give us, why don’t you also give me half and I build my own house? So, half was given to her and half was given to Okaka.

Okaka decided to sale his part to one of our brothers called Dr. Ochoo who was by then the husband of the Hon. Minister now. He informed about the sale. Lilian was also informed about the sale but when she came back from London and found a house on the land she started complaining that she did not get the money of the sale of the property. She was saying that she wanted a share since the land belonged to the mother. I being the clan I called for the family meeting which was attended by both defendants and the plaintiff and we agreed that since her complaint was that she did not get any money..... we agreed with Hon. Betty Amongi that she should add more money. We agreed that she adds 16m for Lilian but the 1<sup>st</sup> defendant brought the cheque for the money, lilian refused the cheque saying she wanted more money.

We had agreed in that meeting because there was no title when we had the meeting that let them get the title and sub-divide for Amongi. We agreed to get a lease for the land and then sub—divide so that Amongi gets her title and Lilian also gets her title.”

- 5) **In cross-examination DW2** said; “I should use the word representative because he was the one in charge as our family. Our family meeting came after the land was sold but when he sold, he only rang me to inform me I am selling the land. I told him go ahead, there is no problem..... yes it my mother who gave the plaintiff the land where she constructed. My mother died in 1996. Lilian also called me and informed me that Okaka was selling the land.....i am not aware of the certificate in the name of the plaintiff. Yes we agreed in the family meeting that the title be processed in the plaintiff’s names and then sub-divide into Hon. Betty Amongi. I don’t remember whether it was sold at 2.7 or 4m but it was less than 5m..... even my mother got that land freely.....”

Analysis of court



**Issue No.1: Whether the suit property originally formed part of the estate of the late Bensey Olong, mother of the plaintiff and 2<sup>nd</sup> Defendant.**

I have carefully looked at the evidence of both parties and the annexures attached to the plaint and the written statements of defence and noted that although the defendants state that the land in dispute belonged to the estate of the plaintiff’s and the 2<sup>nd</sup> defendant’s late mother DENSY OLONG who allegedly died in 1996, the plaintiff on the other hand, state that the land belongs to her. This was proved by PW2 a senior legal officer from Lira Land office who told court that the

record indicates that the plaintiff through her agent DENSY OLONG applied for the leasehold certificate in 1993 and she was granted a lease offer of two years which was extended to 5 years in 2006 and later to 49 years 2007

From the evidence of DW1 and DW2 plus the 2<sup>nd</sup> defendant's written statement of defence, the 2<sup>nd</sup> defendant was only left on the suit land as a caretaker by their late mother which is understandable because the plaintiff lived out of the country.

The evidence of DW2 who is the main witness of the defendants is full of lies and contradictions; for example, while he states that a family meeting was held after the 2<sup>nd</sup> defendant sold the land to the 1<sup>st</sup> defendant and they agreed that the plaintiff applies for a leasehold certificate and divide the land with the 1<sup>st</sup> defendant, the land office records indicates that the plaintiff had long applied for the lease.

Secondly, DW2 says that there are 6 children of his late mother, however following that background, this court wonders why it is only the plaintiff who claimed for the share of the sold proceeds if the land indeed belonged to their late mother. DW2 and other siblings would also have been expected to claim for the same if indeed the suit land belonged to their late mother. This only gives a conclusion that the suit land belonged to the plaintiff.



Thirdly, DW2 told court that he accepted the 2<sup>nd</sup> defendant to sale the land because he was selling to their brother Ochoo. However, when you compare the evidence of DW1 and the sale agreement, the 2<sup>nd</sup> defendant has never negotiated or sold the suit to the alleged brother.

Therefore, since the plaintiff followed up the issue of the leasehold certificate since 8<sup>th</sup> of December, 1993, the other offer of 2006 and eventually the lease of 2007 are just a continuation of the first offer that started in 1993.

I will define the meaning of the word “offer”.

The **Oxford Dictionary** defines it to mean “an expression of readiness to do or give something if desired”

The **Black's Law Dictionary 6<sup>th</sup> edition** defines it to mean; "to bring to or before; to present for acceptance or rejection; to hold out or proffer; to make a proposal to; to exhibit something that be taken or received or not."

The above two definitions establishes the word offer to mean to *present something for acceptance*. In the instant case, the plaintiff was given the first offer of 2 years in 1993 from the date of survey. According to exhibit P.8, the land was surveyed on 3<sup>rd</sup> of February, 2006. It should be noted from the above definitions the word "**OFFER**" is subject to acceptance. The plaintiff having accepted the offer of 2 years, the same was extended to 5 years on 3<sup>rd</sup> of November, 2006 and finally granted lease of 49 years on 1<sup>st</sup> August, 2007.

In the circumstance, it is found that the suit land never belonged to the late mother of the Plaintiff and the 2<sup>nd</sup> Defendant but rather, the land belonged to the plaintiff and their late mother only acted as an agent of the plaintiff.

Issue No. 1 is answered in the negative

**Issue No.2: Whether the 1<sup>st</sup> defendant is a bona fide purchaser for value of the suit property**

It is trite that for a person to claim to be a bona fide purchaser for value without notice he or she must have a certificate of title, he must prove that he holds a certificate of title; he purchased the property in good faith; he has no knowledge of the fraud; he purchased for valuable consideration; the vendor has apparent title; he purchases without notice of any fraud; and he was not party to the fraud. See Hajji Abdu Nasser Katende vs. Vathalidas Haridas & Co. Ltd, CACA No.84 of 2003

In the present case, the vendor/ seller of the suit land to the 1<sup>st</sup> defendant was just a care taker with no interest in the suit land at all, which means he did not have a title and the 1<sup>st</sup> defendant as the purchaser also has no title over the suit land.

In the circumstance, the 1<sup>st</sup> defendant cannot be a bona fide purchaser.

Issue No. 2 is answered in the negative

**Issue No.3: Whether the Plaintiff fraudulently obtained registration of the suit land in her names**

There is no evidence tendered by the defendants to prove any act of fraud committed by the plaintiff since she started processing the leasehold certificate during the life time of her late mother and before the 2<sup>nd</sup> defendant sold the suit land to the 1<sup>st</sup> defendant.



Issue No.3 is answered in the negative

**Issue No.4: Whether the 1<sup>st</sup> Defendant is entitled to be indemnified by the 2<sup>nd</sup> Defendant.**

The 2<sup>nd</sup> defendant having sold the land which did not belong to him, he is under a duty to refund the 1<sup>st</sup> defendant's money.

Issue No. 4 is answered in affirmative.

**Counter-claim**

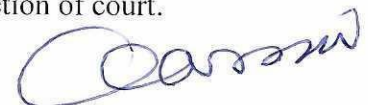
Having found that the Plaintiff is the lawful owner of the suit land, the counter claim stands to be dismissed with costs to the plaintiff.

**Issue No. 5: What are the remedies available to the parties?**

**a) General damages**

The plaintiff prayed for general damages.

The position of the law is that general damages are awarded at the discretion of court.



Considering the amount of inconvenience the plaintiff went through when she found a house constructed on her land without her consent, she is awarded Ugx.10,000,000/= (ten million shillings) for general damages at an interest of 12% from the date this judgment.

**b) Costs**

The general rule is that costs are awarded to the successful party. However, the plaintiff and the defendants being relatives, each party shall bear its own costs.

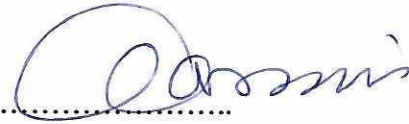
In the result this suit succeeds in the following terms;

- i. It is declared that the Plaintiff is the lawful owner of Volume 3758 Folio 11 Plot No. 38 land at Erute Road, Lira Municipality in Lira District measuring approximately 0.352 Hectares

- ii. An eviction order is issued against the 1<sup>st</sup> Defendant, her agents and servants from the suit land,
- iii. A permanent injunction is issued restraining the defendants and or their agents from trespassing onto the plaintiff's land or interfering with it in any way
- iv. The plaintiff is awarded Ugx. 10,000,000/= as general damages at 12% from the date of this judgment.
- v. Each part shall bear its own costs.

I so order

Dated and delivered at Lira this 17<sup>th</sup> day of January 2024



ALEX MACKAY AJIJI

JUDGE