

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT MBALE**

**HCT-04-CV-CS-0060-2010**

**SAMSON PHILMON BARASA.....PLAINTIFF**

**VERSUS**

**ASEKENYE CATHERINE .....DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

Through his lawyers M/s Nagemi & Co. Advocates, the plaintiff, **Samson Philemon Barasa** sued the defendant **Asekenye Catherine** for declaratory orders, general damages with interest and costs for recover of land.

According to the plaint, the suit seeks for a declaration that the defendant's name was entered on the certificate of title for Freehold Register Volume 475 Folio 19 Plot 174 Samia Bugwe in error on account of fraud and illegality. The plaintiff seeks for an order of cancelation and substitution of the defendant's name with that of the plaintiff on the said certificate. He also seeks for a permanent injunction to restrain the defendant from trespassing on the suit land, damages for the inconvenience and costs of the suit.

From the evidence on record, the plaintiff claims that at all material times he is and was a bonafide purchaser for value of two separate big chunks of customary land

from two different persons namely **Pascal Alegyo Pamba and Agaitano Wanyama** (joint vendors) and **Ouma Andrew**. The purchase was made in 1985 and 1995 respectively. The plaintiff says he developed the suit land and built thereon a residential house and used part of it for farming. That the plaintiff and defendant once lived on the suit land as husband and wife before they divorced as per annexures SP BI of Matrimonial Cause 17/1999. After divorce, the plaintiff enjoyed exclusive, peaceful, quiet and uninterrupted possession of the suit property until about 2008.

That by a letter dated 7<sup>th</sup> August 2008, the defendant through her lawyers Muhibura & Co. Advocates asserted adverse claims over the suit property because the defendant allegedly applied for conversion of the customary suit land fraudulently to freehold tenure without the plaintiff's knowledge, consent and/or permission.

Consequently the defendant fraudulently acquired a certificate of title duly registered into her names. The particulars of fraud are listed in the plaint and she represented herself as married to the plaintiff. She took possession, engaged armed men to guard the property and threatened to shoot the plaintiff.

The defendant did not defend the suit and an interlocutory judgment was entered and the suit was set down for formal proof.

The only issue framed for determination is;

- Whether the plaintiff is entitled to the reliefs sought in the plaint.

From the evidence on record adduced by the four prosecution witnesses I am satisfied on a balance of probabilities that the plaintiff has proved his claim against

the defendant. According to PW.1's evidence which was minutely corroborated by that of PW.2, PW.3 and PW.4, the plaintiff is the one who purchased the suit land from both PW.2 and PW.4's parents who are since deceased.

PW.1 developed the land and erected a magnificent house on the land and a well. He opened the virgin land for cultivation. At the time, he lived with the defendant as husband and wife but have since divorced at the instance of the defendant. The suit land was never a subject in the divorce proceedings. Behind the plaintiff's back the property was transferred into the names of his former wife. This was revealed by M/s Muhibura & Co. Advocates, yet, at the time the defendant was not living in the home. The plaintiff tried to access the property but he was stopped by armed guards.

The divorced wife processed the title Exhibit P.2 without the knowledge of the plaintiff who lodged a caveat on 10 July 2009.

The plaintiff has adduced cogent evidence that he was the bonafide purchaser of the suit land. He took possession and owned the property. He developed the property which he used together with the defendant prior to the divorce at the instance of the defendant. Thereafter he enjoyed exclusive, peaceful and quiet possession until 2008.

In the circumstances it was fraudulent for the defendant to go ahead and process a land title for the same property behind the back of the plaintiff knowing that they were divorced.

In the divorce proceedings or Decrees, there was no mention of the suit property.

**PW.3 Mugeni Joseph** the chairperson Busia District land board helped show how the defendant fraudulently transferred the land into her names. Particulars of fraud that have been proved are;

- a. The defendant illegally and unlawfully surveyed and caused the conversion of the plaintiff's customary land to a freehold land.
- b. The defendant made a false statement that she is a married woman to the plaintiff in the locality of the land yet she divorced.
- c. She made herself to be registered on the Certificate of title without giving the actual value of the land.
- d. She made herself to be registered as proprietor on the Certificate of title when she had no proprietary interest in the property after divorce.
- e. She held out as a married person occupying the suit property yet she knew she was not.
- f. She misrepresented and falsified her endorsement to conceal her true identity during the process of registration.
- g. She did not reveal the developments on the suit land and forged the names of the owners of adjacent land to the suit land.
- h. The defendant under declared the value of the suit property in the lease offer and the consent form to ease the process and evade payment of the appropriate stamp duty on the lease.
- i. The defendant avoided to consult the plaintiff who is the rightful proprietor of the customary interest in the suit land in order to evade the truth that the plaintiff did not execute the requisite consent, permission or acceptance to convert the same to freehold tenure.

The plaintiff has on a balance of probabilities proved fraud on the part of the defendant. The defendant had no proprietary interest in the suit land. The suit land

belongs to the plaintiff. The purported land title acquired is declared null and void on account of fraud and illegality.

The plaintiff sought for orders from this court that *inter alia*.

- (i) The certificate of title relating to the suit property be rectified by cancelling, striking or erasing out the name of the defendant, and;
- (ii) An order to the Chief Registrar of titles to enter, substitute and register the plaintiff's names on the said certificate of title.

I am uncomfortable to grant the above prayers. It has come out clearly that the defendant used false information and misrepresentations to acquire freehold title for the suit land.

All the preliminary documentation is not correct or accurate. It will be safer for the plaintiff to return to the position before the fraud was committed and process registration of his land through a proper process.

The title acquired by the defendant is incapable of ratification but can out rightly be cancelled. The entries into the Register book relating to suit land shall be cancelled. Freehold Register Volume 475 Folio 19 Plot 174 Samia Bugwe is hereby cancelled. The plaintiff is free to convert his customary land into land under the Registration of Titles Act.

From the evidence adduced by the plaintiff, it has not been proved that he is entitled to mesne profits. However for the inconvenience he encountered at the hands of the defendants through her fraudulent acts, the plaintiff is entitled to

general damages. He will be awarded general damages of shs.15,000,000/= which will carry interest at court rate from the date of judgment till payment in full.

I will also grant a permanent injunction against the defendant restraining her, her agents, servants and employees from interfering with or alienating the suit property.

The plaintiff shall get the taxed costs of this suit.

In summary, judgment is entered for the plaintiff and it is hereby ordered that;

- (1) The suit property is absolutely and exclusively owned by the plaintiff.
- (2) The Certificate of title acquired in the names of the defendant for Freehold Register Volume 475 Folio 19 Plot 174 Samia Bugwe is null and void on account of illegality and fraud.
- (3) The certificate of title relating to the suit property be cancelled by the Registrar of titles and the entry in the register book be deleted.
- (4) The plaintiff is awarded 15,000,000 (fifteen million) as general damages to carry interest at court rate from the date of judgment till payment in full.
- (5) A permanent injunction is granted against the defendant restraining her, her agents, servants and employees from interfering with or alienating the suit property.
- (6) The plaintiff shall get the taxed costs of this suit.

**Stephen Musota**

**JUDGE**

**29.01.2013**