

- [3] The defendant on the other hand, in its Written statement of defence (WSD) and counter claim dated 24/2/2017, denied the plaintiff's allegations and claimed that it has been and remains in possession of the suit property that was inherited from the defunct **Uganda National Parks** by operation of the law. That the plaintiff was fraudulently registered as the proprietor of the suit land in total disregard of the defendant's interest in the land.
- [4] In the course of hearing the suit, the defendant successfully applied to have **Uganda Land Commission** (ULC) added as a party. The defendant filed a counter claim against both the plaintiff and ULC as counter defendants and averred that the plaintiff acquired registration as proprietor of the suit property through connivance with ULC without giving the defendant a right to be heard. That ULC ignored the defendant's statutory interest in the suit property while granting the lease and causing registration of the suit property in favour of the plaintiff.
- [5] That as a result of the counter defendants' fraudulent and illegal actions, the defendant has suffered loss, damage, embarrassment and inconvenience for which it is entitled to general damages.
- [6] The defendant/counter claimant therefore sought the following orders.
- i. A declaration that the counter claimant is the lawful owner of the suit land.
 - ii. Cancellation of the 1st Counter defendant as the registered proprietor of the suit land.
 - iii. General damages.
 - iv. Punitive damages against the 2nd Counter defendant.
 - v. Costs of the counter claim.

Counsel Legal representation

- [7] At the hearing of the suit, the Plaintiff/1st counter defendant was represented by **Mr. Gyabi of Gyabi & Co Advocates, Mbale** and the Defendant/counter claimant was represented by **Mr. Ali Luzinda from UWA Legal Unit, Kampala**. Both counsel filed their clients' written statements and submissions as directed by court. As regards the 2nd counter defendant (**ULC**), it neither filed a defence nor did any of its officials appear in court during the hearing of the suit.
- [8] Counsel for the defendant/counter claimant submitted that an interlocutory judgment was entered against the 2nd counter defendant (**ULC**) by this court, the perusal of the record however, does not reflect any evidence that ULC was either served with court process/pleadings or that any interlocutory judgment was indeed, entered against the 2nd counter defendant (**ULC**). The basis of counsel for the defendant on this aspect is therefore not clear.
- [9] During the joint scheduling, the following issues were agreed upon for determination of the suit.
- i. Whether the plaintiff lawfully acquired title of the suit property/land.
 - ii. What remedies are available to the parties.

BURDEN OF PROOF:

- [10] **S.101 of the Evidence Act** provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person. In **SEBULIBA VERSUS COOPERATIVE BANK LTD (1982) HCB 129**, it was held that the burden of proof in civil proceedings lies upon the person who alleges and the standard of proof is on the balance of probabilities.

[11] In the instant case, the burden is on the plaintiff to prove that the suit land lawfully belongs to him and that the defendant is a trespasser.

Resolution of the Issues:

Issue No. 1 Whether the plaintiff lawfully acquired title of the suit land/property.

[12] To prove ownership of the suit property/land, the plaintiff **Stanley Watenga** (PW1), testified that he bought the suit property **Plot 21C Masaba Road** from **Watuwa Anthony Khauka** in May 2003 for a consideration of Ugx 12,000,000/= The purchase agreement is **P.Exh.II**. Thereafter, he obtained a Certificate of title **P.Exh.I** under Leasehold Register No. **ULC/152/1857**.

[13] **Watuwa Antony** (PW2) from whom the plaintiff purchased the suit property, testified that he applied for a Plot in September 1995 after seeing a circular inviting civil servants to apply for pool houses on vacant plots and in 2001, he was given an offer for plot **21C Masaba Road, Mbale Municipality** upon which he was granted a lease by ULC and eventually, he was registered as the proprietor. He later sold his proprietary interest to the plaintiff.

[14] The defendant on the other hand, through its witness **Kizza Fredrick Kayanja** (DW1) led evidence to the effect that he is the chief warden of Mt. Elgon Conservative Area who among other things, is in charge of all properties of the defendant including the suit property whose headquarters are situated on **plot 21A, B, and C** Block 23 of which the plaintiff is claiming **plot 21C**. He testified further that the defendant inherited the said land in 1996 from the defunct **Uganda National Parks** pursuant to the provisions of the **Uganda Wildlife Statute 14 of 1996**. That however, the suit land was initially described as

plot 21 Bishop Masaba Road, Mbale was registered under the ULC which subdivided it into 3 separate plots; **21A, 21B, and 21C** without the knowledge and consent of the defendant. That therefore, the leases and Certificates of title over the suit land were illegally and fraudulently created by ULC and the subsequent transactions thereon by various 3rd parties who included the plaintiff were intended to defeat the defendant's interest on the suit land.

[15] Lastly, **DW1** stated that as a result of the illegal and fraudulent subdivision of **plot 21** and the subsequent transactions thereon, the defendant caveated the said plots in 2008 (**D.Exh.1**) and made several repeated unsuccessful demands to ULC and the **Ministry of Lands, Housing and Urban Development** to cancel the leases illegally and wrongfully created over the suit land (**D.Exh.II & III**).

[16] Counsel for the defendant submitted that the suit property was not available to be dealt in by the ULC while relying on **Section 96 of the Uganda Wildlife Statute No.14 of 1996** which is to the effect that *“All property and assets which were vested in the Game Department or the Uganda National Parks Board of Trustees immediately before the commencement of this statute shall vest in the Uganda Wildlife Authority, subject to all interests, liabilities, charges and trusts affecting the property.”*

[17] Counsel further relied on the authorities of **VENANSIO BABWEYAKA & 3 ORS Vs KAMPALA DLB & ANOR H.C.C.S.No.511 OF 2001** and **KAMPALA DLB & ANOR Vs VENANSIO BABWEYAKA & ORS C.A No. 57 OF 2005 (C.A)** and concluded that the leasing of the suit property by the ULC to the plaintiff was unlawful and the same was not available for

leasing and that as a sitting tenant, the defendant ought to have been given the first priority to buy.

[18] As can be seen from the foregoing defendant's submissions, it is clear that the **ULC** which had the mandate to manage and deal with all land held by Government departments under its then scheme/policy of offering and selling of Government pool houses, sold the suit **plot 21C** to PW2 who in turn sold his proprietary interest to the plaintiff (PW1).

[19] The defendant however alleges that the plaintiff in bad faith and with dishonesty, never bothered to conduct due diligence while purchasing the suit land and deliberately disregarded the defendant's interests in the suit land.

[20] The defendant in this case, however has not shown by way of evidence what interests prior to the offer and sale of the suit land by ULC, it had on the land which the plaintiff ignored. The plaintiff on his part led unchallenged evidence that at the time of the purchase of the suit premises, they were occupied by the vendor **Mr. Watuwa** (PW2). There is no evidence that was led by the defendant that its predecessor owned or had possessory rights over the suit land.

[21] The available evidence is that the suit property was initially owned by government and under the management of ULC, the suit property was offered and sold to **PW2** under the sale of government pool houses scheme, **Ministry of Lands, Housing and Urban Development**. **PW2** later passed on his interest to the plaintiff. The defendant's (DW1) mere claims and statements that the defendant inherited the suit land from the defunct **Uganda National Parks** by operation of the law without any evidence that the property was owned by the National Parks is not enough.

- [21] As a result, I find that the plaintiff is innocent and a *bona fide* purchaser for value. The caveat lodged by the defendant on the suit property on 14/11/2008 (**D.Exh.1**) came long after ULC had disposed of the suit property and the plaintiff was already registered as proprietor thereon in 2003 (**P.Exh.1**). It is also not clear as to why the defendant never took the advantage of the sale of pool house scheme and apply for the suit plot if at all it was in occupation as counsel for the defendant claims.
- [22] In the circumstances, where there is no evidence that the defendant made an attempt to apply for the suit land from government and or that it occupied the suit land, it cannot be said that due process and rules of natural justice were not followed in allocating the suit land to the plaintiff and his predecessor.
- [23] As regards the counter claim, it is founded on fraud. In order to succeed on an action based on fraud, the plaintiff must attribute the fraud to the transferee, that is, by showing that the defendant is guilty of some dishonest act or must have known of such act by somebody else and taken advantage of such act; **KAMPALA BOTTLERS LTD Vs DOMANICO (U) LTD S.C.C.A NO.22 OF 1992.**
- [24] In this case, the defendant/counter claimant did not lead any evidence to prove fraud against the plaintiff/1st counter defendant. The claim by the defendant that the plaintiff ought to had done due diligence is baseless. The suit land was government property which **PW2** had lawfully acquired and accordingly purchased.
- [25] In the premises, I find the 1st issue in the affirmative. The plaintiff lawfully acquired title to the suit property/land. It follows therefore, that the actions of the defendants to forcefully occupy the suit **plot 21C** by the defendant amount to

trespass since it is an admitted fact that it is the defendant in possession.

Issue 2: What remedies are available in the circumstances:-

[26] Having found that the plaintiff is the rightful owner of and lawfully acquired title to the suit property comprised in **LRV 3132 Folio 14 Plot 21C Masaba Road, Mbale Municipality**, judgment is found in favor of the plaintiff with the following orders:-

- a) The entire counter claim is dismissed with costs to the 1st counter defendant.
- b) A declaration that the plaintiff is the registered proprietor of the suit property/land.
- c) A declaration that the defendant is a trespasser.
- d) Vacant possession and a permanent injunction restraining the defendant by themselves, agents, employees or workmen from further trespass on the suit land.
- e) General damages of **Ugx 30,000,000/=** considering the economic inconvenience the plaintiff has suffered resulting from conversion of his building materials that were on the suit plot, conversion of his gate, none use of the premises since 2012, psychological torture inflicted by the defendant's intentional, unlawful entry and the defendant's callous behavior and conduct.
- f) Costs follow the event; **Section 27 (1) C.P.A.** Costs are accordingly awarded to the plaintiff as the successful party.

I so order.

BYARUHANGA JESSE RUGYEMA

JUDGE

27th/9/2021.