

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

CIVIL SUIT NO. 536 OF 2012

CHARLES NKOJO AMOOTI ::: PLAINTIFF

VERSUS

- 1. KYAZZE FRANCIS**
- 2. UGANDA LAND COMMISSION**
- 3. THE COMMISSIONER OF LAND REGISTRATION ::: RESPONDENTS**

BEFORE: HON. MR JUSTICE BASHAIJA K. ANDREW

J U D G M E N T.

CHARLES NKOJO AMOOTI (hereinafter referred to as the “Plaintiff”) brought this suit against the three Defendants jointly for following orders and declarations:-

- (a) A declaration that the Plaintiff is the lawful and rightful owner of land comprised in Leasehold Register Volume No. 3941 Folio 3 measuring 202 hectares.**
- (b) An Order of cancellation of the 1st Defendant’s Certificate of Title.**
- (c) An eviction order and an order for vacant possession of the suit land against the 1st Defendant.**
- (d) A Declaration that the grant of a lease by the 2nd Defendant to the 1st Defendant and the subsequent issuance of a Certificate of Title carved out of the suit land by the 3rd alienating or interfering, in any manner whatsoever with the suit land is null and void.**
- (e) General damages**
- (f) Interest of 25% per annum from the date of judgment till settlement in full**
- (g) Costs of the suit**
- (h) Any other relief this court may deem fit.**

The 2nd and 3rd Defendants were duly served with summons, which they acknowledged, but opted to file no defence. The 1st Defendant was served by way of substituted service in that he was unknown to the Plaintiff, and so were his whereabouts. The matter proceeded *ex parte* under **Order 9 r.10 CPR**, and the Plaintiff adduced evidence to formally prove his case.

Background facts.

The Plaintiff by **Minute No. 13/2007 (a) of 23/4/2007** was granted lease by 2nd Defendant for land comprised in **LRV 39421 Folio 3** known as **Plot 225 Kyaggwe Block 11** (hereafter referred to as the “suit land”). He paid all the necessary dues, and got registered as the proprietor and was issued with a Certificate of Title by 3rd Defendant. On 23/9/2009 he was registered for the initial term of five years commencing on 6/3/2008. He took possession and prepared to commence the process of developing the suit land.

Unknown to the Plaintiff, the 2nd Defendant had on 1/2/2008 issued another minute granting to the 1st Defendant lease over the same suit land. On 29/8/2012 when the Plaintiff sought extension of the initial term of five years to enable him submit architectural plans to relevant authorities for approval before he could commence with developing the suit land, the 2nd Defendant declined to grant the extension on grounds that they had allocated the said land to someone else, hence this suit.

Issues.

- (1) Whether the Plaintiff was the registered proprietor of the suit land.***
- (2) Whether the said land was available.***
- (3) Remedies available to the parties.***

Mr. Mugenyi Arthur represented the Plaintiff and made submissions which I have taken into consideration in this judgment, but have not found it necessary to reproduce them. The Plaintiff also gave his testimony and adduced the exhibits to formally prove his case, which I have referred to in this judgment.

Resolution.

Issue 1:

The Plaintiff attached a copy of Certificate of Title to his pleadings as “Annexure A”, which shows that he got registered on 23/1/2009 at 4:47p.m. vide *Instrument No. 408073*. The title was issued on 29/1/2009 for ***LRV 3941 Folio 3 Plot 225 Kyaggwe Block 11 land at Namanve Mukono District***; for the initial term of five years. The names on the title are “***KOOJO CHARLES AMOOTI of P.O. Box 20032, KAMPALA*** who happens to be the Plaintiff herein. By adducing the certificate of title in court, the Plaintiff has conclusively proved that he is the lawful registered proprietor of the suit land in accordance with provisions of ***Section 59 of the Registration of Titles Act***, which stipulate as follows;

“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”

It would appear clearly from the above cited provision that the production in court as evidence of a certificate by title of a party named therein is sufficient proof of ownership by that party of land described in the certificate of title unless, of course, the case falls within the provisions of ***Section 176 of the Registration of Titles Act (RTA)***. For ease of reference I quote the relevant parts only.

“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases—

(a);

(b);

(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

(d).....;

(e) the case of a registered proprietor claiming under a certificate of title prior in date of registration under this Act in any case in which two or more certificates of title may be registered under this Act in respect of the same land, and in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule of law or equity to the contrary notwithstanding.”

The Plaintiff in the instant case adduced in evidence a certificate of title showing that he is the registered proprietor of the suit land. There is no evidence to the contrary that he is not the registered proprietor of the suit land, or that he obtained the registration through fraud. Accordingly, the first issue would be answered in the affirmative.

Issue 2:

It is evident that two titles were issued by the same authority in respect of the same land to two different persons. The Plaintiff obtained his pursuant to *Minute 13/2007 (a) 217* issued on 23/04/2007, and the 1st Defendant pursuant to a minute dated

1/02/2008. It is the established law that no two titles can be properly issued over the same land. The title issued earlier in time supersedes the subsequent one; which must be cancelled. This is the position which was taken in the case of ***Livingstone .M. Sewanyana v. Martin Alier, S.C.C.A No. 40 of1991 [1992] KARL 116***; which this court is bound to follow.

Applying the same principles to the known facts of the instant case, since the title of the 1st Defendant was issued subsequent to one earlier issued to the Plaintiff, it would follow that the 1st Defendant's title was issued when there was a subsisting lease; hence it was issued in error. No two concurrent titles can be properly issued over the same land. The Plaintiff's lease had not yet expired when the 2nd Defendant issued another minute creating yet another lease over the same land in favour of the 1st Defendant. The suit land was not available for leasing. Therefore, on strength of the authority of the ***Livingstone .M. Sewanyana v. Martin Alier case (supra)*** the 1st Defendant has no lawful and or valid title over the suit land.

Remedies.

The Plaintiff prayed for general damages for the inconvenience he has been put through, of not using his land for all that time. The settled position of the law is that the award of general damages is at the discretion of court, and always as the law will presume to be the natural consequence of the defendant's act or omission. See: ***James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993.***

Secondly, in the assessment of the quantum of damages, courts are mainly guided, *inter alia*, by the value of the subject matter, and the economic inconvenience that a party may have been put through. See: ***Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305.*** Further, a plaintiff who suffers damage due to the wrongful act of a defendant must be put in the position he or she would have been in had she or he not suffered the wrong. See: ***Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.Civ.Appeal No.17 of 1992.*** On the

strength of these authorities, the Plaintiff is entitled to the awarded general damages. The Plaintiff also prayed for costs, **Section 27(2) of the Civil Procedure Act** is to the effect that costs follow the event unless for good reasons court directs otherwise. There are no reasons to disentitle the Plaintiff in this case big awarded cost of the suit.

The Plaintiff further prayed for interest on costs and general damages. The guiding principle is that interest is awarded at the discretion of court See: **Uganda Revenue Authority v. Stephen Mbosi, S.C.C.A No. 26 of 1995**, but like in all other discretion it must be exercised judiciously taking into account all circumstances of the case. See **Liska Ltd.v.DeAngelis [1969] E.A 6; National Pharmacy Ltd v. KCC [1979] HCB 256, Superior Construction & Engineering Ltd v. Notay Engineering Ltd. H.C.C.S. No. 24 of 1992**. Accordingly, it is declared and ordered and follows;

- (a) The Plaintiff is declared the lawful owner of the suit land.**
- (b) The Commissioner Land Registration is ordered to cancel any certificate of title issued to the 1st Defendant in respect to the suit land.**
- (c) The 1st Defendant is ordered to give vacant possession of the suit land and/or be evicted.**
- (d) The Plaintiff is awarded general damages of UShs. 10Million.**
- (e) The Plaintiff is awarded costs of the suit**
- (f) The amount in (d) above shall attract an interest rate of 25% per annum from the date of judgment till payment in full.**

**BASHAIJA K. ANDREW
JUDGE
26/11/2013**