

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION
CIVIL SUIT NO. 505 OF 2012**

ASABA DICKSON ::: PLAINTIFF

VERSUS

- 1. P.S. SEBYALA**
- 2. KOLLY MONICA GOLOOBA-TOOGO ZALWANGO**
- 3. COMMISSIONER FOR LAND REGISTRATION ::::::::::: DEFENDANTS**

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

JUDGMENT:

ASABA DICKSON (hereinafter referred to as the “Plaintiff”) brought this suit against **P.S. SEBYALA, KOLLY MINICA GOLOOBA-TOOGO ZALWANGO, and COMMISSIONER FOR LAND REGISTRATION** (hereinafter referred to as the “1st”, “2nd” and 3rd Defendants” respectively) seeking orders for the cancellation of the Special Certificate of Title issued under *Instrument No. KLA 14989 of 11/09/85*; entries on the Certificate of Title for ***Kibuga Block 28 Plot 681 Land at Makerere*** (hereinafter referred to as the “suit land”) general damages and mesne profits and costs of the suit. The Plaintiff alleges that the said Certificate of Title was fraudulently transferred from the names of **EDIRISA SEBUGWAWO** of P.O. Box 6444, Kampala into the names of P.S. Sebyala and later to the 2nd Defendant by the 3rd Defendant.

The 1st and 2nd Defendants were served with summons by way of substituted service since their addresses and places of abode were unknown to the Plaintiff,

while the 3rd Defendant was served personally. There is proof of service on court record, but none of the Defendants filed a defence. The Plaintiff then applied for interlocutory judgment which was entered on 14/01/2014. The matter was set for formal proof which was heard on 09/04/2014.

Background:

The Plaintiff is the Administrator of the estate of the late Zeresire Elijah which he obtained under ***Administration Cause No. 348 of 2011***. The said Zeresire Elijah purchased land comprised in ***Kibuga Block 28 Plot 681*** at Makerere from one Edirisa Sebugwawo who duly surrendered to the purchaser the Duplicate Certificate of Title and signed transfer forms. The late Ziresire Elijah initiated the process of having himself registered as proprietor of the suit land by paying the stump duty and registration fees but could not complete the process

When the wife Eurelia Mugyema tried to conclude the process in 1992 after the death of Ziresire, she found that a Special Certificate of Title had been issued in the names of Edirisa Sebugwawo in 1985 from whom her late husband had purchased the suit land and then a transferred to the 1st and 2nd Respondents respectively. When contacted, Edirisa Sebugwawo denied ever transferring the title to any of the Defendants, and objected to the transactions as fraudulent.

Two issues were framed for determination of court as follows;

1. ***Whether the 1st and 2nd Defendants fraudulently registered themselves as proprietor of land comprised in Kibuga Block 28 Plot 681 land at Makerere.***
2. ***Whether the Plaintiff is entitled to the reliefs sought.***

Resolution.

Issue No.1: Whether the 1st and 2nd Defendants fraudulently registered themselves as proprietors of land comprised in Kibuga Block 28 Plot 681 at Makerere.

It is the established law that fraud means actual fraud or some act of dishonesty. In ***Waimiha Saw Milling Co. Ltd.v. Waione Timber Co. Ltd.(1926) A.C 101 at p. 106*** it was held that fraud implies some act of dishonesty. In ***Assets Co. v. Mere Roihi (1905) A.C 176*** it was also held that fraud in actions seeking to affect a registered title means actual fraud, dishonesty of some sort not what is called constructive fraud; an unfortunate expression and one may opt to mislead, but often used for want of a better term to denote transactions having consequences in equity similar to those which flow from fraud. The same definition was applied by the Supreme Court and the Court of Appeal of Uganda in the case of ***Kampala Bottlers Ltd. v. Damanico(U) Ltd. Civil Appeal No. 22 of 1999;*** and ***David Sejjaaka v. Rebecca Musoke, Civil Appeal No. 12 of 1985*** respectively where it was further held that fraud should be imputed on to the transferee.

In the instant case, according to the particulars of fraud pleaded in the plaint, the 1st and 2nd Defendants made false declarations as to the Duplicate Certificate of Title getting lost, and proceeded to apply and obtain a Special Certificate of Title without the knowledge of the then registered proprietor one Edirisa Sebugwawo. The 1st and 2nd Defendants either jointly or severally forged transfer documents of the land with a forged signature of the then registered proprietor. PW1 Asaba Dickson testified that the 2nd Defendant who now appears as the registered proprietor on the title has never come to the property to ascertain its true proprietorship before and after her purported purchase.

All the above facts are uncontroverted because as earlier stated, the Defendants never filed their defence despite being served with summons. In ***Serunjoji v. Katabira [1988-90] HCB 148***, it was held that a party who does not file a defence is deemed to have admitted the allegations in the plaint. Equally by the 1st and 2nd Defendants not filing their defence to the suit, it would be deemed that they admitted to fraud as particularized in the plaint. Accordingly, it is found that the 1st and 2nd Defendants fraudulently registered themselves as proprietors of suit land.

Issue No.2: Whether the Plaintiff is entitled to the reliefs sought.

The Plaintiff proved that he is the Administrator of the estate of the late Ziresire Elijah, who had purchased the suit land from the registered proprietor Edirisa Sebugwawo. The vendor executed transfer forms for the property in favour of the deceased. Clearly the deceased had equitable interest in the suit land as the equitable owner at the time of his demise. See: ***Sentongo Godfrey v. Mukono Industries (U) Ltd., H.C.C.S No. 55 of 2012***. The estate of the late Ziresire Elijah in control of the property by the time of his death, and still are in control of the suit property. In ***Katarikawe v. Katarikawe & Another [1977] HCB 187***, it was held that though in contract of sale of land an unregistered instrument of transfer is not effective to transfer title, the purchaser acquires an equitable interest in the land. Therefore, under ***Section 279 of the Succession Act***, the Plaintiff as the Administrator to the deceased's estate is entitled to have all estate property.

Further, since it is the finding of court that the 1st and 2nd Defendants fraudulently got registered as proprietors of suit land, this court finds the 2nd Defendant liable to ejectment and/or recovery of land from her under ***Section 176 (c) of the Registration of Titles Act***. As was held in ***Lwanga v. The Registrar of Titles***

[1980] HCB 24, registration obtained by fraud is void, and the title impeachable.
See also: *Edward Musisi v. Gridlys Bank (U) Ltd. & 2 Others [1983] HCB 39*.

It is therefore ordered as follows;

- 1. The 3rd Defendant cancels the Special Certificate of Title issued in the names of the 2nd Defendant as registered proprietor of land comprised in Kibuga Block 28 Plot 681 land at Makerere.*
- 2. The 3rd Defendant registers in the names of the Plaintiff as the Administrator of the estate of the late Ziresire Elijah on the Duplicate Certificate of Title for land comprised in Kibuga Block 28 Plot 681 land at Makerere .*
- 3. No general damages are awarded to the Plaintiff since there is no basis for them as no evidence was adduced to prove the same. See: Takiya Kashwahiri & A'nor v. Kajungu Denis, C.A.C.A. No. 85 of 2011.*
- 4. The Plaintiff is awarded costs of the suit payable by the 2nd and 3rd Defendants.*

BASHAIJA K. ANDREW

JUDGE

10/04/2014