

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**LAND DIVISION**

**HIGH COURT CIVIL SUIT NO.288 OF 2008**

**QUALITY**

**UGANDA**

**LIMITED :::PLAINTIFF**

**VERSUS**

- 1. THE REGISTER TRUSTEES OF THE MUSLIM (SUNNI) ASSOCIATION ::DEFENDANTS**
- 2. THE REGISTRAR OF TITLES**

**JUDGMENT BY HON.MR. JUSTICE JOSEPH MURANGIRA**

The Plaintiff through its Lawyers KNG Advocates filed this suit against the defendants jointly or and severally seeking the following orders; that:-

- a) An order directing the 2<sup>nd</sup> defendant from cancelling the plaintiff's certificate of Title in respect of the land comprised in Lease Hold Register Volume 3863 Folio 17 Plot 6 Martin Road.**
- b) A declaration that the plaintiff is the owner/registered proprietor of the suit/property.**
- c) A permanent injunction restraining the 1<sup>st</sup> defendant or his agents and workmen, employees, successors in title from committing any acts of trespass on the suit property.**
- d) Costs of the suit.**
- e) General Damages.**
- f) Interest.**

**g) Any other relief.**

The 1<sup>st</sup> defendant through its lawyers M/S Kawanga & Kasule Advocates filed in Court a written statement of defence denying the contentions by the plaintiff in the plaint. The 1<sup>st</sup> defendant also filed a counterclaim against the plaintiff seeking the following remedies; that:-

- a) A declaration that the 1<sup>st</sup> defendant is the lawful owner /occupant and equitable owner of the suit premises.**
- b) A declaration that the plaintiffs certificate of title is null and void.**
- c) Special damages.**
- d) Compensatory General Damages.**
- e) Exemplary/punitive/aggravated damages.**
- f) Interest.**
- g) Costs.**
- h) Any other relief.**

The parties framed the following issues:-

- 1. Whether the defendant was a lawful occupant and equitable owner of the suit premises as at 18<sup>th</sup> July, 2008.**
- 2. Whether the plaintiff's title is subject the 1<sup>st</sup> defendant's interest in the suit land.**
- 3. Whether the plaintiff fraudulently acquired the certificate of title of plot 6 Martin Road.**
- 4. Whether the plaintiff's certificate of title is null and void.**
- 5. Remedies available to the parties in the suit and the counterclaim.**

In support of its case the plaintiff adduced evidence from the following witnesses:-

- a) Apollo Mutungi, the Chief Executive and Managing Director of the plaintiff, (PW1.)
- b) Kirumira Muhammed, Health Inspector in Kampala City Council,( PW2.)
- c) Kasiime Sarah, Secretary to Kampala District Land Board (PW3.)

The 1<sup>st</sup> defendant adduced evidence through the following witnesses:-

1. Nicholas Saali, a valuation Surveyor with Katuramu & Company, (DW1.)
2. Yusuf Shabdin, Chairman of the 1<sup>st</sup> defendant,( DW2.)

The Plaintiff relied on the following documentary Exhibits:-

1. Exhibit PW1 (a) Lease Offer for Plot 6 Martin Road, Kampala.
2. Exhibit PW1 (b) KCC receipt No. 00018351 amount of 20,000,000/= (twenty million shillings)
3. Exhibit.PW1 (c) KCC receipt No. 0026034 amount of 4,000,000/= (four million shillings).
4. Exhibit.PW1 (d) Certificate of Title of Volume No. 3863, Folio 17, photo 6 Martin Road.
5. Exhibit PW1 (e) letter dated 18/7/2008.
6. Exhibit PW1 (f) KCC receipt No.00030312 amount of 59,000/= (fifty nine thousand shillings).
7. Exhibit PW1 (g) letter dated 28/2/2007 to Chairman Kampala District Land Board.
8. Exhibit PW2 (h) letter dated 25/10/2006.

9. Exhibit PW2 (i) report by Chief Healthy Inspector's, office.
10. Exhibit PW3 (a) Lease Offer from Commissioner Land Administration dated 20/5.2008.
11. Exhibit PW3 (b) letter of offer from Kampala District Land Board dated 25/4/2008.
12. Exhibit PW3 (c) letter from Ag. Secretary Kampala District Land Board dated 13/9/2006.
13. Exhibit PW3 (d) Land Form 8, application for Plot 6 Martin Road.

It is important to note that the above Exhibits were allowed in evidence without any objection from the 1<sup>st</sup> defendant's Lawyers.

On the other hand, the 1<sup>st</sup> defendant relied on the following documents in support of its case:-

- 1) Exhibit DW1 – letter written by the 1<sup>st</sup> defendant to Kampala District Land Board dated 17/9/2006.
- 2) Exhibit DW2 report and valuation as at 18/7/2008.
- 3) Exhibit DW3 – letter dated 11/6/2008 by KGN Advocates to occupants of the suit land.
- 4) Exhibit DW4– letter dated 4/6/2008 from M/S Kawanga & Kasule Advocates to KGN Advocates.
- 5) Exhibit DW5 – letter from KGN dated 5/6/2008 to M/S Kasango & Kasule Advocates.

6) Exhibit DW6 – set of photographs.

7) Exhibits (a) to (d) – certified copies of KCC receipts.

The 1<sup>st</sup> defendant's documentary Exhibits were allowed in evidence without any objection, from Counsel for the plaintiff. It is also important to note that the 2<sup>nd</sup> defendant despite service on her the copies of the summons to file a defence with the plaint attached opted not to file a defence to this suit. This suit, therefore, proceeded in absence of the 2<sup>nd</sup> defendant. It is my considered opinion that the 2<sup>nd</sup> defendant is not contesting the plaintiff's suit.

After scheduling conference interparties, the parties:- the plaintiff and the 1<sup>st</sup> defendant filed a joint agreed facts; as shown herebelow; that:-

**“On 20/2/2007, the plaintiff applied for a lease on Plot No.6 Martin Road, Kampala measuring approximately 0.065 hectares and the same was granted on the 20/4/2008 by Kampala District Land Board for 5 years commencing on 20/5/2008. Prior to the grant of lease to the plaintiff, the 1<sup>st</sup> defendant had held a lease on the same piece of land which has expired way back on 31/12/1999. The plaintiff company applied to Kampala City Council and was granted permission to demolish any structures thereon and develop the plot. At that time there was a building structure which was demolished by the plaintiff.**

**The Ag. Commissioner Land Registration gave notice dated 26/6/2008 to the plaintiff of her intention to cancel the above certificate of title.**

**The plaintiff applied for and obtained an interim order to stop the cancellation of titles. The application was subsequent to the above suit. The 2<sup>nd</sup> defendant did not file pleadings to the suit although she was served.**

**The 1<sup>st</sup> defendant filed a defence and a counterclaim to the suit.”**

From the admitted facts by the parties it appears to me that the plaintiff's claim in the suit land and the documentary proof by the plaintiff are conceded to by the 1<sup>st</sup> defendant. This concession of the abovestated facts by the 1<sup>st</sup> defendant completely waters down the 1<sup>st</sup> defendant's defence and the counterclaim.

The parties were allowed to file written submissions together with authorities in support of their respective cases. From the pleadings in the plaint and the counterclaim and the evidence adduced by the parties it is my considered view that issues Nos. 3 and 4 have a direct impact on issues 1, 2 and 5.

Counsel for the plaintiff Mr. Guma Byomugisha, argued in his submissions issues 3 and 4 together. He evaluated the evidence adduced by the parties, cited the law and submitted that the plaintiff lawfully acquired the certificate of title to the suit land comprised in volume 3863 Folio 17 Plot 6 Martin Road, Kampala. That the plaintiff's said certificate of title is so clean. That the said certificate of title cannot be said to be null and void as is being alleged by the 1<sup>st</sup> defendant in its pleadings and evidence.

In reply, Counsel for the 1<sup>st</sup> defendant, Mr. Muhamad Ali Kajubi from Kawenga & Kasule Advocates submitted that the plaintiff acquired the suit land through fraud. He based himself on the following facts:-

- a) The plaintiff acquired title to the land with full knowledge of the 1<sup>st</sup> defendant's interest who is its neighbour with intention of defeating of the 1<sup>st</sup> defendant's unregistered interest in the suit land.
- b) Failed to carry out a physical inspection of land before acquiring it.
- c) In spite of the 1<sup>st</sup> defendant physical presence on the suit land, the plaintiff went ahead to process title to the suit land.
- d) The plaintiff caused a lease offer to be given to it without prior notification to the 1<sup>st</sup> defendant to exercise the option to renew their lease or not to object to the lease offer.
- e) The plaintiff by generally defeating the 1<sup>st</sup> defendant's option to renew the lease.

On this issue No.3, Counsel for the 1<sup>st</sup> defendant also relied on a number of authorities:

- i) **Kampala District Land Board and Another vs. National Housing & Construction Corporation, SCCA No.2 of 2004**, which defines fraud on a person obtaining registration with approved knowledge of **the existence of unregistered interest** on the part of some other person whose interest he knowingly and wrongfully defeats by such registration.
- ii) **John Katarihawe vs. William Katwiremu & Another [1997] HCB 187**, which is to the effect that if a person procures registration to defeat **an existing unregistered interest** on the part of another person of which he is proved to have knowledge, then such a person is guilty of fraud.
- iii) **Marko Matovu & others vs. Sseviri & others Civil Appeal No. 7 of 1978 reported in [1979] HCB** which was cited with approval by the Supreme Court in **Kampala District Land Board & Another vs. Vernasio Babweyaka & others, SCCA No. 2 of 2007** which laid down the procedure followed by the District Land Committees in processing applications for title to land held under customary lease or public land which is under the authority of the District Land Boards.

These are good authorities, however, I have read and internalized all the above cited authorities and in my view they don't apply directly to this instant suit before this Court. They are distinguishable in the circumstances of this case, as I shall endeavour to show hereinafter in this judgment.

In the instant matter there is no unregistered interest of the 1<sup>st</sup> defendant in the suit land as would be emphasized by the above cited cases. What we have in this case before me is that the lease that was granted to the 1<sup>st</sup> defendant by KCC expired in 1999. And that since that time up to date the 1<sup>st</sup> defendant had never bothered to make any application for renewal of its lease over the suit land.

The Courts of record in Uganda in their decided cases have set benchmarks in the definition of fraud regarding title acquisition. From the evidence on record that was adduced by PW1, PW2 and PW3 together with the documentary evidence relied on by the parties it is clear that the plaintiff cannot be held to have acquired the suit property by fraud mainly but not limited on the strength of the following:-

- i. It is not in despite that the 1<sup>st</sup> defendant's title expired in 1999. The plaintiff did apply and obtained a fresh lease about 9 (nine) years later, that is in 2008

from the lessor, Kampala District Land Board. The holder of the reversionary interest Kampala District Land is not sued by the 1<sup>st</sup> defendant in the counterclaim. This piece of evidence that was adduced by the plaintiff was never challenged by the 1<sup>st</sup> defendant in cross-examination.

- ii. The Secretary to the Kampala District Land Board (PW3) gave clear evidence touching the plaintiff's application and the eventual grant of the certificate of title to the suit land. Her evidence was never challenged in cross-examination. The 1<sup>st</sup> defendant never made attempts to renew their lease. Further, PW3 gave evidence that the lessor re-entered its suit land and genuinely allocated the same suit land to the plaintiff. With such evidence, there is no way I can fault the plaintiff.
- iii. The state of the physical appearance of Plot 6 was clearly borne out by the evidence of all the plaintiff's witnesses, particularly PW1, the Managing Director of the plaintiff, PW2, the Health Inspector of KCC as well as that of the Secretary to Kampala District Land Board. From their evidence, the suit land was in an abandoned state and that provided the reasons for the reversionary interest, that is, Kampala District Land Board to grant the lease to the applicant. The plaintiff did what was required of it. And if the 1<sup>st</sup> defendant was aggrieved, then it would have sued. Kampala District Land Board; which the 1<sup>st</sup> defendant failed to do.
- iv. The evidence of DW2, the trustee of the 1<sup>st</sup> defendant is very suspect and scanty in substance. He did not know that the land to which he is a trustee had no land title until he was awakened by the letter written to the occupants by the lawyers of the plaintiff. He did not know the tenants of the property to which he was a trustee and no tenant was brought out to make out any fact of occupancy. Occupancy only arose in the submissions of Counsel for the 1<sup>st</sup> defendant. The payment of moneys to Kampala City Council by the 1<sup>st</sup> defendant after the grant of the lease to the plaintiff is very inconsequential. The money was allegedly paid as ground rent against no grant.
- v. The evidence of DW1, the valuation surveyor was clearly hypothetical against misleading facts. This is clearly shown in evidence in cross-

examination. He was not clearly briefed by those who appointed him and this acts to the detriment of the 1<sup>st</sup> defendant.

- vi. The indefeasibility of the land title is captured under section 64 of the Registration of Titles Act granting only exceptions under Section 176 of the same Act, clearly holds in the instant case with the effect that the plaintiff's title is clean and paramount over any interest, equitable or otherwise. From the evidence in defence, the 1<sup>st</sup> defendant failed to create a doubt in the plaintiff's case.

The copy of the title was exhibited in Court showing that the plaintiff is the grantee, owner, proprietor or lessee of the suit land. The method of acquisition of the grant was clearly brought out in evidence, particularly of PW1 and PW3. The evidence of DW2 who assumed Chairmanship of the 1<sup>st</sup> defendant in 2006 was not helpful to the claim by the 1<sup>st</sup> defendant in the counterclaim, because he was not knowledgeable about the status of the property he was supposed to be in custody of and defend. He testified during cross-examination, that he did not have the documents such as titles concerning the suit property and that he was not aware that the title to the suit land had expired. According to his testimony he only knew of the expiry through correspondences between his lawyers and the plaintiff's lawyers in 2008. He could not state positively who the tenants in the suit property were. The incorporated bodies like the 1<sup>st</sup> defendant act through appointed officers and in this respect it would be the trustees to give evidence to support the 1<sup>st</sup> defendant's case. In essence, the evidence of DW1 and Dw2 does not show that the 1<sup>st</sup> defendant was in occupation of the suit land. The evidence on the Court record shows that the 1<sup>st</sup> defendant's interests in the suit land ceased in 1999 when its lease with the lessor, expired and Kampala District Land Board regained its reversionary interest in the suit land.

The 1<sup>st</sup> defendant never sued the lessor, Kampala District Land Board in my opinion, it is interpreted that it had no valid claims or/and rights over the suit land. In such circumstances, the 1<sup>st</sup> defendant has no valid claims against the plaintiff in the counterclaim and in defence.

In the premises, I answer issues 3 and 4 in favour of the plaintiff.

Further, as I have already alluded to hereinabove in this judgment that the aforesaid stated issues impact on issues 1,2 and 5 on the claim in the counterclaim. In the result, and for the reasons given on issues 3 and 4 hereinabove in this judgment, I answer issues 1 and 2 in the negative. This disposes of the counterclaim.

I now turn to consider issue No.5 that this is, of remedies available to the parties. It is settled law that the prayers are consequential upon Court's finding on the proceeding issues. From the submissions by Counsel for the plaintiff, I agree that the 2<sup>nd</sup> defendant came in the limelight on her issuance of the Notice under Section 91 of the Land Act, as amended, threatening to cancel the plaintiff's title on the suit property. The notice under the said law was irregular and illegal the same having been issued by the very said office which issued the said certificate of title. When in any matter, a certain person complains to the Commissioner Land Registration alleging fraud among other things, the latter has no jurisdiction to cancel a registered proprietor's title on the allegations of fraud. That power lies with the High Court of Uganda. Again, the 2<sup>nd</sup> defendant did not file pleadings to defend that position even when she was served with Court papers.

The Legality and legitimacy of the suit property, lease and grant to the plaintiff which form the core of this case have been dealt with hereinabove in this judgment and the plaintiff is entitled to that remedy.

In the issues of general damages, and interest that would accrue from the award of general damages. It is in the evidence on Court record that the plaintiff has been in occupation of the suit land, and using the same as a parking yard. This means that the plaintiff is benefiting from the occupation and use of the suit property. The general damages he is claiming are so remote and they were not occasioned by the defendants. I decline to grant that prayer and that of interests.

It is settled law that a successful party is entitled to costs of litigation. This issue is answered to that extent in favour of the plaintiff. The plaintiff having succeeded in the

main suit, the counterclaim filed by the 1<sup>st</sup> defendant as a plaintiff by counterclaim fails. It is dismissed without costs.

In the result and for the reasons given hereinabove in this judgment, judgment in this main suit is entered in favour of the plaintiff in the following orders;

1. A declaration that the plaintiff is the proprietor/lessee of the suit land is granted.
2. An order directing the 2<sup>nd</sup> defendant from cancelling the plaintiff's certificate of title in respect of the land comprised in Lease Hold Register Volume 3863 Folio 17 Plot 6 Martin Road, is granted.
3. A permanent injunction restraining the 1<sup>st</sup> defendant or its agents/workmen/employees/successors in title from committing any acts of trespass on the suit property is granted.
4. The 1<sup>st</sup> defendant shall pay to the plaintiff costs of this suit.

Dated at Kampala this 17<sup>th</sup> day of January, 2014.

**Murangira Joseph**

**JUDGE.**

**17/1/2014.**

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
HIGH COURT CIVIL SUIT NO.288 OF 2008**

**QUALITY UGANDA  
LIMITED :::PLAINTIFF**

**VERSUS**

**1.THE REGISTER TRUSTEES OF THE MUSLIM (SUNNI)  
ASSOCIATION ::::DEFENDANTS**

**2. THE REGISTRAR OF TITLES**

**PRESENTATION**

17/1/2014

Mr. Byomugisha Guma for the plaintiff.

Mr. Muhamad Ali Kajubi for the 1<sup>st</sup> defendant is not in Court.

I can see the representatives of the 1<sup>st</sup> defendant:

- 1) Mr. Mashindano Amuru Yusuf, the vice Chairperson of the 1<sup>st</sup> defendant in Court, with other members in their community.

We are ready to receive the judgment.

Mr. Frank Namanya the Clerk is in Court.

**Court:** Judgment is delivered to the parties.

Right of Appeal is explained to the parties.

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**Murangira Joseph,**

**Judge.**

**17/1/2014.**