

**THE REPUBLIC OF UGANDA  
IN THE COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. 330 OF 2014**

- 1. GEORGE WILLIAM MASERUKA**
- 2. AGNES NAKITENDE ::: PLAINTIFFS**
- 3. SOLOME MAYANJA**

***VERSUS***

- 1. CHRISTOPHER NSWEMU**
- 2. REGISTRAR OF TITLES ::: DEFENDANTS**

*BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW*

**J U D G M E N T**

*GEORGE WILLIAM MASERUKA, AGNES NAKITENDE, and SOLOME MAYANJA* the Administrators of the Estate of the Late Yekoyasi Mayanja (*hereinafter jointly referred to as “plaintiffs”*) brought this suit against *CHRISTOPHER NSWEMU and THE REGISTRAR OF TITLES* (*herein after referred to as 1<sup>st</sup> ,and 2<sup>nd</sup> “defendants” respectively*) seeking orders and a declaration that the late Yekoyasi Mayanja is the lawful owner of the land comprised in *Kyadondo Block 195 Plot 169* at Kyanja measuring approximately 3 acres (*hereinafter referred to as the “suit land”*) an order of cancellation of the registration of the 1<sup>st</sup> defendant and the reinstatement of the late Yekoyasi Mayanja as the registered proprietor on the suit land, an order that the 1<sup>st</sup> defendant delivers

up the duplicate / special certificate of title in his possession, a permanent injunction restraining the defendants from dealing with, and trespassing on the suit land, general damages and costs of the suit.

The defendants never filed a defence. They were also not represented despite having been duly served with summons and acknowledged the same; hence the case proceeded *ex parte* under **Order 9 r.10 (2) of CPR**. The plaintiffs were represented by *M/s.Lubega & Co. Advocates*, who filed written submissions to argue the case.

***Background;***

The late Yekoyasi Mayanja purchased from one M.K Sempira in 1961, the suit land comprised in Kyadondo Block 195 Plot 169 at Kyanja measuring approximately 3 acres. The said late Yekoyasi Mayanja got registered on the title as the proprietor in March, 1968, and from the date of the purchase lived on the suit land until his death in 1983. His family continued to live thereon up to present day.

Sometime in 2009, some unknown persons went to the suit land with the intention of transacting in it. The matter was reported to police who arrested the said persons. Upon arrest the said persons produced a photocopy of a special certificate of title showing that the 1<sup>st</sup> defendant is the registered as proprietor of the suit land having been registered by the 2<sup>nd</sup> defendant. On further examination of the

photocopy of the special certificate of title relating to the suit land, it was suspected that it was fraudulently obtained by the 1<sup>st</sup> defendant. This prompted the plaintiffs to apply for letters of administration for the estate of their late father Yekoyasi Mayanja, which was granted by the High Court on 18.11.2010, and they filed this suit.

The plaintiffs adduced their evidence by way of filed witness statements and it was admitted as their evidence in – chief with the attachments thereto. They also filed a scheduling memorandum and raised three issues for determination as follows,

- 1) *Whether the 1<sup>st</sup> defendant got registered on the tile fraudulently?*
- 2) *Whether the 1<sup>st</sup> defendant's name can be cancelled from the certificate of title?*
- 3) *What remedies are available to the parties?*

**Resolution:**

**Issue 1:** *Whether the 1<sup>st</sup> defendant got registered on the title fraudulently?*

**Section 59 RTA (Cap. 230)** provides to the effect that a certificate of title is conclusive evidence of ownership. Further, **Section 64(1) RTA** provides to the effect that the estate of the registered proprietor is paramount except in cases of fraud. Also **Section 176 (c) (supra)** provides to the effect that no action shall be sustained against a person named as registered proprietor except in cases of fraud.

Fraud is defined by *Osborn's Concise Law Dictionary, 8<sup>th</sup> Edition, at page 152*, as the obtaining of a material advantage by unfair or wrongful means. It involves making a false representation knowingly or without belief in its truth or recklessly. In the case of *John Katarikawe vs. Katwiremu & A' nor (1977)HCB1872* it was held that fraud though not defined in the RTA covers dishonest dealings in land. In *David Ssejaka vs. Rebecca Musoke SCCA No. 12 of 1998*, it was held that fraud must be attributed either directly or by necessary implication to the transferee, that is, the transferee must be guilty of the fraudulent act or known of the fraudulent act by somebody else, and has benefited or taken advantage of it.

In the instant case, all the plaintiffs' witnesses testified that they were residing on the suit land before their late father's death and that no one had ever come claiming that the land was sold to them by their late father. PW1, Solome Mayanja testified that when she conducted a search on the title to the land there was no other transfer on the microfilm in the office at Entebbe Office of Mapping & Survey, apart from the one where M.K. Sempira had transferred the suit land to her late father Yekoyasi Mayanja.

PW2 Nakitende Agnes testified that she received a copy of the land transfer from land office where their late father had purportedly transferred the suit land to the 1<sup>st</sup> defendant in 1973 and that when the said transfer form was taken to a handwriting

expert; Mr. Mujuzi (PW4) it was found out that the plaintiff's father's signature on the form was forged.

PW3 testified that their late father owned land measuring 3 acres in Kyanja and that ever since he lived on the suit land, their father had never sold the same to anyone. That even after the death of their father around 1983, nobody had ever come claiming their land until 2009. *Annexure F* on the witness statement of PW3 was attached as proof that the signature of Yekoyasi Mayanja was forged. Therefore, based on the plaintiffs' uncontroverted evidence, court finds that the transfer of the suit land from late Yekoyasi Mayanja to Christopher Nswemu is void as the same was premised on fraud.

***Issue 2: Whether the 1<sup>st</sup> defendant's name can be cancelled from the certificate of title?***

***Section 177 RTA*** is to the effect that the High Court shall direct the Registrar of land to cancel any certificate of title (upon discovery that the same was obtained fraudulently) and to substitute such certificate of title or entry as the circumstances of the case require. In the instant case, since the particulars of fraud were clearly pleaded and proved by the plaintiffs and their evidence was unchallenged, it is clear that the 1<sup>st</sup> defendant's name was fraudulently entered on the certificate of title belonging to the plaintiff's late father's estate. It was held in ***Petero Balaba & 2 Or's vs. Kagaba Moses & 2 Or's HCCS, No.1417 Of 1999;*** and ***Grace Matovu***

*vs. Teopista Nabala & 5 O'rs, HCCS No.243 of 2013*, that fraud invalidates the registration of a proprietor and/or the title itself. Therefore, the 1<sup>st</sup> defendant having been registered on the title to the suit land through fraud ought to be cancelled from the title by the 2<sup>nd</sup> defendant, and the name of the estate of Yekoyasi Mayanja reinstated.

***Issue 3: What remedies are available to the parties?***

Having found as above, the plaintiffs are entitled to the prayers sought. They also prayed for general damages. In their testimonies, they showed that they were subject to extreme anguish and inconvenience by the 1<sup>st</sup> defendant's action of fraudulently transferring their late father's land into his names and yet for all that time since 1973 when the 1<sup>st</sup> defendant purportedly bought the land, no one had ever come to claim the same.

The plaintiffs were further thrown into unnecessary anxiety when the 1<sup>st</sup> defendant started claiming their land after the plaintiff's late father had died leading them to think that the title could have been stolen. Indeed I find that the 1<sup>st</sup> defendants' actions were done out of obtaining a material advantage by knowingly making a false representation. Taking into account all the above factors plaintiffs are entitled to general damages. Counsel for the plaintiffs in his submissions suggested the quantum of general damages of Ugx.700, 000,000/= which was supported by evidence of PW2.

In the case of *Kyagulanyi Coffee Ltd. vs. Steven Tumusange*, CACA No. 9 of 2001, it was held that general damages are the direct probable consequences which may be loss of use, loss of project, physical inconvenience, mental distress, pain and suffering. Also in *Takiya Kashwahiri & A' nor vs. Kajungu Denis*, CACA No. 85 of 2011, it was held that general damages should be compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured plaintiff.

I find that the amount proposed by the plaintiffs as general damages is on the higher side. The plaintiffs have been and continue to be in occupation of the suit land and have not lost the same except for the inconvenience; hence the damage is not so much as to warrant Shs.700, 000,000. I consider the sum of Ugx 60,000,000 to be commensurate to the injury suffered by the plaintiffs based on the particular circumstances of this case and award the same to the plaintiffs.

The plaintiffs prayed for costs of the suit. *Section 27(2) of the Civil Procedure Act (Cap.71)* provides that costs are awarded in the discretion of court and shall follow the event unless for good reasons the court directs otherwise. See: *Jennifer Rwanyindo Aurelia & A' nor vs. School Outfitters (U) Ltd.*, CACA No.53 of 1999; *National Pharmacy Ltd. vs. Kampala City Council [1979] HCB 25*. In the instant case the plaintiffs have succeeded in the suit and there is no compelling

reason to deny them costs of the suit. It is accordingly declared and ordered as follows;

- 1. The late Yekoyasi Mayanja is the lawful owner of the suit land.***
- 2. 1<sup>st</sup> defendant's name on the certificates of title for the suit land be cancelled.***
- 3. The 2<sup>nd</sup> defendant reinstates the names of Yekoyasi Mayanja as the registered proprietor on the suit land.***
- 4. A permanent injunction doth issue restraining the defendant from dealing with or trespassing on the suit land.***
- 5. A permanent injunction doth issue against the defendant or any one claiming under them from further disturbing the plaintiffs' quiet enjoyment.***
- 6. The plaintiffs are awarded general damages of Ugx 60 Million.***
- 7. The amount in (6) above shall attract an interest rate of 8% per annum from the date of this judgment until payment in full.***
- 8. The plaintiffs are awarded costs of this suit.***

**BASHAIJA K. ANDREW  
JUDGE  
27.08.2015**



Mr. Damiano Lubega together with Allan Tumwesigye counsel for the plaintiffs present.

Plaintiffs – present.

Mr. Godfrey Tumwikirize, court clerk – present.

Ms. Hasupher Nansera, transcriber – present.

Court: Judgment read in open court before counsel and parties.

***BASHAIJA K. ANDREW***  
***JUDGE***  
***27.08.2015***