

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

CIVIL SUIT NO. 0010-2008

NARENDRA UMEDBHAI PATEL

(Suing thru' His Attorney

PARIMAL PATEL).....PLAINTIFF

VERSUS

1. JUMA ABDUL AZIZ

2. M/S ZUBEDA JAMAL.....DEFENDANTS

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The plaintiff sued both defendants seeking orders for cancellation of defendant's names from the Register Book and reinstatement of the plaintiff's name in the

Register Book as the Registered Proprietor of LRV. 2435 Folio 9 and known as Plot 16-18 Union Road Mbale and LRV 654 Folio 16 and known as Plot 18 Bunyuli Road, Mbale, a declaration that the alleged transfer of the above lands was illegal and tainted with fraud, a permanent injunction restraining the 2nd defendant from interfering with plaintiff's possession.

2nd Defendant denies having acquired the suit property fraudulently and contends that she purchased the same in good faith from the 1st defendant.

The following issues were agreed upon for determination.

1. Whether there was any fraud attributed to the 2nd defendant.
2. Whether the plaintiff is entitled to possession.
3. Whether plaintiff is entitled to the reliefs sought.

I will resolve the issues as they were presented.

Issue I

During the trial, the parties agreed on some facts in the schedule. Counsel for plaintiff undertook a detailed review of the background to this case in submissions. He reviewed evidence of both plaintiff and defendant and pointed out that of

particular interest to note from the witness for plaintiff **Mr. Parimal Patel** (who holds Powers of Attorney from **Narendra Umedbhai Patel**), that at the time of repossession the plaintiff never sold or disposed of the suit land to any person.

He argued on this issue that the conduct of the 2nd defendant was fraudulent. She purchased land (property) but never bothered to conduct a search to cross check if the seller was the registered owner. Counsel faults D.2 further for realizing that 1st defendant had not yet been registered as proprietor of the same but still went ahead to purchase.

Lastly that even when she went to check on the properties and found there other people she never bothered to cross check from them if they knew D.1. Counsel for plaintiff concluded that the said behavior was a tactic to avoid facing the reality.

Counsel referred to the decided cases of *Fredrick Zabwe and 5 Ors versus Orient Bank and Ors SCCA No.4/2006* which held that fraudulent means acting willfully and with the specific intent to deceive, cheat ordinarily for the purpose of either causing some financial gain to oneself or loss to another.

He also referred to *Waimiha Saw Milling Co. vs. As Waione Timber Co. (1926) AC 101 at 106* where court held that:

“If the designed object of a transfer be to cheat a man at of a known existing right- that is fraudulent.”

Also David Ssejjakka Nalima v. Rebecca Musoke SCCA 2 of 1985 which held that:

“It was fraud for a purchaser whose suspicion are aroused but abstaining from making inquiries for fear of learning the truth.”

In view of the above, counsel concluded that 2nd defendant was fraudulent in her actions with intent to defeat plaintiff’s title.

In reply the 2nd defendant’s counsel in submission reiterated the evidence on record and referred the court to Section 59 of the RTA. He argued that a certificate of Title is conclusive evidence of ownership of title. It cannot be impeached due to irregularity in an application for registration.

He also referred to Section 181 of the RTA to argue that a purchaser of land is protected if the purchase was bonafide for valuable consideration even if the person from whom the purchaser bought obtained registration through fraud or error. He made further reference to Section 95 of the RTA, to argue that P. Exh.

11 and P. Exh.12 were properly valid as instruments for passing the estate to a transferee.

Reference was made to David Ssejjakka Nalima v. Rebecca Musoke SCCA 2 of 1985(1992) v. KALR holding that:

“Where a purchaser was not party to any fraud their interest in land is protected.”

Counsel further stated that the law is that fraud must be specifically proved as held in Kampala Bottlers Ltd v. Damanico (U) Ltd SCC No. 22/92.

Counsel argued that plaintiffs alleged fraud but never proved it. J.W.R. KAZZORA V. M.L.S. RUKUBA SCCA No. 13 of 1992,

“It is not enough to plead fraud but it must be strictly proved in terms pleaded and not inferred from the fact.”

The defendants’ counsel further referred to P.Exh.10 which was a sale agreement; which 1st defendant had executed with plaintiff. He referred to section 10 (1) Contract Act to argue that there was a valid contract between the parties.

Counsel argued that the fact of a sale was sufficiently proved by the 2nd defendant between herself and the 1st defendant. Counsel argued that 2nd defendant was diligent, conducted a search, and inspection and hence committed no fraud.

With the above arguments it is my finding that this matter rotates around the law that governs land transactions. The parties as is clearly agreed by both counsel derive their interest from titled land. The law governing titled land is of strict interpretation because much of it is codified. As argued by the defendant, the transactions between the parties were governed by the RTA, which governs titled land. The plaintiff in his pleadings as per paragraph 4 and 7 in his plaint specifically placed his cause of action as;

“a claim for an order of cancellation of the defendants’ names from the Register Book as the Registered Proprietor of the land comprised in LRV. 2435 Folio 9 and known as Plot 16-18 Union Road, Mbale.”

The contents of paragraph 7 provide the alleged particulars of fraud by defendant. It is to be noted that the facts are not disputed as presented. It is only left for this court to determine if the 2nd defendant’s title is tainted with fraud. The law regarding titled land in addition to the provisions of the RTA cited by counsel for

defendant and the case law referred to, was also considered in the case of HARIPRASAD RAMABAI PATEL V. BABUBHAI KALIDAS PATEL [1992-1993]

HCB where **J. Karokora** (as he then was) held:

“A certificate of title is a conclusive evidence of ownership of the suit property. No submission or oral evidence can be called to vary the certificate of title unless fraud, lack of consideration or illegality is proved.”

The import above is that since defendant has title, and plaintiff wishes to impeach it, he is enjoined by the law to lead evidence which proves every allegation of fraud. The requirement of the law of evidence is that he who alleges the fact must prove it. This was the position of **C.J Wambuzi** (as he then was) in the case of Kampala Bottlers Ltd v. Damanico (U) Ltd C/A 22/1992: He held inter alias thus:

“Further I think it’s generally accepted that fraud must be proved strictly; the burden being heavier than on a balance of probability generally applied in civil matters.”

A review of the evidence on record shows that though fraud was pleaded, it was never proved at all by the plaintiff. it remained an allegation on the plaint.

Counsel for plaintiff tried to impute defendant's behavior of not contacting plaintiff etc as indications of fraudulent behavior.

I disagree and indeed agree with defendant's counsel's position that the 2nd defendant acted prudently. She cross checked the information, she consulted. The transaction involved lawyers. (The agreement was drawn by Lawyers). She saw transfer forms. She saw Powers of Attorney. She searched in the land office as per evidence on record. Her conduct was of a bonafide purchaser for value, not a fraudster. I therefore disagree with Counsel for plaintiff's submissions on this issue. I agree with views as expressed by the defendant and find that there was no fraud. Issue 1 therefore fails.

Issue 2:

The plaintiff's counsel submitted that there is no shred of evidence whatever to show that plaintiff or his agent ever transferred possession assigned or transferred interest in the suit property to either of the two defendants. He argued that by time of her contact of first defendant he was not the registered proprietor but she never bothered to find out the registered proprietor. Her failure to visit the premises and failure to ask the occupants who the plaintiff was is also faulted.

Counsel argued that plaintiff is the true owner of the suit lands- and has never transferred the same.

Defence counsel argued that plaintiff sold the land and can't repossess what he sold.

Contrary to arguments by counsel for plaintiffs the evidence on record shows that there was a valid sale of the property. The exhibited documents on record EXP.10, (sale agreement), EXP.11(sublease) and EXP. 9 (sale agreement); all show that **A.B POPAT**, who held Powers of Attorney for **UMEDBHAI BHAGWANDAS PATEL**, sold the property described as Plot 18 Bunyuli Road, Mbale LRV 654 Folio 16 to **JUMA ABDUL AZIZ** on 28th August 1994; and Plot 16-18 at Union Road, Mbale LRV 701 Folio 14 on 5th May 1996.

In evidence-in-chief, PW.1 testified that he knew POPAT as the Attorney for the Principal whose Powers were revoked in 1998. The plaintiff apart from alleging the forgery of these documents did not prove these allegations in court.

PW.1 when cross-examined, was clearly honest and said he was not able to tell if these transactions were valid or not because he was not a party to them, though in re-examination he attempted to infer fraud and forgery.

The observations of counsel for defendants on this issue are agreeable to this court in as far as he points out lack of evidence to show that defendant's title has ever been cancelled, contested or impeached by any court, Fora, or authority.

The result is that this issue is terminated in the negative.

Issue 3:

I do not find any merit in any of the reliefs sought by plaintiff. By the findings under ground 1 and ground 2, the plaintiff has failed to prove his suit against the defendants. He therefore is not entitled to the reliefs sought.

Having found as above, this court finds that the plaintiff has failed to prove his case on a balance of probability. The court further finds that the evidence shows that the suit property belongs to the defendant. The plaintiff's claim is disallowed with costs to the defendant. I so order.

Henry I. Kawesa

JUDGE

26.3.2015