

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO. 360 OF 2008**

5           **MEERA INVESTMENTS LTD.....:PLAINTIFF**

**VERSUS**

**1. SADRUDIN GULAMHUSSEIN**

**2. COMMISSIONER LAND REGISTRATION.....: DEFENDANTS**

**COUNTERCLAIM**

10 **1.SADRUDIN GULAMHUSSEIN.....: COUNTERCLAIMANT**

**VERSUS**

**1. MEERA INVESTMENTS LTD .....: 1<sup>st</sup> COUNTERDEFENDANT**

**2. DAVIS KAKWENZIRE.....: 2<sup>nd</sup> COUNTER DEFENDANT**

**3. SHABAN MATOVU .....: 3<sup>rd</sup> COUNTER DEFENDANT**

15 **4. THE ATTORNEY GENERAL .....: 4<sup>th</sup> COUNTER DEFENDANT**

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

**JUDGMENT**

M/s.Meera Investments Ltd (*hereinafter referred to as the “plaintiff”/“1<sup>st</sup> counterdefendant”*) filed this suit against Sadrudin Gulamhussein and the Commissioner for Land Registration (CLR) *hereinafter referred to as the “1<sup>st</sup> defendant” /“counterclaimant” and “2<sup>nd</sup>defendant” respectively*) seeking court’s declaration that the cancellation of its certificate of title by the CLR land comprised in LRV 208 Folio 8 Plot 8 Nakasero Road, Kampala (*hereinafter referred*

to as the “suit property”) without giving the plaintiff a hearing is illegal; that the contravention of the court order dated 28/03/2008 is illegal, fraudulent and in contempt of court; that the CLR  
25 acted ultra vires her powers; that the reinstatement of the 1<sup>st</sup> defendant’s name as registered proprietor of the suit property is illegal and fraudulent; that the plaintiff is a bonafide purchaser of the suit property for value without notice and was legally registered as proprietor thereof; an order of cancellation of the 1<sup>st</sup> defendant’s name as the registered proprietor on the suit property; an order that the CLR registers the plaintiff as the proprietor of the suit property; an order of  
30 eviction of the 1<sup>st</sup> defendant and /or his agents from the suit property; a permanent injunction restraining the defendants from interfering with the plaintiff’s ownership, proprietorship and possession of the suit property; special and general, and punitive damages; interest and costs of the suit.

**Background:**

35 In July, 2007 the plaintiff company purchased the suit property from one Davis Kakwenzire the 2<sup>nd</sup> counterdefendant. Kakwenzire himself had in June, 2007 purchased the same from one Shaban Matovu the 3<sup>rd</sup> counterdefendant who was registered earlier on 21/03/2007 vide *Instrument 378396*. The plaintiff obtained photocopy of the duplicate certificate of title for the suit property from Davis Kakwenzire which Mr. Wycliffe Birungi the plaintiff’s lawyer used to  
40 do a search in the Land office. The same, *Exhibit P5 (a)* was certified by the Land Registry on 12/06/2007 as confirmation that it was the duplicate copy of the White Page of the original certificate of title for the suit property. Certification of photocopies was at the time the mode of confirming any search done in the Land Registry. Davis Kakwenzire and the plaintiff executed a purchase agreement, *Exhibit P1*, and a transfer deed, *Exhibit P15*. After the conclusion of the  
45 transaction the plaintiff got registered on the title on 11/07/2007 under *Instrument 382985* and

took possession. Later, however, the plaintiff received a notice, *Exhibit P9*, dated 10/08/2007 signed by Mr. Edward Karibwende, the Ag CLR then. The notice stated that the title held by the plaintiff should be produced for inspection and further action. The notice also alluded, inter alia, to forgery of the said title.

50 The plaintiff's lawyers replied to the Ag. CLR in letter *Exhibit P10* dated 24/08/2007. They contended, inter alia, that since the allegations involved forgery which is fraud, the matter was outside the legal scope of the CLR's mandate and should therefore be referred to courts of law for resolution. The CLR concurred and decided, in letter *Exhibit P11* dated 24/08/2007 addressed to counsel for the 1<sup>st</sup> defendant, that fraud is a serious matter which requires proof beyond  
55 balance of probabilities and it exceeded his statutory mandate. The CLR advised the parties to refer the matter to court, if they so wished.

In the same month of August 2007, a joint meeting at Police Headquarters was held between the plaintiff and the 1<sup>st</sup> defendant's agent. It was again concluded that since the matter involved allegations of fraud and bonafide purchase of property by a third party who claimed to have  
60 purchased for value without notice of any fraud, it should be referred to court to determine.

On 25/03/2008, the plaintiff received yet another letter *Exhibit P12* from CLR this time signed by Ms. Sarah Kulata Basangwa re-opening the matter which Mr. Edward Karibwende had decided in August, 2007. The letter indicated that the certificate of title held by the plaintiff was erroneously obtained and the CLR would proceed to amend the Register by cancelling the  
65 plaintiff's name.

The plaintiff instituted this suit in the High Court. On 28/03/2008 it obtained an interim order, *Exhibit P13*, restraining CLR from cancelling its name on the Register. The court order was duly

served on CLR whose office acknowledged it as received by their stamp and signature the same day. Nevertheless, CLR proceeded and canceled the plaintiff's name on the Register.

70 The defendants denied the plaintiff's claim. In addition, the 1<sup>st</sup> defendant filed a counterclaim against the plaintiff, Kakwenzire Davis, Shaban Matovu, and the Attorney General (AG) as 1<sup>st</sup> - 4<sup>th</sup> counterdefendants respectively. The counterclaimant alleged fraud mainly against the 1<sup>st</sup> - 3<sup>rd</sup> counterdefendants. He averred that he is the duly registered proprietor having been registered on the suit property 14/12/1962. That he lost his duplicate certificate of title and was issued with  
75 a special certificate of title, *Exhibit D11*, on 28/04/1995 by the Land office. Further, that on 23/05/ 2007, he sold the suit property to M/s. Pine Investments Ltd at US\$ 1,200,000 under the sale agreement, *Exhibit D24*. That when the purchaser tried to register the suit property in its name, it was discovered that records in the Land office reflected the plaintiff as the registered owner. That further investigation also revealed that the 1<sup>st</sup> - 3<sup>rd</sup> counterdefendants had used a  
80 forged land title, *Exhibit D10*, to get registered on the suit land. The counterclaimant avers that his is the only genuine special certificate of title that was issued by the Land office for the suit property and that he has never transferred it into any other person's name.

The CLR, as the 2<sup>nd</sup> defendant, also denied the plaintiff's claim. She averred that the plaintiff's name was lawfully cancelled on the title in exercise of her powers as CLR under section 91 of  
85 the Land Act, Cap 227. That when her office found out that the title held by the plaintiff had been erroneously obtained, the plaintiff was notified in letter *Exhibit D23*, but refused to attend the meeting or bring the title as required. That she proceeded and effected amendment of the Register by cancelling the plaintiff's name and reinstating the 1<sup>st</sup> defendant's name. The CLR maintained her office has never issued the special certificate of title held by the plaintiff.

90 Kakwenzire Davis, 2<sup>nd</sup> counterdefendant, also denied allegations of fraud against him in the counterclaim. He essentially averred that on 12/04/2007, he purchased the suit property from one Shaban Matovu the 3<sup>rd</sup> counterdefendant and paid valuable consideration without knowledge of any fraud. That he was duly registered on the title on 05/06/2007. That prior to purchasing, he conducted a search in the Land Registry and his lawyer, Mr. Peter Kusiima, also did another  
95 search on his behalf. That at the time of the purchase and his registration, there were no any registered incumbrances on the title. That he thereafter paid the necessary taxes and the Land Registry effected transfer and registered his name on the title for the suit property vide *Instrument 381541*.

Shaban Matovu, the 3<sup>rd</sup> counterdefendant, never filed a defence or appeared in court for the  
100 hearing. The case proceeded *ex parte* against him.

The 4<sup>th</sup> counterdefendant, the AG, also denied all acts of fraud attributed to its employees including those of CLR. It averred that the counterclaim is fundamentally incompetent, bad in law and an abuse of court process. The AG gave details of the registration of Shaban Matovu under *Instrument 378396* on 21/03/ 2007, that of Kakwenzire Davis vide *Instrument 381541* and  
105 the plaintiff who was on 11/07/2007 vide *Instrument 382985*.

The AG contended that the plaintiff's entry on the title was cancelled by CLR following the rectification of the Register. That prior to the said rectification, the plaintiff was issued with notice to effect change in the Register Book dated 10/08/2007. That this was on the suspicion that the title held by the plaintiff was forged.

110 The AG also averred that in amending the Register, CLR was performing her statutory functions under the Land Act (supra). That the plaintiff was notified of the actions to be taken on the

special certificate of title in letter *Exhibit D22* dated 25/03/2008. Further, that there is no law that bars CLR to review his or her earlier decision or opinion.

115 Though conceding that the court order in issue was served on CLR on 28/03/2008, the AG insisted that the order was never registered as an incumbrance on the title as lodgment fees had not been duly paid. That as such the court order could not bar CLR taking the action she did thereafter.

The AG also contended that the plaintiff's title had been registered illegally or erroneously as there was another subsisting title in the name of the 1<sup>st</sup> defendant who was registered on 120 24/12/1962. That CLR had no option but to enter the name of Sadrudin Gulamhussein on 31/03/2008 vide *Instrument 394060*. That the counterclaimant ought not to be entitled to any damages against the AG.

The plaintiff/1<sup>st</sup> counterdefendant was at the hearing represented by Mr. Alex Rezida, the 1<sup>st</sup> defendant/counterclaimant jointly by Mr. Richard Rubaale and Ms. Ritah Sendege, the 2<sup>nd</sup> 125 counterdefendant by Mr. Peter Kusiima, and the AG/4<sup>th</sup> counterdefendant by Ms. Esther Nyangoma. Counsel for the parties made oral submissions which I have taken into account while evaluating evidence in this judgment. I also thank them for supplying court with copies of authorities.

At the Scheduling Conference, five issues for determination were framed as follows;

- 130
- 1. Whether the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants obtained title by fraud or were registered through fraud on the title.***
  - 2. Whether the plaintiff's, 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants' registration was effectual and lawful.***

3. *Whether the cancelation of the plaintiff's name on the title was lawful.*

135 4. *Whether the plaintiff is a bonafide purchaser for value without notice.*

5. *Remedies available to the parties.*

***Resolution of the issues:***

***Issue No.1: Whether the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants obtained title by fraud or were registered through fraud on the title.***

140 The term “fraud” was given judicial interpretation in *Kampala Bottlers Ltd vs. Damanico (U) Ltd, SCCA No.22 of 1992*. Citing the case of *Waimiha Saw Milling Co. Ltd vs. Waione Timber Co. Ltd (1926) AC 101* at page.106, the Supreme Court held that it is a well-established law that fraud means actual fraud or some act of dishonesty. Further quoting Lord Lindsey in *Assets Co. vs. Mere Roihi (1905) AC 176*, the Court held that fraud in actions seeking to affect a registered  
145 title means actual fraud, dishonesty of some sort; denoting to transactions having the consequences in equity similar to those which flow from fraud.

In *Fredrick J.K Zaabwe vs. Orient Bank& Others, SCCA No.4 of 2006*, adopting the definition of fraud by Black’s Law Dictionary 6<sup>th</sup> Edition, at page 660, Katureebe JSC held as that fraud is;

150 ***“An intentional pervasion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or***

155 *suggestion of what is false, whether it is by direct falsehood or innuendo by speech or  
silence, word of mouth, or look or gesture.....*

*A generic term, embracing all multifarious, means which human ingenuity can devise  
and which are resorted to by one individual to get advantage over another by false  
160 suggestions or by suppression of truth, and includes all surprise trick, cunning  
dissembling, and any unfair way by which another is cheated, dissembling and any  
unfair way by which another is cheated. “Bad faith “and “fraud” are synonymous,  
and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.*

*As distinguished from negligence, it is always positive, intentional. It comprises all  
acts, omissions and concealments involving a breach of a legal or equitable duty and  
165 resulting in damage to another. And includes anything calculated to deceive, whether  
it be a single act or combination of circumstances, whether the suppression of truth of  
the suggestion of what is false whether it be by direct falsehood or by innuendo, by  
speech or by silence, by word of mouth, or by word of mouth, or by look or gesture....”*

In *Kampala Bottlers Ltd vs. Damanico (U) Ltd*, (supra) the Supreme Court further clarified that  
170 normally where fraud is pleaded, particulars of the fraud must be given. That the burden of proof  
in fraud cases is heavier than one on a balance of probabilities generally required in ordinary  
civil matters. The Supreme Court further elucidated that;

*“For a party to plead fraud in registration of land a party must first prove fraud was  
attributable to the transferee. It must be attributable either directly or by necessary  
175 implication, that is, the transferee must have known of some fraudulent act or must  
have known of such act by somebody else and taken advantage of such act.”*

The principles enunciated in the above cited cases, which were also relied on by counsel for the parties in their submissions, will form the basis in the resolution of this particular issue.

The 3<sup>rd</sup> counterdefendant, Shaban Matovu, did not file a defence to the counterclaim. This being  
180 a land matter, the case proceeded *ex-parte* as against him as if he had filed a defence within the context of Order 9 r.10 of the Civil Procedure Rules which provides that;

***“In all suits not by the rules of this Order otherwise specifically provided for, in case  
the party does not file a defence on or before the day fixed therein and upon a  
compliance with rule 5 of this Order, the suit may proceed as if that party had filed a  
185 defence.”***

In determining whether or not the 1<sup>st</sup> - 3<sup>rd</sup> counterdefendants committed the alleged fraud; it calls for exhaustive scrutiny of the evidence as to how they obtained title and got registered in relation to the applicable legal principles.

The particular issue itself essentially stems from the counterclaim. The counterclaimant seeks to  
190 prove the particulars of fraud as against the 1<sup>st</sup> - 3<sup>rd</sup> counterdefendants. His pleadings set out a wide range of particulars of the alleged fraud as against each of the counterdefendants. The dominant feature across them all is that at some point in time, each of the counterdefendants in collusion with the others obtained title and got registered on the suit property using a forged special certificate of title, *Exhibit D10*, which had obvious features of forgeries.

195 DW1, the counterclaimant, testified that the title, *Exhibit D10*, held by the plaintiff claimed to be a special certificate of title for the suit property is a forgery. That it has never been issued by the Lad office. That it was this very forged title that was presented to the Registrar of Titles and erroneously used by him to register *Instrument 378396* dated 21/03/2007 to transfer the suit

property to Shaban Matovu; *Instrument 381541* dated 05/06/2007 to Kakwenzire Davis; and  
200 *Instrument 382985* dated 11/07/2007 to the plaintiff. DW1 claimed that all these instruments  
were illegal and ineffectual and could not in any way transfer property from him because they  
were rooted in a forged document.

DW5 Ms. Sarah Kulata the CLR corroborated the counterclaimant's evidence. She testified that  
her office has never issued the special certificate of title to the counterdefendants. That according  
205 to records in the Land office, however, copies of which she also referred to as she testified in  
court, the counterdefendants somehow got registered as proprietors of the suit property. She  
stated that their particulars as registered proprietors were duly reflected on the White Page of the  
original certificate of title of the suit property. DW5 confirmed the instrument numbers for the  
transactions including those effecting transfer into the counterdefendants' respective names. She  
210 also confirmed signature and names of Registrar who effected transfer in favor of the plaintiff.  
Except for the signature of DW4 Mr. Peter Walubiri which was stated to be forged on the  
instrument issuing the special certificate of title to Shaban Matovu, the subsequent ones effecting  
transfer to the 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants respectively were confirmed as true and genuine.  
DW5 emphasized that all instruments on the title in respect of the counterdefendants were issued  
215 by her office and genuine. While maintaining that her office never issued the title held by the  
plaintiff, DW5 clarified that for particulars to appear on the White Page of the original title a  
registered person must have presented the duplicate copy of to the Registrar who inserts the  
instrument numbers.

PW1 Sudhir Ruparelia, the Managing Director (MD) of the plaintiff company/1<sup>st</sup>  
220 counterdefendant, denied the allegations of fraud. He stated that the plaintiff purchased the suit  
property from the registered proprietor Kakwenzire Davis. That he first met Kakwenzire as a

potential vendor who was introduced to him by one Kirumira as the owner of the suit property desirous of selling. That the suit property happened to be located adjacent to Plot 5 and Plot 7 Lumumba Avenue (*Exhibit P7 and P8 respectively*) the other plots also owned by the plaintiff.

225 The trio met in Munyonyo during the CHOGM preparations. Later Kakwenzire and Kirumira also brought one Kawamara the occupant who was a tenant on the suit property and introduced him to PW1.

PW1 further stated that he obtained a photocopy of the title from Kakwenzire and asked Mr. Wycliffe Birungi (PW2) the plaintiff's lawyer to do a due diligence and handle the transaction.

230 Also, that a photocopy of the passport and a Statutory Declaration, *Exhibit P3* were obtained from Kakwenzire for positive identification. PW2 corroborated evidence of PW1 that he indeed did a search in the Land office using *Exhibit P5 (a)* the photocopy of the title. The search confirmed that Kakwenzire was the registered proprietor of the suit property. That the Land office certified the photocopy of the title which PW2 had presented during the search. Certifying

235 of photocopies of titles by the Land office was at the time the mode of confirming that a search had been done.

PW1 further testified that as part of the due diligence, the plaintiff asked Kakwenzire to produce ground rent and property rates documents, *Exhibit P2*; which he availed. This was for avoidance of any future queries regarding arrears. PW1 stated that these documents also indicated that even

240 the Kampala City Council, as it was called then, recognised Kakwenzire as the registered owner of the suit property. That upon being satisfied, the plaintiff paid US\$850,000 as the purchase price to Kakwenzire and they executed a purchase agreement, *Exhibit P1*, and the plaintiff got registered as proprietor of the suit property on 11/07/2007 vide *Instrument 382985*.

PW1 stated that the plaintiff took possession until later in July, 2008 when at the instance of the  
245 1<sup>st</sup> defendant Police interfered with the possession of the suit property. PW1 stated that by court  
order issued within this suit, the status quo now is that neither of the parties is in possession.  
PW1 denied that the plaintiff committed fraud or had any knowledge of the alleged fraud of its  
predecessors in title. PW1 insisted that the plaintiff is a bonafide purchaser for value without  
notice of any fraud, if any.

250 Kakwenzire Davis, 2<sup>nd</sup> counterdefendant, also denied the alleged fraud against him. His evidence  
was more or less similar to his averments in his pleadings. Basically, it is to the effect that on  
12/04/2007 he purchased the suit property from Shaban Matovu without knowledge of any fraud.  
That he conducted a search in the Land office by himself and his lawyer prior to the purchase.  
Both searches confirmed Shaban Matovu as the registered owner of the suit property. He paid the  
255 necessary taxes and was duly entered on the Register by the Land Registry upon presenting the  
duplicate copy of the certificate of title which is now said to be forged. He subsequently  
mortgaged the property to Crane Bank Ltd and the mortgage was also duly registered by the  
Land Registry vide *Instrument 382430* on 27/06/2007. Later, he sold the suit property to the  
plaintiff.

260 As stated earlier the 4<sup>th</sup> counterdefendant/AG also denied the alleged acts of fraud attributed to  
its employees. Ms. Nyangoma Esther counsel for the AG submitted the cancellation of the  
plaintiff's name on the title by CLR was properly done in rectification of the Register because  
the title held by the plaintiff was suspected to be forged. That in so doing the CLR duly exercised  
her functions under the Land Act (supra).

265 After carefully reviewing all evidence and counsels' submissions on the particular issue of fraud,  
I find that it does not feature anywhere, either directly or impliedly, that the counterdefendants  
obtained title and registration in a manner that imputes fraud on them in any legal sense of the  
term fraud. Evidence adduced by the parties and their respective witnesses is commonly agreed  
that the plaintiff obtained title from Kakwenzire who also got it from Shaban Matovu. This is  
270 apparent on *Exhibit P5 (a)* the photocopy copy that was certified by Land Registry on  
13/07/2007. It is also on the evidence of PW2 Mr. W Birungi, the lawyer who did the search, that  
certification of photocopies of titles was at the time the confirmation by the Land Registry that a  
search of the Register had been conducted. *Exhibit P5 (a)* further shows that Kakwenzire Davis  
was the registered owner from whom the plaintiff derived title. Again evidence of PW2 shows  
275 that entries on *Exhibit P5 (a)* the duplicate were duly reflected on *Exhibit D13* the Registry copy.  
The search done earlier in the Land Registry by Kakwenzire and his lawyer also confirmed  
Sahaba Matovu as the registered owner of the suit property. This fact was further corroborated  
by DW5 Ms. Sarah Kulata Basangwa the CLR. While tendering in evidence *Exhibit D13* the  
Registry copy, DW5 stated that entries in respect of the counterdefendants were duly endorsed  
280 on the Register for the suit property by the Land Registry.

In his submissions Mr. Rubaale raised an issue that the plaintiff's title has obvious features of  
forgery; which he pointed out. Counsel argued that these ought to have put the plaintiff on notice  
that the title was forged. I find this proposition to be quite erroneous. What is expected of any  
party doing a search on registered land is not a forensic audit of the Register. A party only has to  
285 satisfy himself or herself that the person from whom he or she is purchasing the land has  
apparent title. "Apparent" is an adjective defined in Black's Law Dictionary 8<sup>th</sup> Edition page  
105; to mean "visible; manifest; obvious; ostensible; seeming." Within the context of the instant

case, it would mean that the plaintiff only had the duty to search the Register and confirm that the potential vendor was actually the registered owner. As a potential buyer the plaintiff was not  
290 expected to go behind the Register. Confirmation by the Land Registry of the registration status of the vendor was invariably sufficient.

It is also noted that entries on the White Page of the original title, duly reflected also on certified copy *Exhibit P5 (a)* used during the search, were entered by the respective Registrars in the Land office. DW4 Mr. Walubiri was categorical in his evidence that if a duplicate title is discovered  
295 forged on presentment; the Land office confiscates it and cancels it to get it out of circulation. If the Registrars who are experts in their own right could not detect the so - called “obvious features of forgeries” Mr. Rubaale pointed out, it would be expecting too much of the ordinary person merely doing a search to detect such infirmities on the Register.

The cardinal rule in the Torrens System, as one in Uganda, was restated in the case of ***Olinda De Souza Figueiredo vs. Kassamali Nanji [1962] 1 EA 756 (HCU)***. Sheridan J.; held that the  
300 register is everything. Except in cases of actual fraud on part of the person dealing with the registered proprietor, such person upon registration of title under which he takes from the registered proprietor has indefeasible title against all the world. The principle was re - echoed by the Supreme Court in ***Kampala District Land Board and A’ nor vs. National Housing and Construction Corporation SCCA No. No.02 of 2004***. It was held that it is well settled that a  
305 certificate of title is indefeasible except on ground of fraud. Also in ***Kampala Bottlers Ltd vs. Damanico (U) Ltd*** (supra) Wambuzi CJ, as he then was, citing section 56 (now 59) RTA and 184 (now 176) RTA held that according to these provisions, production of the certificate to title in the names of the registered owner is sufficient proof of ownership of the land in question  
310 unless the case falls within the exceptions of section 184 (now 176) RTA. The court in that case

further cited with approval the case of *Robert Luswere vs. Kasule & A' nor HCCS No. 101 of 1983*, per Odoki J.; as he then was, held that;

315           **“Therefore while the cardinal rule of registration of titles under the Act is that the Register is everything, the court can go behind the fact of registration in cases of actual fraud on the part of the transferee.”**

Platt JSC in the same judgment for emphasis added that a registered title cannot be set aside for mere irregularity. Fraud has to be proved.

320           From the above cited authoritative decisions, it is clear enough that a person whose name appears on the Register as holding a certificate of title is legally recognised as the owner of the land described in the title. Therefore, a person doing a due diligence on registered land is ordinarily not expected to go behind the Register because; except in cases of fraud attributable to him or her as a transferee, that person obtains good title if he or she purchases on reliance of the information on the Register. That is more so, as in the instant case, when the Registrar of Titles under his hand and seal/stamp confirms as true and correct the information on the Register by  
325           certifying *Exhibit P5 (a)* the photocopy of the duplicate title used in the search.

330           No dispute also exists in the evidence of all the parties that the title held by the plaintiff was previously acted upon by the office of the Registrar of Titles. The title evidently manifests several other entries of registration and ownership which predate the plaintiff's registration. The 1<sup>st</sup> defendant/counterclaimant himself specifically alluded to these entries. No evidence whatsoever points to the plaintiff's hand in the issuance or registration of any of the prior instruments on the title. DW5 the CLR herself confirmed the instruments and entries as genuine having been issued and registered by her office.

There is also no evidence showing that the counterdefendants did not follow the legally established registration procedure. Though fraud was pleaded and extensively particularized, the counterclaimant fell far too short of the required standard to prove the same. It is not enough  
335 merely to allege and particularize fraud. The counterclaimant had the duty to adduce cogent evidence to prove it; the burden of proof being heavier than one on the balance of probabilities required in ordinary civil cases. See: *David Sejjaka vs. Rebecca Musoke* (supra).

It was also incumbent upon the counterclaimant to establish the nexus between the alleged fraud  
340 and the counterdefendants who allegedly committed the fraud. It would be futile to leave it up to the court to infer fraud just because it is pleaded without adducing evidence linking the fraud to the counterdefendants. The settled position, in *Kampala Bottlers Ltd vs. Damanico (U) Ltd*, (supra) is that fraud must be attributable to the transferee either directly or by necessary implication. The transferee must have done some act amounting to actual fraud. The term  
345 “attributable” encapsulates evidence of the necessary linkage of the alleged fraud to the transferee. Similarly the *David Sejjaka Nalima vs. Rebecca Musoke* case (supra) restates more or less the same principle that for the fraud of previous owners does not affect the title except where it is shown that it has been brought home to the knowledge of the current registered proprietor.

350 As I have already observed, hardly any nexus in the evidence exists between the plaintiff’s registration and the alleged fraud if any of its predecessors in title. There is equally no evidence of the linkage between the alleged particulars of fraud and the counterdefendants. Even going by the ordinary meaning of the term “forgery” which is alleged, no cogent material evidence establishes the fact that the impugned title was forged by the plaintiff. Forgery involves the

355 making of a false document with intent to defraud or to deceive. The essential ingredients are that there must be the maker, the intention, and the document which tells a lie about itself.

PW4 Peter Walubiri, the former Registrar in the Land office, denied the signature attributed to him vide *Instrument 270190* dated 28/04/1995 under which a special certificate of title *Exhibit D10* was issued to Shaban Matovu. Also DW8 J.B Mujuzi a forensic expert who compared the  
360 specimen signature samples of Mr. Walubiri and the questioned signatures on the title *Exhibit D10* concluded that Mr. Walubiri's signature on the title held by the plaintiff was forged.

It is, nevertheless, not known who did the forgery. As noted, entries on the impugned title were made and endorsed by the Land office whose officials also entered them on the White Page. DW5 confirmed this fact. A person seeking registration ultimately has no responsibility in the  
365 process of effecting entries on the Register. That is the exclusive domain of the Land officials. Thus in such circumstances, if there was fraud emanating from any forgery, it would not be expressly or by necessary implication attributable to the counterdefendants. It fell squarely on the Land office.

Specifically for the plaintiff, evidence proves that it purchased the suit property upon reliance of  
370 the confirmed information on *Exhibit P5 (a)*; that was duly certified by the Land office, in the ordinary course of doing a search and due diligence. The information apparent on the Register indicated a title devoid of any infirmities; a fact confirmed by Land office. The combination of all these factors qualifies the plaintiff a bonafide purchaser for value without notice.

A "bonafide purchaser" was defined in *Hajji Abdu Nasser Katende vs. Vathalidas Haridas &*  
375 *Co. Ltd, CACA No.84 of 2003*, as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. Citing with approval the case of

*Hannington Njuki vs. William Nyanzi HCCS No.434 of 1996*, the Court of Appeal went on to hold that for a purchaser to successfully rely on the bonafide doctrine, he must prove that he holds a certificate of title; he purchases the property in good faith; he has no knowledge of the fraud; he purchases for valuable consideration; the vendor has apparent title; he purchases without notice of any fraud; and he was not party to the fraud.

As these principles apply to the instant case, no evidence points to the plaintiff as having had actual or constructive notice of the alleged fraud if any, of its predecessors in title. The plaintiff simply took an interest in land adjacent to its other lands in Plot 5 and Plot 7 Lumumba Avenue, *Exhibits P7 and P8* respectively. Kakwenzire the registered owner at the time was interested in selling and the plaintiff paid the requisite consideration and was duly registered as proprietor. Nothing demonstrates that fraud of the previous owners if any; was brought home to the knowledge of the plaintiff.

Mr. Rubaale in his submissions raised issues with some inconsistencies in the evidence of the counterdefendants which he opined were further proof of fraud. He pointed out that whereas PW1 testified that he begun negotiations with Kakwenzire towards the end of June, 2007, he tendered in *Exhibit P5 (a)* certified by the Land office on 12/06/2007. That PW2 Mr. Birungi who had got *Exhibit P5 (a)* certified by the Land office also drafted the sale agreement, *Exhibit P1*, that was executed on 03/07/2007. That yet he stated that he drafted it a month before it was executed by the parties; which would put the drafting the agreement at around 03/06/2007 at a time when the 2<sup>nd</sup> counterdefendant had not even been registered on the title. Mr. Rubaale argued that the dates given by PW1 when the plaintiff purchased and when the suit property was mortgaged by Kakwenzire means that suit property was already sold to the plaintiff in July,2007 when was already mortgaged.

400 Admittedly, appreciating the importance of this argument on the dates of purchase and mortgaging the suit property presents a particular difficulty. It is, nonetheless, clear enough on the evidence that the suit property was mortgaged to M/s Crane Bank Ltd a sister company of the plaintiff. At the time the plaintiff purchased the suit property PW1 stated that it was mortgaged with the bank, and that it was about a month when the transaction was executed.

405 In all fairness when a witness testifies that a period of time was about a month while giving evidence on a transaction that occurred almost ten years earlier; it would not be evidence of fraud. Errors, inconsistencies, or lack of precision with specific dates after such a long lapse of time would not par se be views as evidence of fraud. As rightly submitted by Mr. Peter Kusiima, memory lapse occurs after such long periods of time and a person answering questions at the  
410 spur of the moment may not be precise on time and dates. Overall, the inconsistencies are not of a grave nature as to point to deliberate untruthfulness of the witnesses. The argument on inconsistencies lacks merit.

Regarding Kakwenzire/2<sup>nd</sup> counterdefendant, also no particulars of fraud pleaded against were proved as to how he obtained title and registration. The counterclaimant singled out what he  
415 perceived as failure of Kakwenzire to account for how he got the money to purchase the suit property as evidence of fraud. The 2<sup>nd</sup> counterdefendant actually duly accounted for how he raised funds for the purchase price. Even if he had failed, he was under no duty to account. The onus of proving was on counterclaimant, who had made the allegations; which clearly was not discharged.

420 As regards the 3<sup>rd</sup> counterdefendant, Shaban Matovu, he did not participate in the trial. The trial proceeded as if he had filed a defence. Still the burden was on the counterclaimant prove fraud against the 3<sup>rd</sup> counterdefendant. Section 103 of the Evidence Act, Cap 6, provides that;

425 ***“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”***

Section 106 (supra) provides that;

***“In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.”***

The particulars pertaining to the alleged fraud against the 3<sup>rd</sup> counterdefendant were especially  
430 within the knowledge of the counterclaimant who made them. They included forging or procuring of the forged special certificate of title now held by the 1<sup>st</sup> counterdefendant; forging the caveat withdrawal or procuring it with an illicit design; forging a transfer or procuring one with a fraudulent design; uttering a forged caveat withdrawal to the CLR; using a forged caveat withdrawal to withdraw the 1<sup>st</sup> defendant’s caveat; using a forged transfer to alienate land from  
435 the 1<sup>st</sup> defendant and to transfer the land into his name; forging or procuring the signature of the 1<sup>st</sup> defendant on the forged certificate of title and on the caveat withdrawal; and so on.

As is clear from the particulars, again the term “forgery” features prominently. To prove forgery there must be the maker of a document in question. The counterclaimant was only able to show that he personally did not execute the transfer forms, *Exhibit D14*, transferring the suit property  
440 to Shaban Matovu or sign lifting his caveat, *Exhibit D19*. Evidence of DW4 and DW8 also showed that Mr. Walubiri did not sign the instrument issuing a special certificate of title to the 3<sup>rd</sup>

counterdefendant. This *prima facie* evidence would ordinarily shift the burden to Shaban Matovu to show how he obtained title and registration. It is in the event of his failure to do so that court would draw adverse inferences against him as the maker of the forged documents.

445 Shaban Matovu never participated in the trial. That fact notwithstanding, even if court were to make adverse inferences against him, any such inferences would only affect him. It would not transcend the realm of his own actions as the architect of the forgery to the other counterdefendants. There is no evidence which suggests that such forgery if any, by Shaban Matovu was brought home to the knowledge of the other counterdefendants. The 2<sup>nd</sup>  
450 counterdefendant would still have derived good title from Shaban Matovu who could have got so registered through fraud. Equally, the plaintiff would still have derived good title from Kakwenzire as bonafide purchaser for value without notice of any fraud/forgery.

Other alleged particulars of fraud against the plaintiff are the undervaluing of the suit property and defrauding Government of revenue. It is observed that the particular allegations were not  
455 canvasses by evidence of any of the witnesses, but only featured in the submissions of counsel for the counterclaimant. The gist of the argument is that the 2<sup>nd</sup> counterdefendant claims to have bought at \$550,000 in June 2007 and the 1<sup>st</sup> counterdefendant at \$850,000 in July 2007. That yet the counterclaimant in May 2007 had sold to M/s. Pine Investment Ltd at \$ 1,200,000 as per *Exhibit D24*, and all these transactions occurred within a period of less than three months.  
460 Counsel argued that the 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants ignored the “scandalous and ridiculous” valuations by the Chief Government Valuer (CGV) at Shs.600, 000,000/= at the end of March 2007 and at Shs. 2.2Billion in July 2007. That this should have been an eye - opener to the counterdefendants that something was wrong.

This argument is not quite convincing and it lacks any legal foundation. Firstly, it would be  
465 unfair to condemn the CGV on the values he assigned the suit property at different dates without  
having heard him on his evidence on the reasons for his decision. Secondly, it is the mandate of  
the CGV to assign values to properties which are subject to stamp duty and the tax payer only  
complies with the values as assessed. A procedure does exist under the law of appealing against  
the decision of the CGV by any party dissatisfied with the assessment. Thirdly, the amount  
470 payable as stamp duty is by law assessed as a percentage of the amount of the purchase price and  
the CGV cannot assess otherwise.

The 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants each paid the stamp duty as assessed by CGV on the basis of  
the purchase price each paid for the suit property. That was perfectly legal and in order. The  
revenue receipt, *Exhibit P4*, shows Shs.22 million as the 1% of the total purchase price of  
475 Shs.2.2 Billion paid by the plaintiff. Simple computation in that regard easily shows that  
Government was not defrauded of any revenue at all.

It is quite evident the issue of fraud only came up after the botched sale transaction between the  
1<sup>st</sup> defendant and M/s. Pine Investments Ltd. When the purchaser sought to effect a transfer into  
its name, the suit property was no longer available; having been transferred to other successive  
480 proprietors and eventually into the plaintiff's name. The 1<sup>st</sup> defendant's lawyer then wrote a  
complaint in letter *Exhibit D23* dated 03/08/2007 to CLR that while the 1<sup>st</sup> defendant had a  
genuine title, *Exhibit D11*, there was a parallel title, *Exhibit D10*, which was forged and called on  
CLR to call for it and cancel it.

The CLR wrote to the plaintiff a notice to effect changes in the Register, *Exhibit P9/Exhibit D21*  
485 because title it held was forged, and also that the 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants should inform his

office how they acquired title. The lawyers for the plaintiff replied in a letter *Exhibit P10* stating that forgery is fraud which was outside the mandate and power of the CLR under section 91 Land Act (supra) and that the matter should be referred to courts of law. On the same date the CLR concurred and wrote letter, *Exhibit P11*, addressed to the 1<sup>st</sup> defendant's lawyers, and  
490 advised the 1<sup>st</sup> defendant to take the matter to court, if he so wished.

Lawyers for the 1<sup>st</sup> defendant wrote another letter, *Exhibit D25*, dated 20/12/2007 to CLR who this time re-opened the matter. She stated that the interpretation of law on fraud assigned by the plaintiff's lawyers' was narrow. Further, in letter dated 25/03/2008 *Exhibit P12*, the CLR informed the plaintiff's lawyers that she would proceed to "correct errors" on the Register. The  
495 plaintiff responded by obtaining an interim court order, *Exhibit P13*; dated 28/03/2008 barring any action on the Register, but the CLR went ahead and cancelled the plaintiff's entry on the Register despite evidence of receipt and acknowledgement of the court order.

For emphasis, the plaintiff only got registered subsequent to the 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants respectively. Therefore, even assuming the 1<sup>st</sup> defendant had been defrauded of his property by  
500 the plaintiff's predecessors in title, which was not proved; his remedy lay in an action against the CLR through the 4<sup>th</sup> counterdefendant/ AG, but not the plaintiff. It is noteworthy that the Land office was very office that issued instruments, in the first place, effecting the successive transfers to proprietors who got registered prior to the plaintiff registration. The same office confirmed and gave assurances of the correctness of the information on the title of the plaintiff in *Exhibit*  
505 *P5 (a)*. On strength of that the plaintiff entered into a transaction with Kakwenzire who, according to the search of the Register, was the duly registered owner then. The CLR is the chief custodian of the Register and titles in the country. Therefore, if any fraud was committed on the title, it is directly attributable to officials in the Land Registry. That inevitably renders the 4<sup>th</sup>

counterdefendant/ AG wholly liable for actions or omissions of its officers. Without any  
510 evidence of fraud on their part in the acquisition and registration of title, the 1<sup>st</sup> – 3<sup>rd</sup>  
counterdefendants are duly protected under the law as bonafide purchasers for value without  
notice of fraud or infirmities in title.

Section 181 RTA specifically protects a registered proprietor who purchases land bonafide for  
value without notice of any fraud from persons who could have been so registered through fraud.  
515 For ease of reference I quote it fully below;

*“Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment  
or to an action for recovery of damages as aforesaid or for deprivation of the estate or  
interest in respect to which he or she is registered as proprietor any purchaser bona  
fide for valuable consideration of land under the operation of this Act, on the ground  
520 that the proprietor through or under whom he or she claims was registered as  
proprietor through fraud or error or has derived from or through a person registered  
as proprietor through fraud or error; and this applies whether the fraud or error  
consists in wrong description of the boundaries or of the parcels of any land or  
otherwise howsoever.”*

525 The provision reinforces the principle that a bonafide purchaser for value without notice of any  
fraud obtains good title even if from vendors who got so registered through fraud. In **Hajji Abdu  
Nasser Katende vs. Vathalidas Haridas & Co. Ltd**, case (supra) it was held that whether an  
imperfect title would pass a good title would depend on the imperfection, whether fatal or going  
to the root of the transaction or minor. That there is therefore a duty on a buyer personally or  
530 through his agents to inquire into the title of his predecessor.

In this case there is evidence of a proper due diligence having been done by the 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants on the title prior to their respective purchases. None of the searches revealed any fatal imperfections apparent on the title. Therefore, nothing stood in the way of the 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants to obtain good title.

535 The counterclaimant also faulted the plaintiff/1<sup>st</sup> counterdefendant for failing to inspect the suit property prior to purchase; payment of money to the caretaker of the counterclaimant's property to gag him to move to another property belonging to the plaintiff's MD; failure to pay lodgment fees on the transfer in the Land Office; failure to pay stamp duty; using substituted service knowing too well that counsel for the counterclaimant are M/s Sendege, Senyondo & Co.  
540 Advocates; gross undervaluation, ignoring the suspicious nature of the transfer of the suit property from the counterclaimant to Shaban Matovu shortly after the withdrawal of the caveat which was effected with a forged signature; defrauding Government revenue.

Upon fully appraising the entire record, no specific evidence was adduced supporting these particulars of fraud. I have already fully resolved issues concerning undervaluation and stamp  
545 duty. On the alleged failure to inspect the property, PW1 stated that the occupier of the property one Sam Kawamara was introduced and that upon visiting the suit property, PW1 found that Sam Kawamara was operating a car - wash business there. The plaintiff also adduced in evidence letter *Exhibit P22* addressed to the 1<sup>st</sup> defendant's lawyer by Sam Kawamara which indicates the plaintiff's MD had been to the suit property. The net effect is that *Issue No.1* is answered in the  
550 negative that the plaintiff, the 2<sup>nd</sup> and 3<sup>rd</sup> counterdefendants did not obtain title by fraud nor were they registered through fraud on the title.

***Issue No.2: Whether the plaintiff's, the 2<sup>nd</sup> and 3<sup>rd</sup> counter defendants' registration was effectual and lawful.***

This issue specifically seeks to investigate the legal and procedural propriety of the counterdefendants' registration. At the risk of repetition, the CLR confirmed the counterdefendants having been entered on the Register by her office. She gave an elaborate account of the instrument numbers under which they got registered on the title. She also confirmed that her office issued and registered the instrument numbers, and that they were genuine.

DW1 Raymond Nanseera who testified to having done a search on behalf of the 1<sup>st</sup> defendant also confirmed the instruments of transfer and the transfers themselves. In addition, DW4, Peter Walubiri a former Registrar in the Land office, though denying the authenticity of the signature attributed to him on the instrument issuing a special certificate, confirmed the other entries and instrument numbers.

The position of the law and effect of instrument numbers in the process of registration is clearly stipulated. Under section 46 RTA a certificate of title is deemed and taken to be registered when the Registrar has marked on it the volume and folium of the Register Book in which it is entered; or the block and plot number of the land in respect of which that certificate of title is to be registered. Under subsection (2) (supra) every instrument purporting to affect land or any interest in land which has been registered shall be deemed to be registered when a memorial of the instrument has been entered in the Register Book upon the folium constituted by the certificate of title. It is the requirement under subsection (3) that the memorial mentioned in subsection (2) shall be entered as at the time and date on which the instrument to which it relates was received

in the office of titles together with the duplicate certificate of title and such other documents or  
575 consents as may be necessary, accompanied with the fees payable under the Act. Subsection (4)  
(supra) provides that;

***“The person named in any certificate of title or instrument so registered as the grantee  
or as the proprietor of or having any estate or interest in or power to appoint or dispose  
of the land described in the certificate or instrument shall be deemed and taken to be  
580 the duly registered proprietor of the land.”***

Section 48(supra) is to the effect that upon registration of an instrument in duplicate, the  
Registrar shall keep the original and deliver the duplicate to a person entitled. This provision is  
important in respect of the issue that a person entitled only holds a duplicate of the original,  
otherwise known as “owners copy”. The particulars on it must correspond with those on the  
585 original also known as the “White page”. The original is what is kept by the CLR as the Registry  
copy.

Further, under section 52(supra) the Registrar enters memorial on the duplicate certificate once it  
is registered in the Register Book. Section 54(supra) reinforces the position that an instrument is  
effectual upon registration and presentment of the duplicate certificate of title. These are the  
590 precise instances when registration is said to be effectual.

Given the evidence of DW5 that the counterdefendants were registered in accordance with the  
stipulated procedure, further that they got registered under genuine instruments which also  
appeared on White page of the original title issued by her office, the inescapable inference would  
be that the counterdefendants were lawfully registered, and the transfers were effectual.

595 The counterclaimant vehemently asserted that the instruments being rooted in forgery could not transfer any property and were ineffectual. I find that, however, to be a wrong assertion. Effectual registration is primarily concerned with procedural propriety in accordance with the stipulations of the law rather than which party gets registered as such. This conclusion is fortified by the case of *David Sejjaka Nalima vs. Rebecca Musoke* (supra) where the Supreme Court  
600 emphasized the same point that a person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he or she honestly believes it to be a genuine document which can be properly acted upon.

In the instant case, the certificate of title obtained by the counterdefendants was honestly believed by them to be genuine. It was acted upon by successive Registrars in the office of the  
605 CLR who issued the respective instrument numbers that effected the transfers on the Register, the transfers were effectual.

Mr. Rubaale referred to section 147 and 148 RTA on how instruments are to be executed and witnessed. He specifically singled out *Exhibit D14* the contested transfer from Sadrudin Gulamhussein to Shaban Matovu which shows it was witnessed by *M/s. P.Lutalo & Co.*  
610 *Advocates*. Counsel submitted that that according to DW3 Mr. Robert Mugabe, the Manager Business Registration at the Uganda Registration Services Bureau; and DW6 Mrs. Margaret Apiny, the Secretary of the Uganda Law Council (ULC) who tendered in *Exhibit D33 and D35* respectively, *M/s. P. Lutalo Bbosa Advocates* is neither an Advocate nor a registered law firm. Mr. Rubaale argued that this proved that that transfer was not witnessed as required by law.

615 Once again this argument, although supported by evidence of DW3 and DW6, is in similar category as others before. Even if it is granted that the transfer from Sadrudin to Shaban Matovu

was not witnessed as is required by law; it would not invalidate the transfer from the 3<sup>rd</sup> to the 2<sup>nd</sup> or from the 2<sup>nd</sup> to the 1<sup>st</sup> counterdefendant. The applicable principle is clearly that a person who presents for registration a document which is forged or which has been fraudulently or  
620 improperly obtained is not guilty of fraud if he honestly believes it to be a genuine which can be properly acted upon.

Suffice it also to note that the point raised in respect to section 147 and 148 (supra) by Mr. Rubaale is a departure as it never featured anywhere in the counterclaimant's pleadings. This offends the rule against departure from pleadings stipulated under Order 6 r.7 CPR. *Issue No.2* is  
625 answered in the affirmative.

***Issue No.3: Whether the cancelation of the plaintiff's name on the title was lawful.***

This issue has three major facets. They relate to the alleged disobedience of the court order by CLR, the contravention of the *functus officio* rule, and the failure of the CLR to adhere to the stipulated procedure under the law in cancelling the plaintiff's name on the title.

630 On the first one, the plaintiff adduced in evidence copy of an interim court order, *Exhibit P13*, issued on 28/03/2008 barring the CLR to cancel the plaintiff's name on the Register. Copy of the order bears a receiving stamp which shows that it was received by the office of the CLR same day it was issued. DW5 Ms. Sarah Kulata admitted that the "received stamp" belongs to her office. The cancelation of the plaintiff's name on the Register was done on the 31/03/2008 which  
635 was well after the court order had been served on the CLR. Mr. Alex Rezida particularly criticized the CLR as simply being disobedience of a lawful court order which in itself is unlawful and renders the cancelation unlawful.

The argument in the second facet is that after Mr. Karibwende as CLR had decided that the matter involved serious allegations of fraud and advised parties to go to court, Mrs. Sarah Kulata  
640 could not exercise the same powers to reverse the earlier decision and cancel the plaintiff's name on the Register without reference of the matter to court. Mr. Rezida argued Mr. Karibwende had taken a decision and at that stage the matter was closed as regards the exercise of power under section 91 (supra) by CLR.

The CLR on the other hand contended that her office gave notice of cancellation to the plaintiff  
645 to avail its title for further action. That when the plaintiff never complied the process of cancellation proceeded. On the issue of the "received stamp" of her office on the court order, DW5 argued that merely the document bearing the stamp does not mean that it was lodged. That in this case filing fees had not been paid and the court order was not registered as an incumbrance on the title and could not bar her action. This was the same argument advanced by  
650 Ms. Nyangoma counsel for AG.

DW5 insisted that what existed on the Register was an error; in that the plaintiff's name and that of its predecessors in title had been entered erroneously. CLR maintained the error was within her powers under section 91 (supra) to rectify the Register by cancelling the plaintiff's name and other entries.

655 After evaluating the evidence and submissions of counsel on this multi- faceted issue, it emerges that the lawfulness or otherwise; of the actions of CLR cancelling the plaintiff's name on the title largely depends on whether the due process stipulated under section 91(supra) was fully complied with. I will, however, first address the issue of *functus officio* which emanates from the

contradictory decisions of the CLR in the person of Mr. E. Karibwende and Ms. Sarah Kulata in  
660 the process leading up to the cancellation.

Evidence shows that when the plaintiff's objected to the notice of cancellation earlier issued, Mr. Edward Karibwende the Ag. CLR then concurred with the position. He opined in writing that since the allegations involved fraud which was a serious matter, recourse had to be had to courts of law. That was effectively a decision taken and communicated by the CLR pursuant to his  
665 powers under section 91 (supra) in respect of the complaint lodged with his office of the alleged fraudulent transfer of the suit property into the names of the various transferees who included the plaintiff.

At that stage, the CLR became *functus officio* in respect to the exercise of his powers under section 91(supra) as regards complaints about the suit property. Any party aggrieved by that  
670 decision would either appeal against it to the District Land Board pursuant to subsection (10) (supra) or have recourse to the High Court by filing an original suit since the High Court is seized with both appellate and original jurisdiction in the matter under Article 139 of the Constitution. The CLR had no power whatsoever to review the earlier decision and take a different one in same matter. The law does not vest the CLR with such powers.

675 In that regard the submissions of Ms. Nyangoma are erroneous that there is nothing in law that stops the CLR reviewing her earlier decisions. The intention of the Legislature in enacting section 91 (supra) was to provide for the powers of the CLR in specific terms and the extent of such powers. That can also be inferred from the section which is entitled; "*Special powers of registrar.*" If the Legislature intended to clothe the CLR with power to review its earlier decision

680 or opinions, they would have stated so in very clear and unambiguous terms. They did not. As such, no power of review of its earlier decisions or opinions resides in the CLR.

The implication is that the action of Ms. Sarah Kulata re-opening the matter that had been decided by her predecessor in office Mr. Edward Karibwende; and proceeding to cancel the plaintiff's name on the Register, was illegal and offended the *functus officio* rule. The CLR acted  
685 ultra vires her powers. It was equally misconceived of the 1<sup>st</sup> defendant's counsel to have prompted the CLR, in letter *Exhibit D25*, to review the decision which had been taken by Mr. Edward Karibwende in *Exhibit P11*.

The Supreme Court in ***Mohan Musisi Kiwanuka vs. Asha Chandi, CACA No.14 of 2002***, elucidated on the *functus officio* rule. The rationale of the principle is to avoid the absurdity that  
690 would arise from one officer making a decision and his or her successor reverses that decision. In this case, Mr. Karibwende and Mrs. Sarah Kulata Basangwa or any other officer after them could not be permitted to issue a contradictory decision in the same matter. It would lead to absurdity that a decision taken by the same office changes *ad infenetum* merely on change of office holders. There would be no certainty or end in sight.

695 The next issue is whether in fact the 3<sup>rd</sup> defendant followed the procedure under section 91(supra) in cancelling the plaintiff's name on the Register. The reasons assigned for the cancellation of the plaintiff's name is that it had been entered in "error". This was, however, a flimsy reason given that the entry of instrument numbers on the Register is done upon presentment of the duplicate title to the Registrar and on the basis that the title is believed to be  
700 genuine. That cannot by any stretch of imagination be an error because in addition, there exists an elaborate procedure of how instrument numbers are issued, endorsed and signed.

Besides, the whole process could not be “an error” because it is not only one instrument number involved but a whole range of several other transfers. If it was an error under section 91(supra); a fresh hearing should have been conducted. According to the evidence, there was no hearing of  
705 any kind whatsoever at any stage.

Therefore, the claim by DW5 that the plaintiff refused to produce the owner’s copy is in vain. Such production should have been done during the hearing. The title obviously could not be produced where no hearing was held. The CLR could not invoke powers under section 91(supra) without following or applying its provisions or simply applying them wrongly.

710 The Supreme Court in *Kampala District Land Board & Another vs. Venasio Babweyaka & 4 Others SCCA No. 2 of 2007* citing the case of *Kampala District Land Board vs. National Housing & Construction Corporation Ltd* (supra) emphasized that the parties’ right to be heard before being condemned is sacrosanct. In that case the respondents were not given a fair hearing before they were deprived of their interest in land it was held that the decision was made in  
715 contravention of the principles of natural justice and it could not stand.

Section 91 (supra) gives powers to CLR to take such steps as are necessary to give effect to the Act. The powers include making endorsements, alteration or cancellation of certificates of title. In so doing, the CLR must follow the procedure stipulated thereunder. Under subsection (h) he or she must give notice of intention to take appropriate action of not less than twenty one days to any  
720 party likely to be affected by the his or her decision. Under sub section (i) the CLR must conduct a hearing, give interested party a right to be heard in accordance with the rules of natural justice. Under (j) upon making a finding, the CLR shall communicate the decision to the parties in writing giving the reasons for the decisions made. In (k) after the CLR may then call for the

duplicate certificate of title or instrument before cancelation, collection or delivery to a proper  
725 party after the foregoing. Under (l), it is only when the person possession of a title or instrument  
fails or refuses to produce it within a reasonable time the CLR may amend the register and issue  
a special certificate to the lawful owner. Under (m), a person aggrieved by the CLR's decision  
has a right to appeal against it within sixty days after the decision is communicated. Until after  
the expiry of the stipulated sixty days for appealing, no action must be taken.

730 In the instant case, the CLR wrote the letter dated 28/03/2008 and cancelled the entry of the  
plaintiff in the Register on 31/03/2008. Even assuming that the latter served the purpose of the  
notice, it fell far too short of the mandatory twenty one days under the law. There was no hearing  
accorded to the affected parties. The decision was not communicated to the affected party as  
stipulated. Clearly the decision to cancel the plaintiff's name on the title was arrived at in utter  
735 disregard of the principles of natural justice. Therefore, it is null and void and cannot stand.

Also to note is that DW5 in her letter, *Exhibit P12*, claimed that her decision to the cancel was  
not based on fraud but on "unlawful entries on the folio" to wit; entertaining transaction on a  
document which is not the genuine title. By implication, however, it is clear that DW5 was  
alluding to fraud even though ingeniously avoiding using the word "fraud". It is evident that the  
740 complaint of the 1<sup>st</sup> defendant which set in motion the whole process of cancellation was  
specifically premised on forgery of the title. The pleadings in his counterclaim are also that the  
counterdefendants got registered on the suit property using a forged title and through fraud.  
Therefore, the CLR could not have been responding to a different complaint other than one  
premised on fraud.

745 That being the case, fraud was not within the realm of the powers of CLR under section 91 (supra). The provision replaced section 69 RTA, Cap 205 (1964 Edition) which was repealed by section 97 of the Land Act, No. 16 of 1998. Section 97 (supra) provides that;

***“The Registration of Titles Act is amended by repealing section 69 and paragraph (a) of section 178.”***

750 Section 69 RTA (1964 Edition) (supra) which was repealed provided as follows;

***“In case it appears to the satisfaction of the Registrar that any certificate of title or instrument has been issued in error or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error or on any certificate or instrument, entry, or endorsement has been fraudulently or wrongfully  
755 obtained, or that any certificate of title or instrument is fraudulently or wrongfully retained, he may by writing require the person to whom such a document has been so issued or by whom it has been so obtained or is retained to deliver up the same for the purpose of being cancelled or corrected or given to the proper party, as the case requires; and, in case such a person refuses or neglects to comply with such a  
760 requisition, the Registrar may apply to the High Court to issue summons for such a person to appear before such Court and show cause why such certificate of title or instrument should not be delivered up for the purpose aforesaid; and if such a person when served with summons refuses or neglects to attend before such Court at the time therein appointed, it shall be lawful for the Court to issue a warrant authorizing and  
765 directing the person so summoned to be apprehended and brought before the High Court for examination.”*** (Underlined for emphasis)

While the repealed section 69 RTA (supra) gave the Registrar of Titles (now CLR) the power to cancel certificates of title and entries on grounds, inter alia, of fraud, the 1998 amendment intentionally omitted use of the phrase “fraudulently” in the provision. The intention of the  
770 Legislature was purposely to remove cases involving fraud from the domain of cases CLR could handle. As held in the case of *Fredrick J.K. Zaabwe vs. Orient Bank Ltd & Others* (supra) an allegation of fraud needs to be fully and carefully inquired into since fraud is a serious matter. It must be particularly pleaded and strictly proved to the standard beyond a mere balance of probabilities in ordinary civil cases.

775 Similarly, in *C.R. Patel vs. Commissioner for Land Registration & 2 Others, HCCS No. 87 of 2009*, it was held that such a standard of proof could not be properly attained in evidence casually raised before the CLR, and hence any allegation involving fraud has to be proved before a court of law.

Likewise, in the instant case allegations of fraud against the counterdefendants transcended the  
780 realm of mere errors, misdescriptions or illegalities which the CLR is mandated under section 91(supra) to act upon. The issue could only be determined in a suit in a court law.

The final aspect concerns disobedience of the interim court order. The order barred the 2<sup>nd</sup> defendant from cancelling the plaintiff’s name on the title pending determination of substantive issues. Evidence shows that that after the office of the CLR received the court, she  
785 nevertheless went ahead and hastily effected the cancellation. DW5 attempted to justify her decision for reasons already discussed. I find the reasoning rather absurd and amounting to nothing short of contempt of the court order. For as long as the office of the 2<sup>nd</sup> defendant acknowledged receipt under their stamp, the court order was considered duly served. What the

2<sup>nd</sup> defendant's officials did with the court order thereafter related only to the internal dynamics  
790 of their office and not the responsibility of the process server. Being aware of the court order, the  
2<sup>nd</sup> defendant had no excuse not to comply with it merely because of what the 2<sup>nd</sup> defendant  
considered the order to be.

In the case of *Amirat Goyale vs. Halichand Goyale & Others, CACA No. 109 of 2004*, the court  
emphasized the need for parties to obey court order. It was held that if court order were allowed  
795 to be ignored with impunity that would destroy the authority of judicial orders which is at the  
heart of all judicial systems.

Mr. Rezida raised a point trying to show that the 1<sup>st</sup> defendant through his lawyer Mr. Joash  
Sendege was also aware of the court order. That the said lawyer attended court on a watching  
brief and listened in. Mr. Sendege vehemently denied that he attended the court or had any prior  
800 knowledge of the court order in issue.

In my opinion, the presence or otherwise of Mr. Sendege at the hearing or his knowledge of the  
order and the imputed knowledge on the 1<sup>st</sup> defendant is beside the point. The party to whom the  
order was specifically directed for the purpose of barring action is the CLR. As already found,  
the order was duly received but defied by the same office. Therefore, it does not serve any useful  
805 purpose to belabor the point whether Mr. Sendege was present in court or not when the order was  
issued.

I only need to emphasize the position that a court order is an order issued *in rem*. In *Bashaija  
Kazoora John vs. Bitekyerezo Medard & Another, HCEP No. HCT – 05 – CV – EP – 004 –  
2004* it was held that a court order is an order against the whole world. Once issued, a court order  
810 binds all the parties and everyone in respect of the subject matter under litigation.

***Issue No.3: Whether the plaintiff is a bona fide purchaser for value without notice.***

This point has largely been canvassed under *Issue No. 2* premised on the decisions in ***Hajji Abdu Nasser Katende vs. Vathalidas Haridas & Co. Ltd***, (supra) and ***Hannington Njuki vs. William Nyanzi*** (supra). It is therefore not necessary to repeat the same in detail.

815 PW1 led evidence as to how he met the vendor of the suit property Kakwenzire. The two had not known each other or had any other prior interaction. The plaintiff caused a search which confirmed that Kakwenzire Davis was the registered owner according to the records in the Land office. The plaintiff paid the purchase price and the two executed a sale agreement, and a transfer deed was registered vide *Instrument 382985*. The instrument number was confirmed by the DW5  
820 as having been entered in the Register. The plaintiff took physical possession of the suit property until late July 2008 when Police ordered the plaintiff out.

I only wish to emphasize that the principle of bonafide purchaser for value without notice exists precisely because it is envisaged that something may have gone wrong. The purchaser for value with no notice of whatever could have gone wrong is, nevertheless, protected by law. This is a  
825 peculiar feature in our land law. The remedy for whoever may have suffered the wrong lies in damages against the party in default. Thus to defeat that principle, it is imperative that the wrong be attributed to the transferee; in this case the plaintiff. The RTA under section 59, 64 and 181 encapsulates this principle. In particular section 181(supra) specifically protects a bonafide purchaser for value without notice.

830 The provision reinforces the earlier finding of this court that a bonafide purchaser can get a good title from a vendor so registered on title through fraud or error. It also dispels the notion espoused by DW5 that she cancelled the plaintiff's name on the Register on account of its

predecessors in title having been registered in error. Under section 181(supra) even errors are clearly not excepted from the rule. In *Olinda De Souza vs. Kasamali Nanji*, case (supra) it was  
835 held that the obligation of the person dealing with registered proprietor is to ascertain the existence of the registered proprietor and the genuineness of the instrument signed by him. *Issue No.3* is answered in the affirmative.

***Issue No.4 What remedies are available to the parties?***

The cancellation of the plaintiff's name on the Register for the suit property by the 2<sup>nd</sup> defendant  
840 without according the plaintiff a hearing contravened the principles of natural justice, and it is illegal, null and void.

The disobedience of the interim order issued by the High Court dated 28/03/2008 by the 2<sup>nd</sup> defendant was in contempt of the order of court and as such unlawful.

The plaintiff is a bonafide purchaser of the suit property for value without notice of any fraud/  
845 infirmities on the title and was legally registered as proprietor thereof.

The 2<sup>nd</sup> defendant acted ultra vires her powers when she reinstated of the 1<sup>st</sup> defendant's name on the Register as the registered proprietor for the suit property and the said reinstatement is illegal and was illegally done.

The 2<sup>nd</sup> defendant is ordered to cancel the 1<sup>st</sup> defendant's name on the Register as the registered  
850 proprietor of the suit property, and to register the plaintiff as the proprietor thereof.

As regards the prayer for an order of eviction of the 1<sup>st</sup> defendant and /or his agents from the suit property, the status quo currently obtaining on the suit land as presented in the evidence of the plaintiff and submissions of its counsel is that neither party is in physical possession/occupation

after the court order. That would not call for an order of eviction against the 1<sup>st</sup> defendant who is  
855 not in physical possession of the suit property.

A permanent injunction doth issue restraining the defendants from interfering with the plaintiff's  
ownership, proprietorship, and possession of the suit property.

The plaintiff prayed for special damages and interest thereon. PW1 led evidence of how he  
planned to have the suit property as part of the business center office complex. He adduced in  
860 evidence *Exhibit P7* about the planned developments, architectural designs and drawings and the  
projected income that would accrue from rent on the property upon completion

PW1 further stated that the planned office space was 17,269 square meters at a rate of \$17 per  
square meter totaling to \$293,573 per month. That the retail space would be 3411 square meters  
at \$30 per square meter and that totals to \$102,330, parking space of 445 slots at \$25 per slot  
865 which would yield \$11,125 per month and the monthly total income would be \$407,028. That  
total less 30% would leave a net of \$341,904 per annum. PW1 also stated that it should have  
taken about two years from 2008 to 2010 to develop the property. That since from 2010 to-date  
is seven years and the total income lost is \$23,933,249. He based the rates on other tenancy  
agreement of similar office space, retail parking in *Exhibits P19 - 21*.

870 On general damages, Mr. Rezida submitted that under section 183 RTA damages against  
Government are permissible. That in this case, its officials' actions of cancelation, the actions of  
Police, the actions of CLR who is a party to this suit, the actions of the Government servants  
represented by the Attorney General in this case would attract general damages to that extent  
suffered by the plaintiff. Mr. Rezida further called for the award of punitive damages for the  
875 conduct of the CLR in disobeying the court order.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants' counsel and counsel for the 4<sup>th</sup> counterdefendant for their part submitted generally that the plaintiff is not entitled to any of the reliefs sought.

Quite clearly the amounts stated by the plaintiff as special damages were based on the assumption that it would put the suit property to the planned developments' purpose and income  
880 in rent would necessarily accrue in accordance with the plan and stated rates. No contingencies appear to have been envisaged at all in the proposed plans and it was generally assumed that everything would go clock – work - like.

It is, however, observed that the plans were merely proposals. In such circumstances court is are reluctant to award special damages premised on speculation of the occurrence of contingent  
885 factors, such as projected income from rent at given rates for planned developments that were not even commenced yet. It would be too presumptuous and stretching the imagination too far.

Regarding general damages, they are awarded in the discretion of the court and are always as the law will presume to be the natural and probable consequence of the loss suffered. A plaintiff who suffers loss due to acts of the defendant should be awarded damages that will put him or her in  
890 back in the same position he or she would have been if he or she did not suffer the loss.

In the instant case, the issue is; who should pay the damages? Certainly not the 1<sup>st</sup> defendant. He genuinely believed that he was pursuing recovery of the suit property that was ordinarily supposed to be his. He never occasioned or caused any loss to the plaintiff. As such no general damages would be awarded against him.

895 Also for the 2<sup>nd</sup> defendant, no damages would be recoverable. The CLR has no legal capacity to sue or be sued in its own name. No law clothes that office/institution with that legal capacity. It is usually added in the suits for purposes of effecting consequential orders for it to perform

duties/functions set out by statute. Even where it is not included in a suit as a party, consequential orders for the performance of a specific statutory duty would ordinarily issue  
900 directing to CLR to comply. Such orders, however, do not include payment damages.

The party liable to pay damages in such instances would be the Attorney General if added as party to the suit for actions/omissions of Government officials including for the CLR. While damages by law are permissible against Government, the Attorney General must have been a party in a suit in the first place. This was not the case with the plaintiff's suit; therefore, no  
905 damages can be awarded against a non-party to a suit.

On the issue of costs section 27(2) CPA provides that costs are awarded in the discretion of the court; but shall follow the event unless for good reasons court directs otherwise. The plaintiff has succeeded in its suit and is awarded costs of the suit.

Regarding the counterclaim, as earlier found the actions of the officials of the Land office led to  
910 the alienation of the suit property to the counterclaimant. While he cannot recover as against the counterdefendants, he is rightly entitled recover all his computed losses including the market value of the suit property and costs of the counterclaim from the 4<sup>th</sup> counterdefendant/the Attorney General. The counterclaim thus only succeeds as against the 4<sup>th</sup> counterdefendant, but it fails and is dismissed with costs as against the 1<sup>st</sup> and 2<sup>nd</sup> counterdefendants. It is ordered that the  
915 4<sup>th</sup> counterdefendant/Attorney General pays the full market value of the suit property at the prevailing market rate to the counterclaimant, and costs of the counterclaim.

**BASHAIJA K. ANDREW**

**JUDGE**

920

*28/04/2017*

Mr. Peter Kusiima Counsel for the 2<sup>nd</sup> counterclaimant present.

925

Mr. Richard Bwayo holding brief for Mr. Alex Rezida Counsel for the plaintiff/ 1<sup>st</sup> counterclaimant present.

Mr. Richard Rubaale Counsel for the 1<sup>st</sup> defendant /counterclaimant present.

Ms. Nabaasa Charity State Attorney holding brief for Ms. E. Nyangoma Counsel for the 4<sup>th</sup> counterdefendant present.

Mr. Godfrey Tumwikirize Court Clerk present.

930

Court: Judgment read in open Court.

***BASHAIJA K. ANDREW***

***JUDGE***

***28/04/2017***

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