

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 241 OF 2015

5 **ZION CONSTRUCTION LTD. :::::::::::::::::::::::::::::: PLAINTIFF**

VERSUS

1. ABAHAIRE DAVID

2. ATTORNEY GENERAL :::::::::::::::::::::::::::::: DEFENDANTS

3. COMMISSIONER FOR LAND REGISTRATION

10 **4. ADMINISTRATOR GENERAL**

BEFORE HON. MR. JUSTICE BASHAIJA K. ANDREW

J U D G M E N T:

15 Zion Construction Ltd. (*hereinafter referred to as the “plaintiff”*) brought this suit against Abahaire David, the Attorney General, the Commissioner for Land Registration, and the Administrator General (*hereinafter referred to as the 1st, 2nd, 3rd and 4th “defendant” respectively*) seeking the following remedies;

(a) *A declaration that the 1st and 4th defendant have no legal, beneficial, or equitable*
20 *interest in the suit property formerly comprised in Kyadondo Block 53 Plot 24 vide; Plots 249-306, 389-778, 791-867, 868-964, 1230-1295, 1298-1353, 1376-1636, 1637-2303 or any part thereof, or the now reconstituted Plot 24 (hereinafter referred to as the “suit land”).*

(b) *A declaration that the plaintiff lawfully acquired its legal interest in the suit land then*
25 *comprised in Kyadondo Block 53 Plot 24 measuring approximately 938.20 acres and currently subdivided into several Plots vide; Plots 249-306, 389-778, 791-867, 868-964, 1230-1295, 1298-1353, 1376-1636, 1637-2303, and that the cancellation of the title in*

the plaintiff's name and all surveys and subdivisions emanating therefrom by the 3rd defendant and agents of the 2nd defendant is illegal, irregular and in bad faith.

30 (c) *A declaration that the directives by the 3rd defendant to the Wakiso District Staff Surveyor to cancel all subdivisions arising from Kyadondo Block 53 Plot 24, and to sanction a re-survey, reconstitution and re-installment of Plot 24 in the names of the 4th defendant, the Administrator General, as the transferee are illegal, irregular, and in bad faith, and constitute a violation of the plaintiff's right of ownership and*
35 *possession.*

(d) *A declaration that the re-survey, subsequent cancellation of the subdivision and all surveys and reconstitution of Plot 24 in the names of the 4th defendant by both the 3rd defendant and agents of the 2nd defendant is illegal, and liable to cancellation as they constitute violation of the plaintiff's right of ownership and possession.*

40 (e) *A declaration that the action by the 3rd defendant of directing the cancellation of the survey and all sub divisions arising from Kyadondo Block 53 Plots 24, and in effect nullifying all transaction between the plaintiff and third party purchasers is unconstitutional, irregular, illegal, and in bad faith.*

(f) *A declaration that the impugned action by the 3rd defendant based on claims of ownership by the 1st and 4th defendants or other claimants long after the lawful acquisition of the suit land by the plaintiff and subdivision thereof and transfer to third parties, without proof thereof is illegal, irrational, and actuated by mala fides.*
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(g) *A declaration that the impugned action of the 3rd defendant directing cancellation of the survey of Kyadondo Block 53 Plot 24 land at Mwererwe and all subdivision*

50 *therefrom without proof of fraud against the plaintiff by the 1st defendant or any other claimant in a court of competent jurisdiction is illegal.*

(h) *An order directing the 2nd and 3rd defendants to cancel the re-survey of the suit land, the deed print issued in favour of the 4th d and all instruments, and entries on the register of the land comprised in Kyadondo Block 53 Plot 24 in favour of the 4th defendant, the Administrator General, as the administrator of the estate of the late Daudi Muise Mwebe.*

(i) *An order that the certificate of title for land comprised in Kyadondo Block 53 Plot 24 at Mwererwe, Wakiso District, the survey and all subdivisions therefrom effected by the plaintiff, as the registered proprietor, and all entries thereof be re-instated on the respective register kept by the 3rd defendant, and the Wakiso District Survey office.*

(j) *An order directing the 3rd defendant to re-instate Plot 24 in the names of the plaintiff and all entries thereon and all the surveys and sub-divisions and all certificates of title for the subdivisions therefrom vide: Plots 249-306, 389-778, 791-867, 868-964, 1230-1295, 1298-1353, 1376-1636, 1637-2303 affected by cancellation.*

(k) *An order of a permanent injunction restraining the 3rd defendant and all agents or departments of the 2nd defendant including the Wakiso District Staff Surveyor from issuing any certificate of title in favour of the 4th defendant for Plot 24, or any subdivision therefrom and upon reinstatement of the suit property in the names of the plaintiff, from cancelling the survey of land comprised in Kyadondo Block 53 Plot24 and all subdivisions therefrom or any certificates of title issued and all entries in favour of the plaintiff and its transferees.*

(l) *General damages and costs of the suit.*

Background:

The plaintiff, a company dealing in the real estate business, purchased the suit land from one
75 Michael Kalibbala Nteyafa who was the registered proprietor by virtue of Letters of
Administrator for the estate of Apollo Kalibbala Nteyafa. The 3rd defendant transferred the suit
land and registered it into the names of the plaintiff. Thereafter the plaintiff caused the suit land
to be sub divided into several plots currently comprised in Kyadondo Block 53 Plots 249-306,
389-778, 791-867, 868-964, 1230-1295, 1298-1353, 1376-1636, 1637-2303. All these plots were
80 curved out of land originally comprised in Kyadondo Block 53 Plot 24 measuring approximately
938.20 acres. The process of sub division was duly sanctioned by the Wakiso District Staff
Surveyor's Office and the 3rd defendant. Accordingly, several certificates of title were issued out
in respect of the various plots and quite a number of them were sold off and transferred to third
parties by the plaintiff company.

85 The transferees included one Bitature and Samuel Muneeza who were earlier on the suit land as
tenants having purchased their respective portions from Michael Kalibbala Nteyafa the
Administrator of the estate of Apollo Kalibbala Nteyafa, before he sold the entire suit land to the
plaintiff company. They agreed with the plaintiff to be compensated for their respective interests
in the suit land by way of grant of certificates of title. There were also other categories of tenants
90 to whom the plaintiff sold some portions of the suit land it had sub divided and also made
transfers to.

The plaintiff through its Managing Director, one Godfrey Genza, later learnt that the 1st
defendant had lodged a complaint to the 3rd defendant who initiated the process of cancelling all
the sub divisions created from Plot 24 reconstituting the suit land as a Blue Page otherwise

95 known as Part of Unascertained Parcel of land (P.U.P). The plaintiff instituted this suit seeking the remedies enumerated above.

Upon filing the suit the plaintiff obtained an interim order against all the defendants to preserve the *status quo* on the suit land. The 3rd defendant, nevertheless, went ahead and caused the issuance of a deed print for Block 53 Plot 24 in favour of the 4th defendant who was in
100 possession of Letters of Administration for the estate of one late Daudi Muise Mwebe who was claimed to have been the original owner of the suit land under the Blue Page

Prior to the commencement of hearing the case, the plaintiff withdrew the suit against the 1st defendant and settled his part of the claim in the suit land. The other defendants filed their respective defences. In addition, the 4th defendant filed a counterclaim also asserting interest in
105 the suit land as the administrator of the estate of late Daudi Muise Mwebe. The 4th defendant averred that it had a Blue Page for the P.U.P for Plot 24, and sought for the cancellation of the plaintiff's title on account of fraud attributed to the plaintiff's predecessors in title.

In the joint scheduling memorandum, parties agreed on the following issues for determination both in the main suit and counterclaim.

- 110 **1. Whether the plaintiff lawfully acquired the suit property and was lawfully registered as proprietor thereof.**
- 2. Whether the estate administered by the 4th defendant has any legal or beneficial interest in the suit land as such.**
- 3. Whether the actions of the 3rd defendant in conjunction with agents of the 2nd
115 defendant in purporting to cancel the plaintiff's registration on the suit land and all the subdivisions therefrom, and in purporting to reconstitute and revert the suit land to the original Plot 24 on a Blue Page in the names of the 4th defendant were lawful.**

4. Whether the 4th defendant's counterclaim is barred by law.

5. What reliefs are available to the parties both in the main suit and counterclaim?

120 The plaintiff adduced evidence its Managing Director, Genza Godfrey as PW1, Mr. Ssentongo
Erisa the LC1 Chairman of the area where the suit land is situate as PW2, and Mr. Samuel
Muneeza formerly a tenant on the suit land as PW3. The 2nd defendant adduced no evidence. The
3rd defendant called evidence of one witness, Mr. Wamala Ali as DW1. The 4th defendant also
adduced no evidence in support of its defence or counterclaim despite being afforded an
125 opportunity to do so on several occasions. Court accordingly proceeded under Order 17 r. 4 of
the Civil Procedure Rules (CPR) and had the 4th defendant's defence closed and counterclaim
dismissed with costs.

All Counsel representing the parties filed their respective written submissions which I have taken
into account in arriving at the decision in this judgment. I am also thankful those who supplied
130 Court with authorities upon which they relied for their arguments. The plaintiff was represented
by Mr. Kyazze Joseph of *M/s. Magna Advocates*. Mr. Elaisha Bafirawala represented the 2nd
defendant. The 3rd defendant was represented by Mr. Sekitto Moses, and the 4th defendant by Mr.
Robert Bogere.

Resolution of the issues:

135 Counsel for the 2nd defendant in his submissions raised an objection to the effect that no cause of
action was established against the 2nd defendant in its representative capacity. He was of the view
that there was no evidence pointing to the actions of the servants of the 2nd defendant in this case.
Counsel argued that the actions complained of were only attributed to the office of the
Commissioner for Land Registration, who is a party to the suit as the 3rd defendant and not to the
140 2nd defendant.

In reply Counsel for the plaintiff argued that the plaintiff specifically pleaded that the 2nd defendant is liable and was sued on account of the acts and omissions of its agents in the Department of Survey and Mapping and Registrars in the Land Office under the supervision of the 3rd defendant. Further, that all these are employees of Government which is represented by
145 the 2nd defendant. In addition, that the existence of *Issue No. 3* in the joint scheduling memorandum is confirmation that the facts constituting the cause of action as against the 2nd defendant were duly pleaded.

The law relating cause of action is settled. The Court of Appeal in the case of ***Uganda Aluminum Ltd. vs. Restituta Twinomugisha CACA No. 22 of 2000*** held, inter alia, that to
150 determine whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any, and nowhere else. Similar position was taken in ***Ssemakula Peter & Others vs. Attorney General, HCCS No. 237 of 2010.***

A cursory look at the pleadings in the amended plaint, in paragraphs 3, easily shows that the 2nd defendant was sued;

155 “... ***in its representative capacity as the Attorney General of Uganda for the acts and omissions committed by the Government agents/servants in the course of their employment.***”

Under paragraph 9 (a) – (k), the alleged acts and omissions of the Government agents /servants are outlined in the facts constituting the cause of action. Further in paragraph 20, allegations of
160 the impugned actions of the Wakiso District Staff Surveyor on the instructions of the 3rd defendant in favor of the 4th defendant, are clearly set out. Therefore, on the face of the pleadings facts constituting a cause of action against the 2nd defendant were duly established. The objection lacks merit and it is dismissed.

***Issue No. 1: Whether the plaintiff lawfully acquired the suit land and was lawfully registered
165 as proprietor thereof.***

The issue calls for an incisive examination of the propriety of the processes leading up to the plaintiff's registration on the title. PW1 testified that as MD of plaintiff company dealing on real estate business, he was informed by a land broker sometime in 2010 that the suit land was under sale. The land broker linked PW1 to the owner one Michael Kalibbala Nteyafa who was the
170 Administrator of the estate of the late Apollo Kalibbala Gulemye Nteyafa. Together with the land broker and Michael Kalibbala, PW1 inspected the suit land by moving around it. They found squatters who recognized Michael Kalibbala as the landlord. Upon purchase of the suit land by the plaintiff the same squatters entered into various sale agreements with the plaintiff to process for them titles for the agreed portions of their Bibanja interests on the suit land.

175 This evidence was corroborated by PW2, Ssentongo Erisa, the area LC Chairman. He added that no person ever came up to claim interest in the suit land or to object to the inspection. PW2 also stated that no beneficiaries of the estate administered by the 4th defendant ever came up to claim any interest in the suit land. Further, that Michael Kalibbala was the person known to the local authorities as the registered owner of the suit land.

180 PW1 also stated that upon conclusion of the physical inspection, Michael Kalibbala availed him a photocopy of the title with the description of the suit land as Kyadondo Block 53 Plot 24 situate in Mbugu measuring approximately 938.20 acres. PW1 proceeded and caused a search in the 3rd defendant's office and obtained a search letter *Exhibit P2*. The particulars thereon corresponded with entries on the special certificates of title, *Exhibit P.1*. The search also showed
185 that the suit land existed with no registered incumbrances at all.

PW3 Samuel Muneeza, also corroborated the evidence of PW1 with regard to the status and particulars of the suit land. He stated that he had also earlier caused a search on the suit land in May, 2009 from the office of the 3rd defendant which issued him with a search letter, *Exhibit P3* with corresponding entries as in *Exhibit P.1* the certificate of title for the suit land. DW1, 190 Wamala Ali, from the office of the 3rd defendant in his testimony also confirmed the authenticity of *Exhibits P2*, and *P.3* and the particulars contained therein, and stated that they were issued by the office of the 3rd defendant.

PW1 further adduced in evidence the residue title of original Plot 24. It showed that Michael Kalibbala Nteyafa was registered thereon in 2002 under *Instrument No. KLA 242799*; which is 195 the same Instrument number appearing on *Exhibit P.1* the title the special certificate of title. DW1 from the 3rd defendant's office once again corroborated this piece of evidence adding that title, *Exhibit P1* and search letters *Exhibits P.2* and *P.3* had nothing in them to show that the land was on P.U.P, but that they only showed that the suit land existed with all the particulars as indicated therein.

200 PW1 also exhibited sale agreements with Michael Kalibbala Nteyafa the vendor as *Exhibit P.4 (a)* and *P.4 (b)*. The agreements essentially show that the plaintiff purchased the suit land for valuable consideration. PW1 further testified that prior to the purchase there existed claims of Samuel Muneeza (PW3) and one Michael Bitature who earlier purchased portions of the suit land from Michael Kalibbala Nteyafa all totaling to 100 acres. PW1 stated that the plaintiff 205 agreed to settle their respective claims by processing titles for them. To support this he adduced in evidence an "Addendum" agreement *Exhibit P.5*.

PW1 further stated that after the plaintiff was issued with a special certificate of title, the 3rd defendant then transferred the suit land into the plaintiff's name and registered it as proprietor

vide *Instrument No. 466158* on 16/08/2010. DW1 from the office of the 3rd defendant
210 corroborated this evidence and confirmed that all the processes leading up to the plaintiff's
registration were done by the office of the 3rd defendant. DW1 further stated that the registration
of all the plaintiff's predecessors in title had never been challenged by any person.

PW1 also testified that after the registration, the plaintiff caused the suit land to be subdivided
into several plots, and that the process was duly sanctioned by the 3rd defendant. To prove this
215 PW1 adduced in court copies of the mutation forms and area schedule forms marked *Exhibit P.7*
and *Exhibit P.8* respectively. He further stated that the plaintiff processed certificates of title for
the squatters under the arrangement with Michael Kalibbala Nteyafa vide *Exhibit P.9* and *Exhibit*
P.10. PW1 also exhibited the various certificates of title for some for the plots carved out of the
original Plot 24 and a list of persons who had purchased part of the suit land from the plaintiff
220 vide *Exhibit P.18*. PW1 maintained that throughout the pre-purchase inspection and after the
purchase, the transfer and during the process of creating the sub - divisions, none of the
beneficiaries of the state administered by the 4th defendant ever showed up to claim interest in the
suit land. PW1 further stated that the plaintiff even undertook the activities of physically grading
and sub - dividing the suit land which ordinarily would have attracted claims, but none ever
225 came up.

After carefully evaluating the evidence as a whole on this issue, it emerges out quite clearly that
the original title *Exhibit P.1* for Kyadondo Block 53 Plot 24 which was subsequently subdivided
had a White Page from which it was created as far back as 1946. The title has since then been a
subject of successive unchallenged transfers. DW1 from the office of the 3rd defendant confirmed
230 the various successive entries dating back to 1946 with their respective Instrument Numbers. It is
shown therein that the plaintiff's immediate predecessor in title was registered in 2002 and the

plaintiff in 2010, and the suit land was at no time incumbered in any way whatsoever. Therefore, the evidence adduced by plaintiff has successfully demonstrated that the suit land was a subject of a valid title in the names of the plaintiff's predecessors in title who had been duly registered.

235 In the case of *Madhivani Group Ltd. vs. Alexander David Simbwa & Others HCCs No. 615 of 2012*, it was held, inter alia, that where a party acquires land for valuable consideration and there was no evidence showing that the party acquired the land through fraud either of itself or predecessors in title, the party hold a good and indefeasible title.

In the instant case, evidence shows that the plaintiff's immediate predecessor in title was 240 registered on the title in 2002 by virtue of the Letters of Administration for the estate of the late Apollo Kalibbala Gulemye Nteyafa. In that capacity he was duly clothed with the necessary legal authority to deal in the property including selling and transferring it to the plaintiff.

It was further shown that the suit land was transferred to the plaintiff through duly executed transfer instruments and was registered under *Instrument No. KLA 466158* dated 16/08/2010. By 245 virtue of Section 92 (2) of the Registration of Titles Act, Cap 230 (RTA), the estate and interest of the Michael Kalibbala Nteyafa with all the rights, powers and privileges belonging to him legally passed on the plaintiff as the transferee. A similar position was taken in the case of *Themis Nakibuuka Sebalu vs. Peter Sematimiba & 2 O'rs SCC Appl. No. 15 of 2014*. Needless to emphasize, the decision in that case is binding on this court.

250 The plaintiff having discharged the burden of proof on it, the evidential burden shifted to the 3rd and 4th defendants who wished court to believe otherwise. Section 103 of the Evidence Act (Cap.6 provides that;

255 ***“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.”***

In the case of ***Dr.Vincent Karuhanga t/a Friends Polyclinic vs. National Insurance Corporation & Uganda Revenue Authority, HCCS No.617 Of 2002 (2008)ULR 660 at page 665***, which was cited with approval by the Court of Appeal in ***Takiya Kaswahili & A’ nor vs. Kajungu Denis, CACA No.85 of 2011***, it was held, inter alia, that;

260 ***“...The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof, that is, his allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption.”***

265 In the instant case the 4th defendant had the burden to prove the particular allegations in its counterclaim that the acquisition of title by the plaintiff’s predecessors in title was tainted with illegalities and fraud. As noted earlier the 4th defendant never led any evidence to prove the allegations of fraud on the part of the plaintiff’s predecessors in title attributable to the plaintiff. In absence of such evidence the title of the plaintiff for the suit land cannot be impeached and the
270 plaintiff is protected by law under Section 176 (c) RTA. For ease of reference I quote the relevant part below;

“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases—

275 ***(a)***

(b).....

(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;...”

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The legal implication is that the plaintiff’s title cannot be successfully impeached on account of the manner in which the late Apollo Kalibbala Nteyafa Gulemye or the plaintiff’s immediate predecessor in title obtained registration unless it is shown that the plaintiff was privy to the fraud. As was held in *David Sjjaka vs. Rebecca Musoke, Civil Appeal No.12 of 1985*, fraud must be attributable to the transferee, either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of such act by somebody else and participated in it or taken advantage of it.

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The above finding also inevitably renders untenable the 3rd defendant’s claim that the plaintiff’s title was erroneously issued. The claim remained wholly unsupported and appears to have been just an afterthought. It is noted that DW1 sought to assert that the Instrument Number in respect of the entry of Apollo Kalibbala Gulemye Nteyafa was not in the register of 1994. DW1 however could not state that the Instrument Number was forged or that it was not allocated by the Land office. On the contrary, he conceded that entries on the title date back to 1946 and bear Instrument Numbers all of which were effectually allocated by the Land office. DW1 enumerated all the previous entries on the title predating the registration of the plaintiff and confirmed that they all corresponded with those in the search statements in *Exhibit P.2* and *P.3* issued by the 3rd defendant. At no time did DW1 state that the particular Instrument Numbers by which the plaintiff and its predecessors in title got registered were not in the register.

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On the 3rd defendant's assertion that the suit land still formed part of the P.U.P, DW1 exhibited
300 copy of the Blue Page to support the view that Kyadondo Block 53 Plot 24 was still intact on a
Blue Page. He then made a vain denial that the plaintiff's title was curved out of the said Blue
Page, and further made assertions that the land is yet to be surveyed.

I find that DW1 was absolutely being dishonest with his evidence in that regard. His evidence
completely fails the threshold reliability test of credibility and cogency under the rules of
305 evidence. It will be recalled that DW1 had earlier in his testimony confirmed that there exists a
White Page for land comprised in Kyadondo Block 53 Plot 24. He also unequivocally
acknowledged that for any title to exist, it must have emanated from a White Page. DW1 was
also specific on the acreage /measurements of the suit land and stated that the title has a deed
print which delineated the suit land also emanating from survey that was invariably conducted by
310 Survey & Mapping Department in the Land office. With these facts in its own evidence, the 3rd
defendant's claim that the suit land is not surveyed land falls flat in its face. There is no way a
White Page could have been created for land that was not surveyed. There is also no way
measurements/acreage could have been ascertained if the suit land was not surveyed and a deed
print made. The evidence by DW1 is self – defeating as it totally contradicts the pleadings of the
315 3rd defendant.

It is also important to note the evidence of DW1 that upon creation of a White Page, the Blue
Page must be closed. He categorically confirmed that closing of the Blue Page is the
responsibility of the Land office. Logically, it means that the Land office having created the
White Page for Kyadondo Block 53 Plot 24, it had the obligation to close the corresponding Blue
320 Page. Any omission on part of the Land office to close the Blue Page could not be blamed on

the plaintiff; much less be proof of fraud on part of the plaintiff's predecessors in title to warrant the impeachment of the plaintiff's title.

Yet another issue was raised by DW1 in his evidence that the title of the suit land describes the land as being situate at Mbugu, whereas Block 53 is actually situate at Mwererwe. While DW1
325 claimed this to be an irregularity in the title, he conceded that he does not know the geographical location of Mbugu, Sayi or Mwererwe. Evidence of the title however shows that the entire Block 53 is situate at Mwererwe. PW2 and PW3 the area LC1 Chairman explained, and correctly so, that Plot 24 is big and cuts across two villages of Mbugu and Sayi. What this means is that the certificate of title for Plot 24 can only indicate the name of the village where the land is situate;
330 which is Mbugu, falling within the bigger Block 53 of Mwererwe. Most importantly, the certificate of title was made by the Land office which also indicated the location therein as Mbugu. That cannot in any way amount to evidence of fraud on part of the plaintiff or its predecessors in title.

Under the Torren system, the law regulating titled land and the efficacy of a certificate of title of
335 a registered owner is well settled. Section 59 RTA imbues a registered proprietor of land with indefeasibility of title and such title as conclusive evidence of ownership. In ***Hariprasad Ramabai vs. Babubhai Kalidas Patel [1992 -1993] HCB***, it was held that;

340 ***“A certificate of title is 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.”***

As already pointed out the 4th defendant never adduced evidence to prove the allegations of fraud it levied against the plaintiff in the counterclaim. Also the evaluation of the 3rd defendant's evidence that the title of the plaintiff was irregularly issued has been found to be devoid of any

merit. On the other hand the plaintiff amply established that it exercised the necessary due
345 diligence expected of it as a purchaser and lawfully acquired the suit land. The plaintiff therefore
enjoys the protection accorded under Section 176 (c) RTA (supra) against ejectment by the
defendants. *Issue No.1* is answered in the affirmative.

***Issue No. 2: Whether the estate administered by the 4th defendant has any legal or beneficial
interest in the suit land as such.***

350 This issue stems from a claim of interest in the suit land by the 4th defendant as the administrator
of the estate of the late Daudi Muiise Mwebe. In its defence and counterclaim, the 4th defendant
averred that there was no way the late Daudi Muiise Mwebe could have transferred the suit land
to the late Apollo Kalibbala Gulemye Nteyafa, the father to the plaintiff's immediate predecessor
in title. That the plaintiff and its predecessors in title were therefore registered on the suit land
355 illegally and through fraud.

At the risk of repetition, although fraud was pleaded, it has been found that it was never proved
at all by the 4th defendant/counterclaimant. In *Kampala Bottlers Ltd. vs. Damanico (U) Ltd.,
CACA No.22 of 1992*, it was held that;

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

In the present case no iota of evidence was led by the counterclaimant to prove that it had any
interest in the suit land or that the plaintiff or its predecessors in title illegally or fraudulently
acquired the suit land.

The plaintiff for its part was able to show that it lawfully acquired the suit land. In particular,
365 PW2 stated that the only person known in the area as the owner of the suit land at the time was
Michael Kalibbala Nteyafa. That after obtaining Letters of Administration and upon being

registered on the title around 2002; Michael Kalibbala Nteyafa introduced himself to the local authorities. He even caused a survey of the suit land. PW2 and PW3 further confirmed that the 4th defendant and the beneficiaries claiming under it are unknown in the area and have never
370 been on the suit land or in occupation or possession. They have never laid any claim or lodged any complaint in respect on the land with the local authorities. That even during the inspection of the suit land, the survey, and sub division by the plaintiff, none of them ever came up to lay any claim of interest on the suit land.

In addition, the plaintiff's certificate of title shows entries dating back to 1946. They show that
375 the plaintiff's predecessor in title got registered in 2002. The late Apollo Kalibbala Gulemye Nteyafa whose estate was administered by Michael Kalibbala was registered in 1994, and his registration was never challenged by the 4th defendant or anybody for all that time. Not even a caveat was ever lodged on the title by the 4th defendant or beneficiaries claiming under the estate administered by the 4th defendant to protect their interest if any, whatsoever. DW1 who testified
380 for the 3rd defendant confirmed that the suit land was not subject of any registered incumbrances. Several transactions were carried out and the suit land sub- divided into several plots and sold to third parties who are in possession and have developments therein with certificates of title in their names. There is no evidence suggesting that that the plaintiff participated in the registration of all its predecessors in title.

385 On strength of the evidence available, the 4th defendant and beneficiaries claiming under the estate administered by the 4th defendant have no interest in the suit land. If at all they had any interest, then it was extinguished in 1994 upon the suit land being transferred into the names Apollo Kalibbala Gulemye Nteyafa. It follows that in absence of any evidence of fraud, the plaintiff upon its registration acquired good title, and any other person's interest in the suit land

390 was extinguished. Such other interest could no longer be recoverable owing to the successive transfers to the plaintiff and from the plaintiff to numerous third parties who now have independent certificates of titles. *Issue No.2* is answered in the negative.

Issue No. 3: Whether the actions of the 3rd defendant in conjunction with agents of the 2nd defendant in purporting to cancel the plaintiff's registration on the suit land and all
395 ***subdivisions therefrom, and in purporting to reconstitute and revert the suit land to the original Plot 24 on a Blue Page in the names of the 4th defendant were lawful.***

The legality of the 3rd defendant's actions complained of largely depends on the procedure it adopted and reasons it assigned for the decision to cancel all the sub divisions created from the Kyadondo Block 53 Plot 24.

400 PW1, PW2 and PW3 led evidence that the 3rd defendant has never served them with the requisite notice under the law of the intention to cancel the titles created out of former Plot 24. PW1 in particular stated that the only claim that the plaintiff responded to was in respect of the purchase of part of the land by Abahaire David under *Exhibit P.13* and *Exhibit P.11*.

After careful appraising the evidence, indeed no copy of a notice issued by the 3rd defendant
405 pursuant to Section 91 of the Land Act (Cap 227) was found on the record. DW1 from the 3rd defendant's office merely testified to matters of law that the 3rd defendant is vested with a statutory mandate, whether moved by parties or on her own accord, to cancel a certificate of title illegality obtained or erroneously issued or retained. DW1 premised his evidence on provisions of Section 91 of the Land Act (*supra*) as amended.

410 The issue, however, is not whether the 3rd defendant is vested with the power and authority under the law or not, but whether the 3rd defendant adhered to the due process set out under the said provision of the law; and also whether there was any valid reason in any case for such a decision.

One of the reasons DW1 gave in his evidence was that 1st defendant, David Abahaire, lodged a complaint that he had an interest in the suit land which the plaintiff had bought and registered in
415 its name including Abahaire's portion. The other reason DW1 stated was that the suit land was still part of the P.U.P on Blue Page in the names of the 4th defendant. That the 3rd defendant raised questions as to how the plaintiff could have obtained the certificate of title given that the land was P.U.P still on the Blue Page.

DW1 stated that after investigating the matter, the 3rd defendant came to the conclusion that the
420 title was erroneously issued and took a decision to cancel it and all surveys and sub - divisions therefrom. Further, that it was established that the suit land was still part of a P.U.P, and that the Blue Pages existed in the names of the 4th defendant. Also, that the plaintiff was summoned for a hearing and it was duly represented before the decision was taken and hence the 3rd defendant duly complied with the law.

425 It was noted that DW1 joined the Land office in 2012, and the title in issue had entries dating back to 1946. He stated that he was not involved in the creation of the White Page for the suit land in Plot 24 and hence could not competently attest to facts surrounding its creation. He also conceded that the duplicate certificate of title held by the plaintiff and the White Page were created by the Land office, but that the Blue page was not closed after creation of the White Page
430 which is the normal practice. DW1 could not explain the reason why it was never closed.

It very evident that the complaint allegedly lodged by Abahaire was not the reason for the 3rd defendant's action. There is no proof of the alleged complaint in evidence on court record as none was tendered. Even assuming that Abahaire's complaint was the reason, it only showed that he had purchased 40 acres of the suit land then comprised in Kyadondo Block 53 Pot 24 from the
435 then registered proprietor Michael Kalibbala Nteyafa, who sold off the entire land to plaintiff

including the 40 acres. In effect Abahaire's complaint would not be that the land formed part of a P.U.P, but only a recognition that Michael Kalibbala Nteyafa was the registered owner of the suit land at the time, and not the 4th defendant. As already stated, the plaintiff settled Abahaire's claim and withdrew the suit against him. If indeed this was the basis of it decision, then the 3rd defendant no longer had any claim against the plaintiff.

DW1 stated there is no complaint anywhere on record to the 3rd defendant from the 4th defendant claiming to have an interest in the suit land as forming part of the P.U.P or that the plaintiff's title was erroneously or illegally issued. He also confirmed that it was the Land office that issued search statements vide *Exhibit P.2* and *P.3*. This further dispelled the 3rd defendant's claim that the suit land was a subject of a P.U.P.

DW1 further confirmed that all transactions on former Plot 24 and the various sub - divisions and titles created out of it were all sanctioned by the Land office. He also confirmed that Plot 24 ceased to exist upon creation of the sub – divisions out of it. That being the case, it would follow that the 3rd defendant practically and legally could not cancel Plot 24 as there was nothing to be cancelled. Plot 24 could not be the subject to cancellation unless it was first legally reconstituted. It could not be reconstituted without first cancelling all sub – divisions and titles made out of it. The sub divisions and certificates could not be cancelled and the land reverted to a P.U.P without the respective owners who are in possession with developments on the suit land being afforded a hearing.

On the issue of a public hearing, DW1 claimed that the plaintiff and owners of the respective sub divisions were summoned for a public hearing which was conducted on 10/11/2014. To support the claim DW1 referred to the 3rd defendant's trial bundle, in particular to letter marked "E" as

the notice and to document marked “F” as the attendance list and document marked “G” as the decision to cancel upon hearing.

460 A closer look at letter marked “E” (supra), however, shows that it is not a notice of public hearing envisaged under Section 91 (supra). DW1 actually admitted under cross examination that it was not a notice. He also conceded that the provision of the law cited requires a proper notice of rectification to be served on all parties likely to be affected by the decision. He admitted that letter “E” was just an invitation for a meeting which was in respect of Plot 118 and not Plot 24.

465 Further, that the letter did not contain any of the sub divisions created out of the original Plot 24, and that it was not inviting any of the owners of the sub divisions for the public hearing.

DW1 also correctly stated the distinction between a meeting and a public hearing. The distinction, however, exposed his false claim that the list of attendance was evidence of a public hearing. Also, whereas DW1 stated that the meeting took place on 10/11/2014, the attendance
470 list on the other hand refers to a date of 17/11/2014. There was also no evidence of the minutes of the alleged meeting tendered in court, yet DW1 claimed that he was the secretary of that meeting.

To my mind all these glaring disparities, inconsistencies and outright falsehoods clearly demonstrate that the 3rd defendant acted illegally. She did not follow the requisite procedure
475 under the law. She had no legal basis for taking a decision to cancel the plaintiff’s title and the sub divisions created therefrom.

I also find the allegation that the suit land forms part of a P.U.P as having no legal basis at all. Production of copies of the Blue page in evidence only had the effect of showing that the 3rd defendant had the duty to close the Blue Page upon creation of the White Page for Plot 24. The
480 omission to do so could not be blamed on the plaintiff nor could it be an error warranting

cancellation of a White page already sub divided. Most importantly, since Plot 24 which was sought to be cancelled no longer existed, there was nothing to revert to a Blue page other than just closing it.

In the case of *Edward Gatsinzi & Another vs. Lwanga Steven HCCS No. 690 of 2004*, it was held, inter alia, that the failure to adhere to the provisions of the law governing the cancellation of the registered person's certificate of title (in this case the plaintiff) meant that the Chief Registrar of Titles (in this case the 3rd defendant) exercised power illegally with material irregularity, and it rendered her actions null and void. The decision to cancel the title therefore cannot be left to stand. *Issue No.3* is answered in the negative.

490 *Issue No.4: Whether the 4th defendant's counterclaim is barred by law.*

The issue as to limitation of action was solely premised on the 4th defendant's counterclaim. As earlier indicated the counterclaim was dismissed and the issue was accordingly overtaken by event.

Even assuming that it subsisted, the counterclaim would still be unsustainable against both counterclaimants. The 4th defendant's case under the counterclaim was that the late Apollo Kalibbala Gulemye Nteyafa fraudulently obtained registration from Daudi Muise Mwebe. As is clear from *Exhibit P.1* and *P.23*, the certificates of title for the suit land, Apollo Kalibbala Gulemye Nteyafa was registered as a proprietor on 7th October, 1994, and his registration was never challenged for a period exceeding twelve years. This would render any claim of the 4th defendant in the counterclaim caught by the law of limitation as it should have been brought not later than 2006.

On the other hand Michael Kalibbala Nteyafa, the plaintiff's immediate predecessor in title got registered as the Administrator of the estate of the late Apollo Kalibbala Gulemye Nteyafa on

31st January, 2002. His registration too was not challenged and the twelve year limitation period
505 lapsed in January, 2014. The counterclaim was filed in 2015 after expiry of twelve years, and no
grounds of exemption from limitation were pleaded pursuant to Order 7 r.6 CPR. It too would be
rendered time barred.

A similar position was taken in the case of *Bogere Godfrey vs. Abby Kasolo & Others, HCCS
No. 494 of 2013*, where it was held, inter alia, that where a counterclaim is filed out of time and
510 there are no exemption factors from the law of limitation pleaded by the counterclaimant as
required under Order 7 r. 6 CPR, the counterclaim is time barred.

It needs to be emphasized that the fraud alleged in the counterclaim was solely premised on the
registration of the plaintiff's predecessors in title. Since the action was time barred as against
plaintiff's predecessors in title, it could similarly not be competently maintained as against the
515 plaintiff.

Before taking leave of this issue, it is worth observing that Counsel for the 4th defendant made
submission in which he totally failed to address any of the issues framed for determination. He
argued that he would not comment on the merits of the case because the 4th defendant;

***“... is on record as informing the court that he is no longer the administrator of the
520 estate of the late Daudi Muise Mwebe who owns the dispute property under the Blue
Page or P.U.P.”***

Counsel delved then into irrelevant legal arguments about the various capacities the
Administrator General can administer property under the law. He largely dwelt on blaming court
for what he perceived as the failure to allow the 4th defendant to withdraw from the suit. The
525 reasons advanced are quite absurd legally and factually and uncalled for.

Suffice to note that when the plaintiff closed its case, the 4th defendant was required to adduce evidence in its defence and in support of its counterclaim, but failed to do so. It was at that point that Counsel claimed, albeit without leading any evidence at all, that the 4th defendant “intended to renounce” the administration in favour of the beneficiaries of the estate of late Daudi Muise Mwebe, and that the 4th defendant was no longer interested in the case.

Certainly the court was not in any doubt as to which capacity 4th defendant had been sued. Indeed no issue arose in that regard. The 4th defendant basically claimed interest in the suit land as the “*Administrator of the estate of the late Daudi Muise Mwebe*”. It also claimed that the suit land forms part of the P.U.P for Plot 24 for which it claimed to have a Blue Page. That was the essence of the main suit, the defence and counterclaim.

Therefore, court could not merely take submissions from the bar by of Counsel for granted that the 4th defendant “intended to renounce” administration in favour of the beneficiaries of the estate under its administration. The court was not entitled to speculate as to whether or not such “intended renunciation” would mean that the beneficiaries automatically would defend the suit or prosecute the counterclaim initiated by the 4th defendant. Even then, the purported “intended renunciation” would not in itself legally constitute a revocation of the Letters of Administration which were still being held by the 4th defendant. There was no evidence of any court order, ordinarily from the Family Division of the High Court, endorsing the purported renunciation.

Section 7(3) of the Administrator General’s Act, is to the effect that until the Letters of Administration are revoked and a new grant issued, the Administrator General remains vested with the statutory authority, interests, and powers over the estate.

As applicable to the instant case, the mere mention by Counsel that the 4th defendant “intends to renounce” the Letters of Administration or intends to issue a certificate of “no objection” to the

beneficiaries would not suffice as it was wholly unsupported. Such a declaration in court by a
550 lawyer did not automatically constitute a revocation of the existing Letters of Administration,
and as such could not affect the capacity of the Administrator General until the revocation and
new grant was issued.

It needs to be stated for emphasis that throughout the trial, the 4th defendant never raised the issue
of renunciation. It only came up at a stage when the 4th defendant was required to adduce
555 evidence in its defence and in support of its counterclaim. Having fully participated in the suit at
all stages, the 4th defendant could not purport to withdraw from the suit under the guise of the
reasons its Counsel made in his submissions.

Also to note is that Counsel for the 4th defendant made the said submission on 9/09/2016. This
was after failing to produce witnesses to prove its case despite specific court orders that the 4th
560 defendant produces its witnesses. According to the purported copy of the “no objection” which
was attached to Counsel’s final submissions, it shows that it is dated 5/10/2016. That simply
means that at the time Counsel made his submissions, Section 7(3) of the Administrator
General’s Act (supra) still applied with full force to the 4th defendant. It was thus untenable for
the 4th defendant to disclaim capacity when the Letters of Administration in its name were still
565 intact in law and on court record, and when there was no any order of revocation or evidence of a
new grant. The 4th defendant could not, in the circumstances, legally run away from the action it
initiated and actively participated in. They laid their bed; they had to sleep in it. The submissions
of Counsel for the 4th defendant on the issue are lack any substance.

Issue No. 5: What remedies are available to the parties both in the suit and counterclaim?

570 The plaintiff lawfully acquired the suit land formerly comprised in Kyadondo Block 53 Plot 24.
Therefore, the 4th defendant has no interest in the suit land, and the counterclaim is dismissed

with costs. It is also found that the 3rd defendant acted illegally and with material irregularity in cancelling the surveys and titles of the sub divisions created from the original Plot 24. The 3rd defendant's action of purporting to reconstitute and reinstate the land in its original Block 53 and
575 Plot 24, and reverting it into a P.U.P on the Blue Page and registering it in the 4th defendant's name is null and void.

Accordingly, the 3rd defendant is ordered to reinstate all the sub - divisions, entries, and instruments in respect of the sub - divisions and titles created out of firmer Plot 24 in the names of the respective owners. An order of a permanent injunction is issued restraining the 2nd and 3rd
580 defendants or their agents from issuing a title in favour of the 4th defendant in respect of land comprised in the original Kyadondo Block 53 Plot 24 or any sub - divisions therefrom.

The plaintiff also sought the remedy of general damages. The position of the law is that a plaintiff who suffers damage due to a wrongful act of the defendant must be put in a position he/she would have been in had she or he not suffered the wrong. See: ***Madhivani Group Limited***
585 ***vs. Alexander David Simbwa & Others*** (supra).

The plaintiff adduced evidence showing that subsequent to the purchase, it caused the suit property to be transferred into its name and obtained a certificate of title. By the nature of its business, as a real estate dealer, it sub - divided the suit land into very many plots and started selling them off to third parties. The plaintiff also settled all claims of squatters. However, while
590 still in the process of creating titles for the various persons who had bought some of the plots, the 3rd defendant at the behest of the 4th defendant took the decision to cancel all the surveys and transactions done on the suit land. This inevitably deprived the plaintiff of its right to fully utilize and make use of its property to generate income by selling and transferring of the land to prospective buyers, and certainly had adverse financial effects on the plaintiff's business. For

595 instance the plaintiff had to cease any further business on the suit land. All the pending transfers were stopped by the 3rd defendant; a fact that caused financial loss to the plaintiff. The plaintiff is thus entitled to an award of general damages from the defendants.

Going by the current value of the land generally and the nature of the plaintiff's business being real estate, and the extent of damage in time lost for business and loss of financial income from
600 prospective buyers, court considers the sum of Shs. 300,000,000/= as being fair and reasonable in the circumstances and award the same as general damages.

The plaintiff prayed for costs of the suit. Section 27 of the Civil Procedure Act provides that costs are awarded in the discretion of the court but shall follow the event unless for good reasons the court directs otherwise. The plaintiff being the successful party is awarded costs of the suit.

605 In summary, it is declared and ordered as follows;

1. ***The plaintiff lawfully acquired the suit land formerly comprised in Kyadondo Block 53 Plot 24.***
2. ***The 4th defendant's counterclaim is dismissed with costs.***
3. ***The 4th defendant has no interest in the suit land.***
- 610 4. ***The 3rd defendant acted illegally and with material irregularity in cancelling the surveys and titles of the sub divisions created from the original Plot 24.***
5. ***The 3rd defendant's action of purporting to reconstitute and reinstate the land in its original Block 53 and Plot 24, and reverting it into a P.U.P on the Blue Page and registering it in the 4th defendant's name is null and void.***
- 615 6. ***The 3rd defendant is ordered to reinstate all the sub - divisions, entries, and instruments in respect of sub - divisions and titles created out of firmer Plot 24 in the names of the respective registered owners.***

- 620 7. *A permanent injunction doth issue restraining the 2nd and 3rd defendants or their agents from issuing any title in favour of the 4th defendant in respect of suit land comprised in the original Kyadondo Block 53 Plot 24 or any sub - divisions therefrom.*
8. *The plaintiff is awarded general damages of Shs. 300,000,000/= which shall attract an interest rate of 8% per annum from the date of this judgment until payment in full.*
9. *The plaintiff is awarded costs of this suit.*

625 **BASHAIJA K. ANDTREW**
JUDGE
31/01/2017

Mr. Joseph Kyazze Counsel for the plaintiff present.

630 Plaintiff's representatives present.

Counsel for the 2nd, 3rd and 4th defendants absent.

Mr. Godfrey Tumwikirize Court Clerk present.

Court: Judgment read in open Court.

635 **BASHAIJA K. ANDTREW**
JUDGE
31/01/2017