



- iii) a declaration that the Plaintiff is the rightful owner of the land in Block 257 Plot 357 at Munyonyo as per duplicate certificate of title in her names since 30<sup>th</sup> August 1991.

The Plaintiff prayed for a permanent injunction, general damages, interest and costs of the suit.

The plaintiff details in paragraph 5 thereof, the particulars of this claim which briefly is that the Defendants fraudulently transferred the land into their names in 2007. On the 12<sup>th</sup> day of February 2010, the 3<sup>rd</sup> Defendant attempted to claim ownership of the same but was repulsed.

Paragraph 6 particularized the fraud committed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The Defendants did not enter appearance nor filed a defence inspite of being served by substituted service. The matter then preceded *ex-parte* under O.9 rule 10 and 11(2) of the Civil Procedure Rules.

The Plaintiff called evidence in proof of PW1, PW2 and exhibits PE<sub>1</sub>, PE<sub>2</sub>, PE<sub>3</sub> and PE<sub>4</sub>. PW1 Angela Simuyu informed Court that the Plaintiff is her sister and holds Powers of Attorney for her regarding this suit. She confirmed that the Plaintiff is registered as owner thereof since 1991 and has never sold it.

She tendered in Court the following exhibits;

- PE<sub>1</sub> (Power of Attorney),
- PE<sub>2</sub> – (original certificate of title),
- PE<sub>3</sub> (photos of land and developments),
- PE<sub>4</sub> (special certificate o title for Defendants),
- PE<sub>5</sub> (letter by the Plaintiff) and
- PE<sub>6</sub> (copy of caveat).

PW2 – Paul Kimbugwe told Court that since 1991, the Plaintiff has been possessing the land in question. (Plot 357, Block 257). He is one of the caretakers of the land with PW1 Simiyu Angela. He confirmed all issues as testified to by PW1 that the land has never been sold by the Plaintiff to anybody and that the Defendants tried to access it in 2010 but were repulsed. They ran away and have disappeared to date.

The issues for determination were listed as;

- (i) Whether the Defendants were fraudulent in their transactions on the suit land,
- (ii) Whether or not the Plaintiff is the rightful and lawful owner of the land comprised in Kyadondo block 257 Plot 357 - Munyonyo

I resolve the issues as follows:

The defence never filed a defence. The law is that failure to file a defence raises a constructive admission of the claim made in the pleadings. In his submissions, Counsel referred to the cases of *Asuman B Kiwala versus Chief Registrar of Titles HC MA NO. 106/2004 (2004) KALR – pages 518 – 519*

In this matter by virtue of O.9 r10 of the Civil Procedure Rules, where a party does not file a defence on or before the day fixed therein and upon compliance with O.9 r5 (*affidavit of service being filed*), the suit may proceed as if the party had filed a defence.

Under O.9 r11 of the Civil Procedure Rules, such a suit may proceed *ex-parte*.

The above provisions mean that the Plaintiff shall bear the burden to prove the case in accordance with the standard of proof.

In this case, given the evidence of PW1, PW2, and the exhibits PE<sub>1</sub> – PE<sub>6</sub>, there is enough evidence on record to show that;

- i) The suit land belongs to the Plaintiff who was registered as owner vide PE<sub>2</sub>, and has been in actual and constructive possession thereof as evidenced by PW1, PW2 & PE<sub>1</sub>- PE<sub>6</sub>,
- ii) The Defendant acted fraudulently when they obtained registration in their names for land belonging to the Plaintiff claiming that her certificate of title was lost whereas not. All actions as contained in the evidence of PW1 and PW2 proved the element of fraud as pleaded.

Therefore, from the evidence above, I resolve both issues above in the affirmative.

ISSUE 3 – REMEDIES:

## **1) Cancellation of Title**

Section 177 of the Registrar of Titles Act empowers this Court to direct the Commissioner for Land Registration to cancel any certificate of title and replace the same, for being fraudulently obtained contrary to Section 176 of the Registrar of Titles Act.

I do agree with the Plaintiff that this is a proper case for ordering for cancellation of the title of the Defendants and replace it with her original title in her own names.

## **2) Damages**

This Court agrees that the Plaintiff is entitled to recover damages from the Defendants for their fraudulent acts on her land since the year 2010. The law regarding general damages is that they are the direct natural or probable consequence of the Act complained of. (*Per Storms versus Itutechinson [1905] AC 515*)

In this case, the consequence is that the Appellant has suffered pain and anguish. As a result, the Plaintiff incurred costs of reporting to the LC, going to police, lodging a caveat, coming to Court and taking specialized lookout and care over this land, arising from the Defendant's actions since 2010 to the present date;

- The Plaintiff will be compensated Ugshs. 1,500,000/- (*one million, five hundred thousand*) only per year for 7 (*seven*) years which is shs. 10.5 millions as general damages.
- The Court also awards interest at Court rate from the date of Judgment till payment in full
- Costs of this suit are also allowed.

In all, the Plaintiff has proved the claim against the Defendants in the terms as discussed above.

Judgment accordingly entered in favour of the Plaintiff.

I so order.

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Henry I. Kawesa

J U D G E

21/11/2017

21/11/2017

Katende Patrick for the Plaintiff

Plaintiff absent.

Kyateka Ivan for the 3<sup>rd</sup> Defendant.

3<sup>rd</sup> Defendant absent.

1<sup>st</sup> and 2<sup>nd</sup> Defendants absent. Not represented.

Katende: matter is for judgment, we are ready.

Kyateka we are just learning of the judgment but my client does not contest.

Katende: we welcome that position.

Court:

The matter was left to me at the level of writing a judgment. I have perused the record and proceedings to write the judgment. However, the issues raised by Counsel Kyateka are noted to the extent of not contesting the matter.

Judgment is therefore read out to the parties.

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Henry I. Kawesa

J U D G E

21/11/2017

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Henry I. Kawesa

JUDGE

21/11/2017