

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 202 OF 2016

BUGEMBE KAGWA SEGUJJA:.....PLAINTIFF

V E R S U S

1. STEVEN ERIAKU

2. ALVIN SSETUBA KATO:.....DEFENDANTS

BEFORE HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

The Plaintiff brought this suit to recover land comprised in Busiro Block 412 plot 194 at Lutaba, cancellation of the Defendant's name from the register/title from the said land, transfer of the same into the Plaintiff's names and costs of the suit.

The facts constituting the cause of action are enumerated in details in paragraphs 3 and 4 of the plaint, which particularises of the fraud committed against the Plaintiff by both Defendants herein.

Though served, the Defendants failed to file a defence, whereupon the matter proceeded *ex parte*, and was set down for hearing **under O.9 r11 (2)** of the **Civil Procedure Rules**.

The Plaintiff called one witness whose evidence was contained in the witness statement; of Bugembe Kaggwa Segujja.

The evidence of Bugembe Kagwa established in proof that the suit land was owned by the late Besweri Lutakome who was the registered proprietor thereof and that the Plaintiff resides on the suitland currently as a kibanja owner.

In 2006, the Plaintiff bought a mailo interest in the suit land from Besweri Lutakome and was issued with transfer forms and enabling instruments. The Plaintiff then began requesting for the titles in order to effect the transfers, but Besweri informed him that the title was missing. However, upon conducting a search in the Land office, he discovered that the land had been fraudulently transferred into the names of a one Stephen Eriaku and Alvin Ssetuba. This evidence is supported by the annexures and exhibits PE1, PE2 and PE3 (*sale agreement, transfer forms and photos of the burial grounds*).

From that evidence, this Court now determines the issues as herebelow:

Issue No. 1;

Whether the Plaintiff is a bonafide/lawful occupant of the suit land

From **Section 1 (e)** of the **land Act (Cap 227)**, *'bonafide occupants and lawful occupants,' have the meanings assigned to them in Section 29 of the Act.*

There is evidence on record to show that the Plaintiff has been in occupation of the suit land for over 12 (*twelve*) years and has developed his kibanja with a house and a farm. The kibanja also has burial grounds for the Plaintiff's family. (*See paragraphs 6, 7, 8, 9, and 10 of the witness statement*).

The Plaintiff has further testified that he exercised the right to buy a mailo interest in the suit land from the late Besweri as per the exhibits P1 and P3 (*sale agreement and transfer forms*).

This evidence confirms that the Plaintiff is a bonafide/lawful occupant on the registered land by virtue of having been there for over 12 (*twelve*) years and having bought his mailo interest from the registered proprietor – Besweri Lutakome.

Section 29(1) (b) of the **Land Act** defines lawful occupant as;

‘A person who entered the land with the consent of the registered owner; and includes a purchaser..’

I agree with Counsel for the Plaintiff in his assertion that **Article 237(8) of the Constitution, Sec 31 of the Land Act, (supra), and Section 64 (2) of the Registration of Titles Act Cap 230**, recognise

the security of tenure of a bonafide occupant on land. Such tenant is deemed to be a tenant of the registered owner. The security of this tenancy was discussed in *Kampala Distributors versus National Housing and Construction Corporation SC CA No. 2 of 2007*. The **Supreme Court** postulated that a bonafide occupant was given security of tenure and his interest could not be alienated except as provided by the law, and that while land occupied by a bonafide occupant could be leased to somebody else, the first option would be given to the bonafide occupant, and if it is not done, it means the suit land would not be available for leasing.

Form the above position of the law, I am satisfied that the Plaintiff is a lawful/bonafide occupant of the suit land.

Issue No. 2;

Whether the Defendant’s Certificate of Title is liable to be cancelled on grounds of fraud or illegality;

Section 59 and 176 (c) of the Registrar of Titles Act, red together, protect a holder of a Certificate of Title as conclusive evidence of ownership. Such a title can only be faulted on grounds of fraud.

See *John Katalikawe versus William Katwiremu & Anor (1977) HCB 187* and *Desouza versus Kassamali Manji 1962 EA 756*.

The proof of fraud requires a standard beyond the balance of probabilities. In *Sebuliba versus Coop bank Ltd. (1987) HCB 130*, it is stated that;

‘The standard of proof in fraud cases is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases.’

Fraud is defined by *Black's Law Dictionary 6th Edn at page 660* as referred to by **Hon. J. Katureebe** in *F. J. K Zaabwe vs Orient Bank & 5 Ors SCCA NO. 04 of 2006 page 28 (lead judgment)* as;

'..... A generic term embracing all multifarious means which a human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and includes all surprise, trick, cunning dissembling and any unfair way by which another is cheated...'

From the said definition, I note that the Plaintiff has shown by evidence that the Defendant acted by trickery in obtaining a title behind the Plaintiff's back on land for which he lives and expressed interest by buying out his kibanja, so as to obtain a registered interest. (See PW1's evidence in chief and PE1, PE2 and PE3).

I am satisfied that as argued by Counsel for the Plaintiff in submissions that the evidential burden of proof for fraud has been satisfied.

I also agree that the failure to file a defence raises a presumption of constructive admission to the claim made in the plaint and the story as told by the Plaintiff (*per holding in Agadi Didi versus James Namakaso; HCCS NO. 1230 of 1988*) cited in *Sylvan Kakugu Tumwesigye versus Trans Sahara International General TR DG LLC HCCS NO. 95/2005*).

I am satisfied that this issue terminates in the positive.

Issue 3: Remedies:

- a) Cancellation of title

Section 177 Registration of Titles Act provides that;

'Upon recovery, if any land, estate or interest by any proceedings from the person registered as proprietor thereof, the High Court may in any case, in which the proceedings is not herein expressed barred direct the Registrar to cancel any certificate or instrument...'

There has been proof that the Defendants obtained registration by fraud. The said certificate cannot therefore be allowed to stand. The same is therefore *null* and *void* and is hereby ordered to be cancelled by the Registrar of Titles as per the law above.

b) General Damages

General damages are in the discretion of Court. In *Uganda Commercial Bank versus Kigozi (2002) 1 EA 305*;

Court gave guidance that the consideration for an award of general damages should be mainly the value of the subject matter, the economic inconvenience that a party may have been put through and nature and extent of the breach or injury suffered.

The Plaintiff has shown that he bought the land, but has been denied its transfer by the Defendants. The Plaintiff suffered pain. However, since he is in occupation and still utilising the land, he has suffered so much economic hardship, going by the evidence.

Court will grant general damages of shs. 1,500,000/- (*one million, five hundred thousand only*) for pain and suffering.

C) Costs

Costs follow the event.

The Plaintiff is granted costs

The Plaintiff is given Judgment in the terms as above.

I so order.

.....

Henry I. Kawesa

JUDGE

27/2/2018

27/02/2018:

Mr. Lubega Budhala for Applicant present.

Applicant absent.

Respondents;

2nd Respondent presentⁱ

6th Respondents present.

5th Respondent present.

Court: Ruling given to the parties above.

.....

Henry I. Kawesa

JUDGE

27/2/2018

