

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION**

CIVIL SUIT NO. 510 OF 2012

- 1. ERIVANIA SUSAN NALWANGA**
- 2. SENKUBUGE LUKWAGO:.....:PLAINTIFFS**

VERSUS

NELSON SERWANO SEBINENE SENKUBUGE:.....:DEFENDANT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The land comprised in Kyagwe Block 107 Plot 341 LRV 2490 Folio 21 at Kauga Mukono District (*hereinafter suit land*) was formerly registered in the name of Robert Nasanaeri Senkubuge (deceased). The Plaintiff, Defendant, Andrew Sekamwa Serwanga and Christine Abisaje Nampiima Kiyimba were jointly granted Letters of Administration in respect of the deceased's estate after which they became registered on the suit land as Administrators and Administrixes.

It is the Plaintiffs' claim that the Defendant fraudulently transferred the suit land from the Administrator's names, including herself, and mutated the same into thirty (30) plots that is; 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2585 & 2586, and that the Defendant threatened to evict her mother from the family home and also grade the burial ground on the suit land.

The Plaintiff seeks reliefs of cancellation of the thirty (30) certificates of title on grounds of the Defendant's fraud, a permanent injunction restraining the Defendant from intermeddling with the

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estate property and also acting without the authority of the Plaintiff, general damages, interest thereon, and costs of the suit.

The particulars of fraud as pleaded are;

- a. Transferring land comprised in Block 107 Plot 341 Kyagwe Kauga Mukono LRV 2490 Folio 21 from the Plaintiffs' names without the Plaintiff's' authority.
- b. Forging the signature of the Plaintiff to effect transfer of the same from the Administrators to the Defendant
- c. Surveying/mutating/sub-dividing land comprised in Block 107 Plot 341 without the consent of, authority and/or signature of the Plaintiff and creating Plots 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2585, & 2586.
- d. Presenting false documents to the public offices vide the Land Office and Survey Office.
- e. Fraudulently obtaining titles to Plots 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2585 and 2586.

The Defendant was served with summons to file a defence but did not file written statement of defence and the Plaintiff thus, prayed that the matter be set down for hearing *ex-parte* under O.9 r.11 (2) Civil Procedure Rules. In addition, the Plaintiff abandoned the claim for a permanent injunction. Court was satisfied that the Defendant was duly served thus granted leave to proceed *ex parte*.

The Plaintiff filed in Court a trial bundle containing two (2) witness statements sworn by the Plaintiff (*hereinafter PW1*), and Andrew Sekamwa Serwanga (*hereinafter PW2*). To these statements the Plaintiff attached several annexures in support of her claim marked "A" to "J" and "A" to "D" according to the respective witness statements. These were admitted by Court as the Plaintiffs' evidence in chief.

According to paragraph 2, 3 & 4 of PW1s' written statement that she is a beneficiary and one of the Administrators to the estate of the late Ssalongo Robert Nasanaeri Senkubuge to which the

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suit land forms part. A copy of Letters of Administration and duplicate certificate of title were tendered as Annexure A and B respectively. She added that the suit land is now occupied by the widow to the deceased as well as her and other beneficiaries' gardens and family burial grounds.

It was also her evidence in paragraph 6, 7, 8 that she was jointly registered on the suit land as Administrators with the Defendant; PW2, and Christine Abisaje Nampiima Kiyimba but that the Defendant without her consent and that of her co-Administrators, forged her signature and fraudulently transferred the suit land by mutating it into 30 plots.

A copy of the certificate of title alleged to have been fraudulently mutated by the Defendant and one to which she was jointly registered with others as Administrator was admitted as annexure "C" and "D". In addition to this, a copy of the area schedule and a deed plan were tendered in proof of the mutation and admitted as annexure "E" & "F".

It is also the evidence of PW1 in paragraph 9, 10 & 11 of her witness statement that upon discovery of the said fraud, she lodged a caveat but, that notwithstanding, the Defendant has gone ahead to; distribute the suit land to the other beneficiaries, sell the suit land to unsuspecting buyers, and threaten evicting their mother from the family home and grade the burial grounds on the suit land. *A copy of a caveat was admitted as annexure "G".*

Further, PW1 testified in paragraph 12 of her witness statement that the estate of the late Nasanaeri Senkubuge has suffered a loss of earning due to the Defendant's breach of trust vested in him since he is selling the estate property and retaining the proceeds for his personal benefit. A copy of transfer form, certificate of title to the land said to have been transferred and a land sale agreement, by the Defendant was also admitted as annexure "H", "I", "J" respectively.

PW2 corroborated PW1's evidence confirming that the suit land forms part of the estate of the late Nasanaeri Senkubuge and that he was with PW1, the Defendant and Christine Abisaje Nampiima Kiyimba, jointly registered on the suit as Administrator.

He added, however, in paragraph 6, 7, 8 & 9 of his witness statement that the Defendant approached and told him that the other beneficiaries wanted their share in the estate. He added that his suggestion to the Defendant was that they should convene a meeting with the

beneficiaries to pave a way forward which the Defendant never heeded to but went forward to forge his signature and caused the transfer of the suit land to his names.

He confirmed PW1's testimony that the Defendant mutated the suit land into 30 plots. *A copy of the area schedule form and the deed plan herewith was admitted as annexure "C" & "D".*

He also confirmed that the Defendant is threatening to evict their mother from the suit land and also grade the burial grounds thereon.

Counsel for the Plaintiff in his written submissions to Court raised two issues for the determination of this suit which are;

1. Whether the Defendant fraudulently transferred and/or acquired the suit land.
2. Whether the Plaintiff is entitled to the remedies sought.

I chose to deal with these issues jointly because one will automatically lead me to the other.

Counsel referred Court to the definition of fraud as stated in the case of ***Olivia Nuwamanya versus Magezi Rubaale & Anor HCCS No, 265/2012***, where *Hon. Justice Kwesiga* stated that fraud is;

"An intentional perversion 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 suppression of truth or suggestion of what is false or whether by a single act or combination or by suppression of the truth".

It was Counsels' submission that the Plaintiff particularised fraud in accordance with O.6 r.3 Civil Procedure Rules, when she stated that the transfer of the suit land by the Defendant was without her consent as co-Administrator.

Counsel added that the Plaintiff in her evidence in chief also testified that she was registered jointly with the Defendant and others on the suit land which meant that the suit land vested in all their hands as joint Administrators by virtue of Section 180 of the Succession Act Cap 162.

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It was Counsel's submission that the testimony of PW1 in paragraph 7 of PW1's witness statement, in addition to PW2's testimony clearly show that the purported transfer of the suit land was done without the consent of other Co-Administrators which makes the Defendant a fraudster. To support this submission, Counsel relied on Section 134(3) RTA Cap 230 which provides that;

"If in any case...administration is granted to more persons than one, all of them for the time being shall join and concur in every instrument..."

Counsel submitted further that PW1 testified that having fraudulently forged her signature to cause the transfer of the suit land into his names, the Defendant went further to fraudulently cause a mutation of the suit land into 30 plots which by virtue of the Area Schedule Form and the Deed Plan are solely registered in his name. Counsel's explanation was that the mutations were first registered in the names of the Administrators as evidenced by annexure "C" and later registered in sole proprietorship of the Defendant as annexure "D" indicates.

Counsel quoted an extract from the *Supreme Court* decision of *Kampala Bottlers Ltd vs Domanico (U) Ltd SCCA No.22 of 1992* that;

"Fraud must be attributed to the transferee. It must be attributed directly or by necessary implication. The transferee must be guilty of some fraudulent act and must have known such acts by someone else and taken such advantage of such act"

It was from this extract that Counsel submitted that the evidence on the record shows that the Defendant is the transferee of the mutated land and that as such, fraud is attributed directly to him.

Counsel's prayer was that Court should find that the Defendant obtained the suit land fraudulently, and order cancellation of the said transfer and the mutations thereafter and reinstatement of the Administrators as proprietors of the suit land.

Resolution

Whether the defendant fraudulently transferred and or acquired land comprised in LRV 2490 folio 21 Kyagwe block 107 plot 341

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The evidence led by the Plaintiff through PW1 and PW2, alongside Annextures A, B, C, D, E, F, G, H, I, J respectively is basically evidence showing that the title of the land comprised in LRV 2490 folio 21 Kyagwe block 107 plot 341, originally was registered in the names of all the Administrators of the estate of the later Robert Nasanaeri Senkubuge. The evidence shows that, the said land has been subdivided and various plots created therefrom by the Defendant as seen from annextures 'C', 'D' and 'E'.

Evidence further shows that the Plaintiff took steps to place caveats on this land vide annexure 'G'. Further evidence vide annextures 'H', 'I' and 'J' shows that the Defendant dealt with this land as a vendor and issued a sale agreement purportedly to sale and transfer part of the land comprised in block 107 plot 2341 – (currently registered in the names of Natunga Sarah; on 2nd August 2013, having got it from Kajura Francis who got from the Defendant on 14th May 2010.

There is evidence from annex 'G'; caveats by Erivania Susan, showing that she mounted a search in the Land Registry and found that the Defendant had mutated the land and transferred it into his own names.

The import of all the evidence above satisfies the required standard of proof in cases of this nature.

This case is premised on fraud. According to **Black's law Dictionary, 6th Edn. Page 660**, Fraud is defined as;

'An intentional perversion 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 suppression of truth or suggestion of what is false or whether by a single act or combination or by suppression of the truth'.

This definition aptly fits in the facts before Court which show that the Defendant went behind the backs of other Administrators and carried out activities including sale, mutation and transfer of the estate property unlawfully and without the consent of the co-administrators.

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The evidence of forging the signatures of PW1 and PW2; is evidence of fraudulent conduct. This is contained in paragraph 7 of Erivania Susan's statement and paragraph 8 of Andrew Sekamwa's statement. Fraudulent

In *Kampala Bottlers Ltd versus Domanico (U) Ltd SCCA No. 22 of 1992*, the Supreme Court held that;

“Fraud must be attributed to the transferee. It must be attributed directly by necessary implication. The transferee must be guilty of the same fraudulent act and must have known such acts by someone else and taken such advantage of such act”.

It is my finding that in going behind the back of his co-administrators to transfer, forge documents and mutate plots out of this estate property, the Defendant acted fraudulently. This issue is found in the positive.

ISSUE 2:

Whether the Plaintiff is entitled to remedies sought

1. The Plaintiff prayed for cancellation of all the subdivisions carried out on Block 107 Plot 341 Kyagwe Kauga Mukono District, fraudulently done by the Defendant. It is trite that an advantage obtained fraud cannot be allowed to stand as per *Lazarus Estate Ltd versus Beasley 1956 QB at 712*. This remedy is therefore granted.
2. The Plaintiff prayed for cancellation of all titles created by the said subdivisions on Block 107 Plot 341 Kyagwe Kauga Mukono District. Since this is an estate property, the said subdivisions were illegally done and any titles obtained thereby were to that extent illegally obtained. However, these titles were not produced in Court to prove their existence. This Court will order that the Registrar of titles should recall all titles created out of subdivisions illegally done on Block 107 Plot 341 Kyagwe Kauga Mukono District, for restoration.

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3. An order for re-instatement of the Administrators of the estate of the late Salongo Robert Nasanaeri Senkubuge as registered proprietors of the land comprised in Block 107 Plot 341 Kyagwe Kauga Mukono District, is hereby granted.

4. General damages

No guidance was given to Court by the Applicant/Plaintiff as to quantum. This Court cannot guess since no input from Counsel is on record. Given the time spent by the Plaintiff in Court, the alleged pain and suffering and loss occasioned to the estate by the Defendant since 2012 when the matter came to Court, this Court will give the Plaintiff a nominal figure of damages of shs. 1,500,000/- only (*one million, five hundred thousand*) per annum, since 2012 which is shs. 1,500,000/- x 6 years which is; shs. 9,000,000/- only (*nine million*).

Costs of this suit are allowed to the Plaintiff.

Interest on the damages is allowed at Court rate from the date of Judgment till payment in full.

Judgment is entered in the favour of the Plaintiff in terms as above.

I so order.

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Henry I. Kawesa
JUDGE
6/6/2018

Right of Appeal explained.

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Henry I. Kawesa

JUDGE

6/6/2018

07/6/2018

Mr. Mugerwa Vicent for the Plaintiffs

Plaintiff present.

Defendant absent.

Clerk: Grace

Court: Judgment delivered in chambers.

Before me:

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Samuel Emokor

DEPUTY REGISTRAR

07/06/2018