

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO.621 OF 2017

TRANSROAD UGANDA LIMITED:.....PLAINTIFF

VERSUS

COMMISSIONER LAND REGISTRATION:.....DEFENDANT

BEFORE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff a body corporate brought this suit against the Defendant for a declaration that the Plaintiff's title over land comprised in Kyadondo Block 222 Plot 2353 Land at Namugongo is valid, a permanent injunction from interference by the Defendant of the land title held by the Plaintiff for the land comprised in Kyadondo Block 222 Plot 2353 at Namugongo and costs of the suit.

It was the Plaintiff's case that it is the lawful owner having purchased the suit land in 2017 from Golden Lane Uganda Ltd. That the Plaintiff before purchase did a search at the registry and found out that the land belonged to Golden Lane Uganda Ltd who was the registered proprietor with no encumbrances and the Plaintiff got registered on the 16th May 2017 as proprietor and has been in possession un-disturbed. That on 18th August 2017, the Plaintiff received a letter from the Defendant seeking to cancel the Plaintiff's entry from the register alleging that the registrar of titles erroneously removed a Court order Vide WAK 1417998 of 7th June 2016 and that the transfer was erroneously done as there was a subsisting Court order stopping any transactions on land.

It was the Plaintiff's case still that the Defendant intends to cancel the entry of Golden Lane Uganda Ltd and have the title in the names of Benedicto Kalongoli without having Golden Land being heard, that the Plaintiff explained to the Defendant in a public hearing held on 11th August

2017 that it was a bonafide purchaser for value who is neither a party to the cases of which the said orders emanate and that the Plaintiff explained to the respondent that the power to reconcile the two orders that is to say, the temporary and the consent order is preserve of Court and not within the commissioner's powers

The Defendant in its written statement of defence averred in paragraph 4 that there is no cause of action against it as it is a government department and cannot be sued. That the notice to effect changes on the register was made to the Plaintiff concerning land comprised in Kyadondo Block 222 Plot 2353 land at Namugongo on 17th July 2017 that this was pursuant to a complaint made by Tubusweke David Mayinja acting on behalf of Karoli Tabuta a former registered proprietor of the suit land to the effect that a Court order which was registered on the suit land was wrongfully removed from the register and thereafter transferred to the names of the Plaintiff. It was the Defendant's case that on carrying out investigations, the Defendant found that the register revealed that Benedicto Kalongoli was registered as proprietor of plot 2353 under instrument No.KLA 507994 of 18/7/2011 as administrator of the estate of Benedicto Sajabi.

The Defendant averred that the Court order arising from Civil Suit No. 102 of 2011 was registered on the 4th August 2011 under instrument No. KLA 510531 and that on the 21st March 2012, another Court order for a temporary injunction arising from Civil suit No. 102 of 2011 was registered under instrument No. KLA539959. That the Defendant on receipt of an application form from M/s Sebunya & Turyagenda advocates and legal consultants dated 17th January 2017 to cancel the Court order on the premise that a consent order had been issued on the 5th March 2012 under Civil suit No.205 of 2011 by the High Court had been issued, subsequently removed it from the register under instrument No. WAK147998 of 7th June 2017 and later transferred it into the names of Golden Lane Uganda Ltd under Instrument No.00118064 of 7th March 2017 who in turn transferred it to the Plaintiff under instrument No. WAK00126468 of 16th May 2017. That in accordance with its statutory mandate, upon discovery of the error in removing the Court orders referred to in Civil suit No.102 of 2011 whereas the order used to remove them refers to Civil Suit No.295 of 2011, it sought to have the error rectified and cancel the Plaintiff's transfer and have the entry of Bendicto Kalongoli Iga (administrator of the estate of the late Benedicto Sajabi) reinstated.

The Defendant averred that a public hearing was held in respect of the matter on 11th August and that they agreed that there had never seen a Court order vacating the temporary injunction on the

suit land, that the temporary injunction entry be reinstated and Benedicto Kalongoli Iga be reinstated as the proprietor of the suit land.

Only the Plaintiff filed written submissions which shall be relied on together with the pleadings in resolution of the issues.

Issues as In the Joint Scheduling Memorandum.

1. *Whether the Defendant has jurisdiction to cancel the certificate of title for the Plaintiff in the circumstance of the case?*
2. *Whether the title deed can be impeached where no fraud is pleaded against the Plaintiff*
3. *What remedies are available to the parties*

Resolution of the Issues

Counsel for the Plaintiff in her submission handled issue 1 and 2 concurrently and issue 3 separately, therefore Court will follow suit.

Issue One;

Whether the Defendant has jurisdiction to cancel the certificate of title for the Plaintiff in the circumstance of the case?

Issue two;

Whether the title deed can be impeached where no fraud is pleaded against the Plaintiff?

On the 1st issue, Counsel for the Plaintiff submitted that the commissioner land registration lacks powers to cancel the Plaintiff's entry in the circumstance of the case. That if there were any errors, they were done by the Defendant itself and that to condemn the Plaintiff on errors it was not privy to would be to abolish the indefeasibility of title principle which is protected in sections 59, 64, 77,176(c) and 181 of the Registration of Titles Act which is the hallmark of the Torrens system of title by registration practiced in Uganda. That the irregularities talked about by the Defendant occurred before the Plaintiff bought the suit property, that unless there is fraud on the Plaintiff and that none was alleged.

Counsel contends that the Defendant heavily relies on Section 91 of the Land Act against the Registration of Titles Act and she cited the case of **Patel versus Commissioner Land Registration &2 Ors HCCS No. 87 of 2009** in support of her submissions where it was stated

that Section 91 of the Land Act was never intended to abolish this age old concept of indefeasibility of title. Indeed, Section 91 (1) of the Land Act begins with the expression, (1) subject to the of the Registration of Titles ...

Further, that the Plaintiff holds a certificate, it purchased the property in good faith, it had no knowledge of any encumbrance/‘*contradictory Court orders*’ at the time of purchase from the vendors who had apparent title and that the Defendant has not pleaded that the Plaintiff was fraudulent.

Needless to note, Under Section 64 (1) of the Registration of Titles Act Cap 230. The title of a registered proprietor is indefeasible except in case of fraud. It is trite law that fraud must be strictly pleaded and proved the burden being heavier than on a balance of probabilities.

It was the Plaintiff’s evidence that it purchased the suit property from Golden lane Uganda Ltd after conducting a search in the land registry and found that the land was in the names of the vendor and consideration paid for the same.

Section 101 (1) of the Evidence Act Cap 6 provides that;

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.” The case of ***Sebuliba versus Co-operative Bank Ltd [1982] HCB 129*** considered the above sections where it was held that *the burden of proof in civil proceedings lies upon the person who alleges.*

It is alleged that the special certificate of title to the suit land which was issued to the Plaintiff under instrument No.WAK00126468 of 16th May 2017 was issued in error. The Defendant contends that on discovery of an error, it has a statutory mandate to rectify and cancel the Plaintiff’s transfer.

Under Section 91 of Land Act, the special powers of the registrar provided under this section are subject to the Registration of Titles Act, it provides that, the registrar shall without referring a matter to a Court or district land tribunal have powers to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificate of title, the issue of fresh title or otherwise.

Under Section 91(2) of the Land Act, provides that the registrar shall where a certificate of title or instrument.

- a) Is issued in error
- b)
- c)

Call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party, these powers are subject to the Registration of Titles Act (emphasis is mine).

It is an established principle of law that jurisdiction is a creature of statute, it is only vested by law and it cannot be assumed. Like in this case, the jurisdiction vested in the Defendant under Section 91 of the Land Act is subject to the Registration of Title's Act therefore, challenging jurisdiction of the Defendant should be treated with seriousness and the Land Act must be applied in line with what the Registration of Titles Act provides.

To find whether the Defendant has jurisdiction, emphasis must be put on the complaint before the Defendant which she states it is an error occasioned by two different Court orders which is also evidenced in Annexure 'A' to the Defendant's pleadings a "Notice of Intention to Effect Changes". As noted above under Section 91(2) (a) of the Land Act, the registrar of titles has special powers to call for a duplicate certificate of title for cancellation of title where it is issued in error therefore it is within her powers however, the Plaintiff is a 2nd proprietor after the alleged errors had been made and discovered by the Defendant, it pleads not being a party to the orders alleged by the Defendant.

Article 139 (1) of the Constitution empowers the High Court with unlimited jurisdiction in all matters brought before it.

In the case of **CR. Patel versus the Commissioner Land Registration and 2 Others, HCCS No.87 of 2009**, one of the issues in that matter was whether the 1st Defendant had jurisdiction to cancel the certificates of title of the Plaintiff.

Justice *Mulagira Joseph* had this to say:-

"Even if there were errors or irregularities in the issue of the special certificates of title and transfer to Ddamulira Stephen which is not proved, the Plaintiff was not a party to the errors committed in the office of the 1st Defendant by her officers. To condemn the Plaintiff on account of errors he has never been privy to would be to abolish the indefeasibility of title principle which is protected in sections 59, 69, 77,176(c) and 181 of the RTA and which is the hallmark of the Torrens system of title by registration in

Uganda. Section 91 of the Land Act was never intended to abolish this old age concept of indefeasibility of title.....errors, illegalities and even frauds in earlier transactions cannot entitle the 1st Defendant to cancel a registration of a person who is not privy to the errors”.

Also in the case of;

The Administratrix of the estate of late James Katubale Kagudde Mukasa versus The Commissioner Land Registration and 2 Ors, HCCS No.2392 of 2016; formerly Nakawa Civil Suit No. 028 of 2010. Justice Bashaija K. Andrew stated that;

“...even if the commissioner for land registration was to cancel the certificate of title on grounds of errors or illegalities, he or she would have no jurisdiction where the registered proprietor was not party to the errors or illegalities”.

Under Section 59 Registration of Titles Act possession of a certificate of title by a registered person is conclusive evidence of ownership of the land described therein. Further, under Section 176 (c) (*supra*) a registered proprietor of land is protected against an action for ejection except on ground of fraud. (See **Kampala Bottlers versus Damanico (U) Ltd, S. C. Civil Appeal No. 22 of 1992** and **H. R. Patel versus B.K. Patel [1992 - 1993] HCB 137**). Therefore, the Plaintiff can only be impeached on grounds of illegality or fraud, attributable to the transferee.

Therefore, since fraud has not been pleaded on the part of the Plaintiff prior to his registration on title and he was not a party to the alleged errors, his title is conclusive evidence of ownership of the suit land. The Plaintiff is a bona fide purchaser for value without notice. It purchased the land after conducting all due diligences and thus its title is indefeasible.

Issue 3;

What remedies are available to the parties?

Having held that the suit property belongs to the Plaintiff, it has the following remedies.

- a. A declaration that the Plaintiff’s title over the land comprised in Kyadondo Block 222 Plot 2353 land at Namugongo is valid.

b. The Plaintiff also prayed for an order of a permanent injunction restraining the Defendant from interfering with the land title comprised in Kyadondo Block 222 Plot 2353 land at Namugongo. Having found that the Plaintiff has a valid title to the suit land, an order of permanent injunction is issued restraining the Defendant from interfering with the Plaintiff's title.

c. Costs of the suit.

Judgment for the Defendant as above.

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Henry I. Kawesa

JUDGE

14/03/2019

14/03/2019

Nabukenya on brief for Nakachwa Sarah for the Plaintiff.

No representative.

Mugabi Ronald; Legal for the Plaintiff.

Court:

Judgment delivered to parties above.

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Henry I. Kawesa
JUDGE
14/03/2019

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Henry I. Kawesa
JUDGE
14/03/2019