THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO.401 OF 2011

JOSEPH KABUBBU……..……..PLAINTIFF

VERSUS

WAGABA NGANDA…….DEFENDANT

Before: HON. MR. JSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff brought this suit against the Defendant for;

i) an order of cancellation of the Defendant's name from a certificate of title for land comprised in Block 436 plot 658 at Nalugala**,**

ii) an order that the Registrar of Titles enters the Plaintiff's name as the proprietor of the suit land,

iii) permanent injunction to restrain the Defendant,

iv) general damages,

v) interests and;

vi) Costs of the suit.

It was the Plaintiff's claim that he is the sole son of the late Ntwanita Musoke who was a daughter of the late Mukasa Nasanayiri Muzinja, and that the late Ntwanita Musoke made an *intervivos* gift to the Plaintiff during her life time being her beneficial interest from the estate of her late father Nasaniri Mukasa where he took possession and ownership of the suit land uninterrupted up to date. That unknown to him and without a consent and approval, the Defendant caused the production of certificate of title in his names over the suit land and has threatened to interrupt with the use of suit land and all the persons legally claiming under him. That the Plaintiff being threatened by the actions of the Defendant, lodged a caveat on the suit land in December 2010 and that by a letter dated 28th July 2011 sought the Defendant to deliver the certificate of title along with signed transfers, identification card and passport photographs which the Defendant ignored hence the suit.

On his part, the Defendant denies the contents of the Plaintiff's case and avers that he lawfully acquired the suit land from Nalunga Teopista and Kabenga Samuel who are the Administrators of the estate of the late Mukasa Nasanayiri Muzinja, who was the registered proprietor of the suit land and that the Plaintiff has no interest whatsoever in the same. The Defendant further counterclaimed in his defence alleging that the Defendant/Plaintiff illegally lodged a caveat on the suit land yet he had no interest in the same and has never been in occupation of the suit land. That the Defendant has been in possession of the suit land since its acquisition, been in effective occupation as the registered proprietor and has developed a small portion of it with banana plantation.

With this, the Defendant/counterclaimant prayed to this Court for

i) a declaration that the Respondent unlawfully lodged a caveat on the suit land,
ii) an order directing the Registrar of Titles to cause the removal of the Plaintiff's caveat,
iii) an eviction order against the Respondent,
iv) a permanent injunction against the Respondent and
v) Costs of the counterclaim.

The parties filed a joint scheduling memorandum that was composed of the summary of facts, agreed and disagreed facts, agreed issues, list of documents, list of witness and list of authorities. They include;

Agreed issues.

1. Whether the Plaintiff has *locus standi* to institute this suit.

2. Whether the Defendant fraudulently acquired proprietorship of land comprised in Block 436 plot 658 Nalugala.

3. Whether the Plaintiff has an interest and therefore entitled to the land comprised in Block 436 plot 658 Nalugala.

4. Whether the Plaintiff has any caveatable interest in the suit land.

5. Whether the parties are entitled to the remedies prayed for.

The Plaintiff called three witnesses to support his claim who were; Joseph Kabubu (PW1), Teopista Nalunga (PW2) and Charles Ssengendo (PW3). The Defendant also presented five witnesses including; Wagaba Nganda (DW1), Lubega Nyansio (DW2), Nakibengo Milly (DW3), Mazinga Jacqueline Semakula (DW4) and Kabenga Samuel (DW5).

Both parties were allowed to file written submissions and their witness statements which shall be considered in the resolution of the issues in this matter.

The following was evidence that was adduced at trial.

PW1 Joseph Kabubbu the Plaintiff herein, testified that the suit land was given to him by his mother the late Namusoke Ntwanita which he inherited from her late father Nasanyiri Mukasa and he took by possession by building a home and lived there. That the land is the size of a football pitch which is about 0.9 acres and that Kiberu is using the land for 16 years. He stated that he sold the land to Kiberu and that he was left with giving him the certificate of title but he failed because the Wagaba Nganda (Defendant) took the land from which he was to get the certificate of title. He told Court that when they called for a meeting to show that the land was subdivided, DW1 claimed that Kiberu had built on his land, and that he did not attend the

Administrator General's meeting but he saw the distribution documents. That he was put in the document as a person who was supposed to get a share of the land.

In cross examination, he avers that DW1 changed and transferred the land to himself yet the title was in the names of Nasanyiri Mukasa his grandfather. He claims that his mother left a will of 1988 where she gave him that land stating that her kibanja was his. That he was not yet registered and that all who got registered did partitioning from his grandfather's land, but DW1 took what was supposed to be his. That the estate of late Nasanyiri is in the hands of his children but he does not know whether any of his children got Letters of Administration to the estate. He insisted that he sold the land to Kiberu but he did not give him a certificate of title and that is what he is pursuing and he had to caveat the land, however, he is not aware when title of the suit land was created and he does not know how the Defendant acquired the suit land.

PW1 Teopista Nalunga an auntie to the Plaintiff (PW1) testified that the land belonged to her late Father Nasanyiri Mukasa who gave it to Namusoke (PW1's mother) and PW1' late mother used to occupy it, that she gave it to PW1 while she was still alive. That the whole land was subdivided after Namusoke's death and that in the process of sharing, the late Namusoke was given her share which was given to PW1 but they did not give him a certificate of title and some of the children got titles. That PW1 was not given a certificate of title because Nanono Efulance (one of PW1's aunties) claimed that PW1 only had a kibanja which the mother gave him and that he was not entitled to certificate of title. She avers that the Defendant handled matters of their land and she has no idea of what Nganda (DW1) and Nanono Efulance agreed upon but she came to know that he (DW1) did the subdivision of the land and that DW1 was authorized by Nanono Efulance.

In cross examination, she said she had kept the title to the land and for about 20 years which she gave to Nanono and Kabenga when they agreed to share the land and the sharing was to be put in writing and that herself and the children who were present signed. She told Court that she sold to Nganda (DW1) a piece of land which land is in Court. That she has title to the portion which she sold to DW1 and she did not sell to him titled interest in a kibanja. Further that the small part she sold to DW1 is not on PW1's land but on her side. She also states that she sold a plot of land to a one Ronald Luvule her son and he refused to pay her. In re-examination, she told Court that PW1 was supposed to be give land by Nanono and Kabenga.

PW3 Charles Ssengendo a young brother to PW1 did not get his share from his grandfather's estate Nasanyiri Mukasa. That in 2008 Nanono Efulance and Kabenga opened a file with Administrator General directed that a family meeting be held. That DW1 became the secretary while he became the chairperson of that meeting. He said that there was a misunderstanding over the deceased's will and it was agreed that the land be shared equally where Nanono Efulance agreed that PW1 had to get a share in his grandfather's land. This was agreed on 8th March 2009 and he signed on the document. That PW1 and others were to share 2.5 acres but he did not get his share of the land.

In cross examination, he told the Court that the Administrator General gave him authority to administer the estate and that he did not sign any minutes in any meeting at the Administrator general's office and he has never been in such meetings. That he just learnt from DW1 that the Administrator general rejected the minutes. That DW1's role was to follow the process of putting the sharing in effect as they had agreed and that he was on the side of Nanono and he did not know the dealings between Nanono and Nganda. He further stated that his mother (PW2) sold a piece of her kibanja the part that had fallen on the side of Nanono to DW1 as a kibanja that fell in the 2.5 acres that went to Nanono in the shared 2.5 acres of mailo land. That the kibanja fell on DW1's land and that this land includes the land on which Kiberu is on now, that PW1 sold his Kibanja to Kiberu and that it is where he had a share as land, PW3 went on to state he does not know whether after PW1 selling his kibanja he left any other kibanja and that Kiberu is a kibanja holder and PW1 has never been a registered owner of the land.

For the defence, DW1 Wagaba Muhammad Nganda the Defendant in this suit affirmed that he is the registered owner of the land comprised in Block 436 plot 658 at Nalugala since 3rd February 2010 and he has a certificate of title there to. He claims that he got the same from the Administrators of the estate of the late Nasanyiri Mukasa Muzinja as consideration for various works he did for the beneficiaries in obtaining Letters of Administration, subdivision and registrations. He stated that 2008 he was approached by Nanono Efulance a beneficiary of the estate to assist them to facilitate the process of acquiring Letters of Administration and certificate of title and that the request was written with annextures which include a will. That he went to the registry to confirm whether the deceased had land and that the land existed in his names. That he

helped the beneficiaries apply for a letter of objection and he facilitated the obtaining of Letters of Administration in High Court which were granted and the beneficiaries were registered on the land. That he further engaged a surveyor to open up the boundaries and that the Administrators carried out subdivision to share the land and that his consideration was ½ (*half*) an acre of the suit land. That he never saw PW1 throughout the process and that the land was occupied by Zawedde and Charles Kiberu who were squatters and that DW1 came to know of PW1's claims in 2010 when he took him to RDC's office claiming the land and he caveated the land without caveatable interest.

In cross examination, he stated that the beneficiaries constituted themselves into two groups and agreed to share costs of administration of the estate 50/50 and that the suit plot falls on the side of Kabenga's group which was the consideration despite the fact that it falls on Kabenga's side. That DW1 was contented with it and did not claim from the other side. Further that the transfer of the title into his names was done within 6 minutes from the time of registering from the Administrators to registering him.

DW2 Lubega Nyansio told Court that PW1 was his neighbour with whom they shared boundaries and that he sold the kibanja his mother gave him and went away. He told Court that he witnessed the will of the late Nathaniel Mukasa and he indicated in the will what he had given to the children and kept it. That after the death of Mukasa, during the distribution process, a dispute arose. That Teopista (PW2), Namusoke Imelda and Nankanda wanted to take the property so that was when the late Efulance approached DW1 to assist them so that their land is not taken which he did and that the late Efulance Nanono promised him (DW1) ½ an acre of land in appreciation and which agreement was written down. That DW1 then brought surveyors who demarcated the land using his money and that they took 2½ acres while the orphans also took 2 ½ acres and ½ acre was given to DW1 as an appreciation which he later sold to Charles Kiberu.

DW3 Nakibengo Milly in her witness statement stated that PW1 is her cousin, their mothers being sisters. She stated in paragraph 8 that she advised the late Efulansi Nanono to approach DW1 as she had known him to be a person who helps people sort out land related matters, which she did and asked DW1 to help her sort out the estate land and help them secure certificate of

title. She stated in paragraph 14 that DW1 and the beneficiaries; Sempangi Samson, Kabenga Samuel and Ssekikubo Enoch made an agreement giving DW1 half an acre of land in appreciation of what he had done. She confirmed to Court that PW1 owned a Kibanja which he sold to Charles Kiberu in 2001 and has never been a registered owner of the suit land.

In cross examination, she told Court that costs of surveyor were met by a one Good Samaritan (DW1) who helped the children conduct the survey.

DW4 Mazinga Jacqueline Semakula in her witness statement in paragraph 8, stated that the family members reached a compromise on how to share the properties of the deceased and presented the same to the Administrator General who in response, according to paragraph 9, turned down the contents of the letter advising that there was no law which allows the clan member or anybody to invalidate a deceased's will. That the letter and minutes containing the family resolution on how to share the estate were disregarded and family members were advised to go by the last will of Nasanyiri Mukasa Muzinja in the distribution of estate.

DW5 Kabenga Samuel a nephew to PW1 in his witness statement stated that his late father Nasanyiri Mukasa was given the land by his grandfather the late Mukasa Nasanyiri Mazinja but his father did not transfer the land to his names. In paragraph 5, he states that his late grandmother Nanono who was their caretaker was always worried that there was a likelihood of the land being taken away by her sisters as they did not have the certificate of title as the certificate of title was still in the names of their late grandfather. In paragraph 8, he confirms that his grandmother approached DW1 to help them get Letters of Administration to enable them process the certificate of title and that request was made in formal manner. That DW1 started the work, and they got Letters of Administration and got registered on the certificate of title and DW1 then engaged surveyors who opened the boundaries and also helped in the subdivision of the land. Further that, the land was shared between themselves, the family of the late Nasanayiri Mukasa and their grandparents and each side taking 2.5 acres on condition that their grandparents were to in turn give them 2.5 acres when sharing at Ssese.

In paragraph 15, he contends that they gave DW1 ½ acre of land as an appreciation for the work done which enabled them sort out the estate issues leading them to get the certificate of title. He also stated that, PW1 has never owned any land except for the kibanja he sold to Charles Kiberu.

In cross examination, he told Court that the land was divided among two sides, one Kabenga Samuel (DW5), Teo Nalunga (PW2) and that PW1 was not meant to get from his side and that Nanono Efrance (deceased) was not part of his side as his side was to share as sons.

Resolution of the issues.

In resolution of the issues, Counsel for the Plaintiff joined issues 1, 3 and 4 together and issues 2 and 5 separately and Court will follow suit.

1. Whether the Plaintiff has *locus standi* to institute this suit.

2. Whether the Plaintiff has an interest and therefore entitled to the land comprised in Block 436 plot 658 Nalugala.

3. Whether the Plaintiff has any caveatable interest in the suit land.

To determine whether the Plaintiff has *locus standi*, Counsel submitted that PW1 was a son of late Ntwanita Musoke and a grandson to the late Nasanyiri Mukasa Muzinja who gave piece of land off plot 21 to his daughter Ntwanita Musoke in his life time and PW1 was later given that piece of land in her life time. Counsel cited the case of ***Mukobe versus Wambuwu (HCT-04-CV-CA-0055 of 2005)*** where it was held that;

a *gift intervivos to take irrecoverable roots, the donor must; intend to the given gift, the donor must deliver the property and the donee must accept the gift*.

With this, he submitted that PW1 accepted the gift from his late mother and that PW1's mother accepted that gift from her father. Further, he submitted that a beneficiary is permitted by Section 139 (1) of the Registration of Title Act to lodge a caveat noting his interest and forbidding dealings in land and that a beneficiary's caveat once lodged cannot lapse under Section 140(2) of the Civil Procedure Act**.** He therefore submitted that PW1 being a beneficiary had locus standi to bring this suit.

In reply, Counsel of the Defendant submitted that at the time of filling the instant suit, PW1 described himself as an Administrator of the estate which he did not name and did not attach the grant Letters of Administration on his pleadings which meant that PW1 has no locus standi to bring this suit as an Administrator. He submitted further that PW1 sold the suit land to one Kiberu Charles who is in occupation of the suit land and that the claim by PW1 that he was to give the buyer a certificate of title is a mere afterthought as he wanted to make himself relevant to the land he sold several years ago. He cited Section 54 of the Registration of Title Act which provides that *a person not registered on the certificate of title cannot transfer any interest or estate in land*.

According to **Black's Law Dictionary 9th Edition**, the term *locus standi* is defined as referring to the right to bring an action or to be given the forum to bring an action.

In the case of ***Dima Domnic Poro versus Inyani Godfrey and Anor H.C.C.A No.17 of 2016,*** *Hon. Justice Stephen Mubiru* had this to say;

"…The issue of locus standi is a pure point of law that can properly be raised as a preliminary objection and in determining such a point, Court is perfectly entitled to look at the pleadings and the other relevant matter in its records."

The Learned judge in the above cited case while relying on Article 50(2) of the Constitution of the Republic of Uganda noted that; *for any person to otherwise have a locus standi, such a person must have sufficient interest in respect to the subject matter of suit which is constituted by having an adequate interest not merely a technical one in the subject matter of the suit. The interest must be too remote, must be actual, not abstract or academic and the interest must be current, not hypothetical*.

Further still, the Learned Judge noted that "*the requirement of sufficient interest is an important safe guard to prevent having 'busy-bodies' in litigation with misguided complaints. If the requirement did not exist, Court would be flooded and persons harassed by irresponsible suits."*

From the fact that PW1 claims ownership of the land through inheritance (that it was given to him by his mother during her life time by will), though authenticity and genuineness of the will has not been made a resolution, it would be just for the Court to give an opinion on the same.

In the instant case, PW1 in reply to the Defendant's case and counterclaim attached a will '*Exhibit A4'* which is alleged to have been written by the deceased (PW1' mother), the document is hand written. Under Section 50 of the Succession Act, the signature of the testator or some person in his presence and by direction is an essential element of validity of the will.

In ***Rev. James Kyamukama and Anor Vs Catherine Zaibwede and Anor H.C.C.S No.1114/1997,*** *Justice Lameck Mukasa* noted *"…that a will shall be attested to by two witnesses or more witnesses is that the witness shall be present at the execution of the will, be able to see the testator affix his signature and be able to testify that they saw or had opportunity of seeing his signature."*

By the letter received by this Court on 12th March 2012, the authenticity of the said will has been greatly disputed by one Nabasirye Joyce the daughter to the writer Samwiri Mutanda. She attached letters the father wrote to her for comparison with the handwriting in the will which she confirmed that they were totally different clarifying that the father's handwriting in the will which she confirmed that they were totally different as he used to brag about of being a Buddonian and disliked people who wrote scratching like hens and she regarded this as forgery of her late father's signature.

In Section 45 of the Evidence Act**,** the opinion as to the handwriting is a relevant factor, the section provides that "*when Court has to form an opinion of any person by whom any document was written or signed by that person is a relevant fact*". The fact introduced to this Court by the alleged writer's daughter is a relevant fact and the same has not been disputed. She in another letter to this Court received on 19th October 2012, one of the alleged witnesses to the will; Namagembe Faisi denied the signature on the will, stating that she has never witnessed Namusoke's Ntwanita's will. Section 66 of the Evidence Act requires the signature of a person alleged to have signed on a document to be proved.

The Plaintiff attached a will on his pleadings and Counsel submitted that the suit land was bequeathed to PW1 through the alleged 1988 will. The alleged persons who witnesses the will were not listed as witnesses to be cross-examined by the defence, the Plaintiff failed to prove to Court that indeed the will was authentic as required by section 101 and 102 of the Evidence Act

which requires proof of facts that they exist and the burden of proof lies on that person who would fail if no evidence at all is given.

With the above observations, it cannot be said that PW1's mother left a valid will giving the suit land.

According to the facts, during disturbing of property, no will was followed and from the observation before this Court, distribution of 2½ acres for the two groups was done after the 8th March 2009 minute meeting. It is an undisputed fact that PW1 had a kibanja interest in the suit land which he sold to a one Kiberu Charles. This was confirmed by DW3 when she stated to Court that PW1 owned a kibanja which he sold to Kiberu Charles in 2001, DW1 also stated that he learnt of the Plaintiff's claim in 2010.

From 2001 when PW1 sold his interest to 2010, 9 years had elapsed ever since he sold off his interests and he is claiming he never gave title to the purchaser, as it has been seen from the facts, the title to the suit land was created on 2nd March 2010 which means PW1 sold off some interests before the land was even subdivided and certificates of title created. To this end, I find that the Plaintiff sold off a kibanja interest before sub-division of the land.

Section 54 of the Registration of Titles Act requires a person to be registered on the certificate of title before he/she can transfer any interest or estate in land. PW1 was not registered on the land and as such, he merely sold his equitable interest prior to the creation of the legal interest, moreover, he did not posses even the equitable interest as the will he claims he derived interest from is invalid.

Further still, in the plaint particularly paragraph 1, PW1 claims to be an Administrator of an estate which he did not specify, he has not led evidence throughout the trial to the fact that he has ever obtained Letters of Administration to any estate.

In ***Sentongo Produce & Coffee farmers Ltd Vs Rose Nakafuma Muyiise HCMA No.690/1999*** *Arach Musoke T.* stated that; *for a caveat to be valid, it must have protectable interests, legal or equitable to be protected by the caveat, otherwise the caveat would be invalid*.

Counsel for the Plaintiff claims PW1 lodged a beneficiary caveat and that it cannot lapse. A beneficiary caveat is provided for under Section 137 of the Registration of Titles Act, and as

required by the case of ***Sentongo Produce & Coffee Farmers Ltd versus Rose Nakafuma*** **(***supra***),** a person must have protectable interests legal or equitable, and for our facts, the Plaintiff sold off his equitable interests before legal interests were created. Coming back to claim an interest in the property he sold as a kibanja is an afterthought and as such, his interest (if any) was a foregone principle before title to the suit land was created.

The Plaintiff has no *locus standi* because he is claiming under an invalid will, he is not an Administrator of any estate, and has no interest in the suit land. It follows that the Plaintiff had no caveatable interest to the same.

Issue 2.

Whether the Defendant fraudulently acquired proprietorship of land comprised in 436 plots 658 at Nalugala.

Counsel for the Plaintiff on this issue submits PW2 did not authorize the partitioning of plot 21 that gave rise to the suit land (plot). That the family sharing recognized two groups under PW2 and DW5**,** the Plaintiff's interest fell under DW5. He submits that exhibit PE1 minute 06/09 item 6 required signing of transfers to be done at once in the presence of all parties and that DW1 admitted the signing of the transfers was not in the presence of PW1 who was away. Further, DW1 admits that the transfer of registrable interest was done within 6 minutes of the transfer of the suit land into the Administrators that an act which was hurriedly done, even if the Plaintiff had been aware would have never have adequate time to seek a remedy.

That DW1 engaged surveyors who undertook their work in the absence of PW1 despite having actual notice of PW1's interest and kibanja interest of persons who claim under him, that the actions of DW1 amounted to fraud and that this renders the certificate of title procedure by the Defendant through fraudulent means in terms of Section 77 of the Registration of Titles Act**.**

Counsel cited the case of Meera ***Investments Ltd versus Sardin Gulam Hussein &Anor (H.C.C.S No. 360 of 2008)*** where fraud was defined to mean actual fraud or any acts of dishonesty.

In reply, Counsel for the Defendant submitted that though PW1 pleaded fraud in the plaint, he failed to lead evidence to prove it. He states that the services rendered by DW1 to the beneficiary of the estate of the late Nasanyiri Mukasa Mujanzi from acquiring Letters of Administration to putting the estate land in status of being shared constituted consideration. He quoted the **Black's Law Dictionary 9th Edition** which defined consideration as "*something (such as an act, a for bearan… or a return promise) bargained for and received by a promisor from a promise, that which motivates a person to do something esp. to engage in a legal act*." That the agreement attached on DW3's witness statement explains the kind of consideration furnished by the Defendant.

In the case of ***Patel versus Patel (1992-1993) HCB at 137,*** *Karokora J* (*as he then was*) held that *a certificate of title is conclusive evidence of ownership and no submission or oral evidence can be called to vary the certificate of title unless of consideration or illegality is proved*.

Fraud was defined in the case of ***Fredrick Zaabwe versus Orient Bank & Others, SCCA No.4 of 2006,*** to mean;

> "*An intentional perversion of truth for purposes of including another in reliance upon it to part with some valuable thing*…"

In the matter of ***Ruzhwengyibwa and in the Matter of Ruzigana, Miscellaneous case No. 48 of 1976,*** Court held that; "*knowledge of other peoples' rights or claims and the deliberate acquisition of a registerable title in the face of such knowledge is fraud*" and Section 77 of the Registration of Title Acts is to the effect that a certificate of title procedure by fraud is void.

Counsel for the Defendant submitted that there was no evidence adduced on the fraudulent acts of the Defendant in acquiring the certificate of title. That no evidence of fraudulent sub-division was led by the Plaintiff and that the facts of the unregistered interest in the suit land was only after there was nothing to show that he had an interest in the suit land and it was only after the sub-division and transfer of the suit land to the Defendant that he claimed an interest. That the Plaintiff would have lodged a caveat on the certificate of title to notify the public of his unregistered interest, but he sold off his unregistered interests.

In regard to providing fraud, Counsel of the Plaintiff in rejoinder submitted that the evidence of PW1 proved the particulars of fraud and that DW1 was aware of PW1's interest having been the secretary at the meetings.

The case of ***Eridadi Kabagyema versus Biterwa; HCCS No. 79 of 1987*****,** Court held that *'the Defendant was guilty of fraud when they obtained registration with proved knowledge of the existence of the unregistered interest of the Plaintiff which they wrongly and knowingly defeated'*.

From our facts, it is alleged that the Plaintiff sold off his unregistered interests and moved to an unknown place for 16 years, this can be collaborated by the evidence of the Plaintiff himself when he stated that he sold land to Kiberu Charles and who has been using it for 16 years, PW3 told Court the same thing together with DW2, DW3 and DW5 all stating that PW1 has never owned land except that which he sold to Kiberu Charles.

In the case of ***J. W. R. Kazoora versus M. L. S Rukuba SCCA No. 13/1992*** Court held that; '*allegations of fraud must be specifically pleaded and proved and that the standard of proof is higher than a mere balance of probabilities but not beyond reasonable doubt'*.

In ***Kampala Bottlers versus Damanico (U) Ltd No. 2 0f 2002*****,** it was noted that, *"it is not a requirement that the word fraud be used, however facts must be stated to show that fraud needs to be charged and it cannot be inferred from facts pleaded."* It was further observed that for a party to plead fraud, in the registration land, a party must prove fraud and it must be attributed to the transferee. The Plaintiff did not adduce any evidence to show the fraud committed by the Defendant in the transfer of title to his names**.**

It can be seen that consideration was given by the Defendant before acquisition of the suit land which was reduced into writing and which document has not been ably disputed. On that note, Court is obliged to give effect to the party's consensus. Under Section 91 of the Evidence Act, it is proved that where terms of a contract or grant have been reduced to the form of a document, no evidence shall be given in proof of the terms of contract or grant except the document itself or secondary evidence of its contents.

In case of ***Bank of Credit & Commercial International S.A (in** liquidation**) versus Ali [2001]1 All ER 961, it was held by Lord Bingham of Cornhill*** that;

> "*In constructing contractual provisions, the object of the Court is to give effect to what the contracting parties intended. To ascertain the intentions of the parties, the Court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the party's relationship and all the relevant facts surrounding the transaction so far as known to the parties*."

From the agreement attached "Annexture B2" dated 8th August 2010, Nanono Efulance who was the caretaker of the children who included Kabenga Samuel DW5, Ssekikubo Enock and Sempangi Samson unanimously agreed and gave DW1 ½ an acre of land on Busiro Block 436 plot 658 for the work he did for them. In the agreement as part of its content, it was stated that the land they gave him (Defendant) belongs to them and it included the kibanja belonging to Kiberu Charles and Zawedde Alice.

It is on that basis that DW1 proceeded and transferred the land into his names, given the fact that there were squatters on the land. The agreement clearly stated that the land on which the squatters held belonged to DW5 and the brothers and the same reflected on the title, therefore, we cannot hold that the Defendant was fraudulent.

On issue of providing fraud, the Plaintiff has totally failed to prove that he had any registerable interests which were fraudulently registered by the Defendant as all the witnesses he adduced before Court stated that the Plaintiff had an interest which he later sold. It is on this note I find if at all the Plaintiff claimed an interest he could pursue the same from the beneficiaries of the estate of the late Nasali Mukasa Muzinja who left him out but not from a third party who acquired the property after putting valuable consideration.

Consideration simply put is exchange of one thing of value for another, and in the instant case, DW1 to agree and help in the obtaining the Letters of Administration, partitioning and surveying of the land using his money, he did it because he had been Promised Land and land is something with value.

In case of ***Olinda De Souza versus Kasamale Manji [1962] EA 756*** it was held that in absence of fraud, possession of certificate of title by a registered proprietor has indefeasible title against the whole world.

I therefore find that the Defendant did not commit fraud.

Issue 5

Whether the parties are entitled to the remedies sought

The Plaintiff has failed to prove the case against the Defendant in this suit and therefore since the Defendant is the successful party, he is entitled to costs of the suit as prayed.

In conclusion, judgment is given in favor of the Defendant and this Court orders as follows; the suit is dismissed with costs to Defendant. It is allowed with costs to the Defendant.

I so find.

Counterclaim

From evidence on record, the counterclaim is proved;

That the suit land was lawfully acquired by the Defendant (counterclaimant) from the Administrators of the late Nasanayiri Mukasa Muzinja. Therefore the Respondent has not proved any justification for caveating the land. The counterclaim is found in favor of Defendant (counterclaimant).

I so find.

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Henry I. Kawesa

JUDGE

25/01/19

25/01/19:

Kiiza Moses on brief for Mugabi for the Plaintiff.

Plaintiff absent.

Simon Kiiza for the Defendant present.

Matter for Judgment, we are ready.

Court:

Judgment delivered.

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Henry I. Kawesa

JUDGE

25/01/19