

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

5 (LAND DIVISION)

CIVIL SUIT NO. 207 OF 2020

10 1.KIYINGI ASHUSIKISON GALIBWA ERIC
2.BBOSA ERIYA KIWULI
3.SSERUNKUUMA RONALD -----PLAINTIFFS
(Administrators of the estate of the late
Aliwali Tito Kalyesubula)

15 V

1.MUBIRU CHARLES
2.KAYIZZI JOEL
(Administrators of the estate of the late
Yoweri Kiyondo)
20 3.HAJI YIGA MUWONGE MUHAMMAD-----DEFENDANTS
4.DANIEL NDYAMUHAKI
5.TUMWINE FRANK
6.COMMISSIONER FOR LAND REGISTRATION

25 **Before:** Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiffs filed this suit against the Defendants seeking the remedies below;

- a. A declaration that the registration of transfer and the transfer of the suit land comprised in Singo Block 767 Plot 1 land at Katugo measuring 260.40 hectares to the Defendants without the hand and signature of the Plaintiffs was illegal, null and void.
 - 5 b. A declaration that title in the property comprised in the suit land never passed to each of the Defendants.
 - c. An order directing the 6th Defendant to cancel all entries on the certificate of title in favour of the Defendants on land comprised in Singo Block 767, Plot 1 land at Katugo measuring 260.40 hectares.
 - 10 d. A declaration that the Special Certificate of Title for land comprised in Singo Block 767, Plot 1 land at Katugo measuring 260.40 hectares issued by the 6th Defendant is invalid.
 - e. An order against the 6th Defendant to reinstate ALIWALI TITO as the registered proprietor of land comprised in Singo Block, 767, Plot 1 land at Katugo measuring
15 260.40 hectares under Instrument Number 25993 dated 18th day of December, 1934.
 - f. An order of Permanent Injunction against the Defendants and/or their respective Agents/Servants, transferees from interference with the suit property contrary to the interests of the Plaintiffs.
 - 20 g. Punitive/exemplary damages of UGX. 200,000,000/= due to forgery of court documents which has occasioned loss to the Plaintiffs by the defendants, and;
 - h. General damages for mental anguish, embarrassment and inconvenience caused to the Plaintiffs by the Defendants.
 - i. Costs of this suit.
- 25 This suit was heard ex parte. Several attempts were made to summon the Defendants including an advertisement in the Bukedde newspaper by way of substituted service on 25th June 2020. In spite of all this, the Defendants did not file a defence and failed to attend the hearing of the matter. On the 19th October 2020, the 2nd Plaintiff, Mr. Bbossa Eriya Kiwuli and the 3rd Plaintiff, Mr. Sserunkuma Ronald, executed an authority
30 permitting the 1st Plaintiff to represent them in this suit. He made a written statement which was admitted as his evidence in chief.

Plaintiff's facts

The Plaintiffs are administrators of the estate of the late Tito Aliwali a.k.a Tito Aliwali Kalyesubula (the deceased) who died intestate in 1974. Letters of administration were granted to the Plaintiffs by the High Court of Uganda at Mubende on the 31st October 2016. Since the demise of the deceased, the Plaintiffs and other beneficiaries have been in effective occupation and possession of the suit land comprised in Singo Block 767, Plot 1 land at Katugo measuring 260.40 hectares, property of the deceased.

Upon grant of the letters of administration, the Plaintiffs visited the land office in Mityana and discovered, through the office of the Administrator General that the 1st Defendant and the 2nd Defendant had applied to be registered on the suit land using letters of administration for the estate of the late Yoweri Kiyondo.

The Plaintiffs' inquiries revealed that on the 28th August 2014, the High Court of Uganda at Jinja granted letters of administration to the 1st and 2nd Defendants to administer the estate of the late Yoweri Kiyondo. Using these genuine letters of administration, the 1st and 2nd Defendant made alterations thereon by adding to the name Yoweri Kiyondo the words 'a.k.a Tito Aliwali' to give the impression that Yoweri Kiyondo and Tito Aliwali were one and the same person whereas not. To pull off their deceit, the 1st and 2nd Defendants forged the signature of the Judge and the seal of High Court of Jinja on the altered letters of administration.

Soon thereafter, on the 25th September 2014, the 6th Defendant registered the 1st and 2nd Defendants on the register book of the suit land using the forged letters of administration and later on 13th November 2014, the 1st and 2nd Defendants connived with the 3rd Defendant and transferred the suit land into the names of the 3rd Defendant purporting to regularize the illegality/forgery. And the 3rd Defendant, in order to alienate the estate of the deceased, the late Tito Aliwali, further transferred the suit land to the 4th and 5th Defendants with knowledge that the Plaintiffs were occupation of the suit land.

Counsel for the Plaintiff framed several issues for the determination of this court which I summarize as follows;

Issues

1. Whether the Defendants' transactions on the suit land were lawful?

2. What remedies were available to the Plaintiffs?

RESOLUTION

5 Issues 1

Whether the Defendants' transactions on the suit land were lawful?

PW1 gave a captivating testimony as to the events giving rise to this suit. He testified that at all material times, the Plaintiffs have been in possession of the suit land which is situate in Kyankwanzi district. The documentary exhibits P. 3 to P.10 tendered by the Plaintiff
10 told the elaborate tale of the actions of the 1st to the 5th Defendants.

I will begin with Exb. P.3. It is a copy of letters of administration for the estate of the late Yoweri Kiyondo, granted by the High court of Jinja on the 28th August 2014, under HCT-03-CV-AC-029 of 2014 to Mubiru Charles, 1st Defendant, and Kayizi Jowel, 2nd Defendant, as grandsons to Yoweri Kiyondo. It is duly signed by the Judge and bears the
15 seal of the court.

Exb. P.4 is also a copy of letters of administration for the estate of the late Tito Aliwali a.k.a Kiyondo, granted by the High court of Jinja on the 28th August 2014, under HCT-03-CV-AC-029 of 2014 to Mubiru Charles, 1st Defendant, and Kayizi Jowel, 2nd Defendant, as grandsons to Tito Aliwali a.k.a Kiyondo. It bears a signature of the Judge and the seal
20 of the court.

Exb. P.5 is a copy of a letter from the Deputy Registrar, High Court Jinja to the Registrar Mityana Land office dated 16th December 2016. It is captioned, '**Notification of fraud; Jinja H.C.A.C NO. 029/2014 (Yoweri Kiyondo- Deceased)**'. In it, the Deputy Registrar clarifies that Exb. P.4 is a forgery and that; '**the correct and genuine copy of the letters
25 of administration issued by this court bear the deceased as Yoweri Kiyondo...**'

Exb. P.6 is a copy of the certificate of title to Kiboga Block 767 Plot 1 land at Katugo, the suit land. It indicates that on the 21st April 1934 Tito Aliwali (Sabadu) was registered as

first registered proprietor. 80 years later, on the 25th September 2014, the 1st and 2nd Defendants were registered thereon as administrators of the estate of the late Tito Aliwali under Administration Cause No. 029 of 2014 at Jinja. Less than 2 months after that, on the 13th November 2014, Haji Yiga Muwonge Muhammad, the 3rd Defendant was registered as proprietor.

Exb. P.7 is a copy of a transfer instrument dated 9th January 2015, where for a consideration of UGX192,900,000/= the 3rd Defendant transfers the land to Daniel Ndyamuhaki, the 4th Defendant and Tumwine Frank, the 5th Defendant.

Exb. P.8 is a copy of a search statement on the suit land dated 13th December 2016, which indicates that the 4th and 5th Defendants are registered proprietors as at 23rd January 2015. There are three encumbrances on the property. A caveat lodged by Kaggwa Geoffrey, Rwabukoma James and Nkoyoyo Christopher on 29th November 2015; a caveat lodged by the 1st Plaintiff on the 20th September 2016 and a caveat lodged by the Administrator General of Uganda on the 6th December 2016.

Exb. P.9 is a copy of the 1st and 2nd Defendants request to be registered as administrators of the estate of the deceased proprietor. It is dated 2nd October 2014. Exb. P.10 is a copy of a letter dated 16th December 2016. It is an invitation by the Deputy Registrar High Court of Jinja to the Administrator General and the administrators of the estate of the late Yoweri Kiyondo to attend a meeting scheduled for the 10th January 2017. There is nothing on court record to indicate whether the meeting did take place.

In this court's view the illegality of the 1st and 2nd Defendants actions in relation to the suit land was confirmed by Exb. P.5. The authority they relied on to have themselves registered on the suit land was a false document. With regard to the 3rd, 4th and 5th Defendants, there was no direct evidence that they were parties to the scheme of the 1st and 2nd Defendants. However, Exb. P.8, the search statement indicates that there have been encumbrances on the suit land currently registered in the names of the 4th and 5th Defendants since 2015 which it appears have been left unchallenged, a fact which is suspicious.

Further, as Counsel for the Plaintiff rightly pointed out, no prudent purchaser buys land without visiting it. The Plaintiffs maintain that they have always been resident of the land. They are grandsons of the late Aliwali Tito Kalyesubula. PW1 was 50 years old at the time he testified on the 22nd October 2020. There is also the fact that there were no transactions on the land at all for 80 years since the late Aliwali was registered thereon and then suddenly in a period of less than 6 months, the property had changed hands thrice.

This court finds that the accelerated activity on the suit title had its roots in the illegality of the 1st and Defendants' actions and there was circumstantial evidence pointing to the 3rd, 4th and 5th Defendants acquiescence in that illegality. The failure of the Defendants to respond to this court's summons left this court missing their side of the story. If the 3rd to 5th Defendants wanted to benefit from the defence of bona fide purchaser for value without notice, the duty lay on their shoulders to show up and speak up. They did not. I am satisfied that the actions of the 1st – 5th Defendants amounted to actions intended to deceive and therefore amounting to fraud.

See the case of Frederick Zaabwe v Orient Bank & 5 others SCCA 04/2006, 10/07/07 on the wide definition of fraud.

With regard to the 6th Defendant, it was incumbent upon the Plaintiffs to adduce evidence that the 6th Defendant lent its hand to the fraud perpetuated by the 1st to 5th Defendants and no evidence was led to that effect even though the same was pleaded in the particulars of fraud under paragraph 11 of the plaint. I am unable therefore to agree with the Plaintiffs that the 6th Defendant's actions amounted to fraud.

I, therefore answer issue 1 in the affirmative with regard to the 1st, 2nd, 3rd, 4th, and 5th Defendants.

Issue 2

What remedies were available to the Plaintiffs?

I find that, given the blatant fraud exhibited by the 1st to 5th Defendants, the Plaintiffs are entitled to have this court cancel all the transactions initiated by the 1st and 2nd Defendants

to allow the land to revert to the late Tito Aliwali. General damages are also appropriate in the circumstances.

To that end this court enters judgment in favour of the Plaintiffs as against the 1st to 5th Defendants and orders as follows;

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1. A declaration that the registration of transfer and the transfer of the suit land comprised in Singo Block 767 Plot 1 land at Katugo measuring 260.40 hectares to the 1st to 5th Defendants was illegal, null and void.
2. A declaration that title in the property comprised in the suit land never passed to the 1st to 5th Defendants.
3. The 6th Defendant is directed to cancel all entries on the certificate of title in favour of the 1st to 5th Defendants on land comprised in Singo Block 767, Plot 1 land at Katugo measuring 260.40 hectares.
4. The special certificate of title for land comprised in Singo Block 767, Plot 1 land at Katugo measuring 260.40 hectares issued by the 6th Defendant is invalid.
5. The 6th Defendant is directed to reinstate TITO ALIWALI as the registered proprietor of land comprised in Singo Block, 767, Plot 1 land at Katugo measuring 260.40 hectares.
6. A permanent injunction is issued against the 1st to 5th Defendants and/ or their respective Agents/Servants, transferees from interference with the suit property contrary to the interests of the Plaintiffs.
7. The Plaintiffs are awarded General damages of UGX 20,000,000/= (twenty million shillings) to be paid by the 1st to 5th Defendants for mental anguish, embarrassment and inconvenience.
8. Costs of this suit are awarded to the Plaintiffs.

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Olive Kazaarwe Mukwaya

JUDGE

5 14th December 2020

Delivered by email to Counsel for the Plaintiffs.

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