

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 685 OF 2019

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KIZZA RICHARD -----PLAINTIFF

(Administrator of the Estate of the

Late Charles Lusajjalubi Ssengendo)

Vs

10 **BETTY KABUGO -----DEFENDANT**

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

15 The Plaintiff, Mr. Kizza Richard sued the Defendant, Ms. Betty Kabugo seeking orders for;

1. A declaration that the suit land comprised in Kyadondo Block 244 Plot 1807 measuring 0.10 acres of land, situate at Kisugu, belongs to the estate of the late Ssengendo Lusajjalubi Charles.
2. A declaration that the Defendant fraudulently transferred the suit land into her
 20 name without the knowledge, authority and or consent of the late Ssengendo Lusajjalubi Charles.
3. An order for cancellation of the Defendant's certificate of title.

4. An order reinstating the late Ssendendo Lusajjalubi Charles on the white page of the suit land in the lands Registry.
5. An order that the suit land be transferred into the name of the Plaintiff as the administrator of the estate of the late Ssendendo Lusajjalubi Charles.
- 5 6. General damages
7. Costs of the suit.

Several attempts were made to ensure the participation of the Defendant in these proceedings however they all proved. A default judgment was entered against her under Order 9 rule 11 of the CPRs. When the suit came up to be heard ex parte, two witnesses
10 testified for the Plaintiff.

Plaintiff's facts

The Plaintiff is the Administrator of the estate of his father, the late Ssendendo Lusajjalubi Charles (the deceased). A copy of the letters of administration was admitted and marked Exb. P.1.

15 On the 7th day of November 1969, the deceased got registered on the suit land comprised in Kyadondo Block 244 Plot 1807 at Kisugu under instrument No. KLA55730. He obtained a duplicate certificate of title and immediately took possession of the land until his death on 30th June 2012. A copy of the title was admitted and marked Exb. P.2

Without the knowledge of the deceased, the Defendant fraudulently made an
20 application to the land registry for a special certificate of title for the suit land claiming that the duplicate copy was lost. It was issued to her on the 14th day of August 1998. Using that copy, the Defendant proceeded to transfer the title into her names on the 13th day of November 1998 with the use of a transfer form bearing a forged signature of the deceased. A copy of the title was admitted and marked Exb.P.3.

On learning of these transactions, the deceased lodged a caveat on the suit land on the 7th day of April 1999. A search report dated 26th March 2019 indicating the caveat was admitted and marked Exb. P.4.

5 Mr. Ezati Samuel, a Forensic Document Examiner of 20 years' experience was requested by the Plaintiff's advocates through a letter, Exb. 12, to carry out an analysis on the registry documents purportedly signed by the deceased. He was availed the application for a special certificate, Exb.P.5, the transfer form, Exb.P.6, as the two questioned documents to compare with the specimen signatures of the deceased on the caveat, Exb. P.7, an acknowledgement of receipt dated 30th August 2010, Exb. P.8, and
10 the Passport of the deceased, Exb. P.9.

Mr. Ezati carried out the examination and came to conclusion that it is very unlikely that the author of the signatures in Exb. P.5 and Exb. P.6 signed the questioned signatures in Exb. P.7. Exb. P.8 and Exb. P.9. His report dated 20th July 2019 was tendered into evidence and marked Exb.P.13.

15 The Plaintiff testified that this is not the first time the Defendant acted fraudulently. In Civil Suit 547 of 2006, in its judgment dated 20th August 2007, the court found that the Defendant fraudulently transferred land in Block 244 Plot 1808 belonging to the Plaintiff's paternal aunt, the late Jane Nalule Lusajjalubi into her name. Judgment was given in favour of the Administrator in that case.

20 Since the Plaintiff took over possession, of the suit land he has had no interference from the Defendant or any other person and therefore prayed that he be granted the prayers sought.

Counsel for the Plaintiff filed submissions in this matter which I have considered.

Issues

1. Whether the Defendant fraudulently transferred land comprised in Kyadondo Block 244 Plot 1807 into her names?
2. What remedies are available to the Parties?

RESOLUTION

- 5 **1. Whether the Defendant fraudulently transferred land comprised in Kyadondo Block 244 Plot 1807 into her names?**

In the case of Fredrick Zaabwe vs. Orient Bank & others SCCA No. 04 of 2006, the Supreme court, relying on Black's Law Dictionary 6th Ed. at page 660, defined fraud to mean;

- 10 **'the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter or fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall**
- 15 **act upon it to his or her legal injury.'**

Further in Kampala Bottlers Ltd vs. Damanico (U) Ltd, SCCA No.22 of 1992, it was held that fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters. It was held further held that;

- 20 **"The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."**

- To impeach the Defendant's special certificate of title, the Plaintiff in this case, is duty bound to prove fraud on part of the Defendant. Under Paragraph 7 of the Plaintiff pleaded the particulars of fraud as follows;
- 25

- a) *Applying or causing for the application and issuance of a special certificate of title for land comprised in Kyadondo Block 244 Plot 1807 land at Kisugu based on false information that the duplicate certificate of title was lost whereas the same is still existing and was in possession of the deceased.*
- 5 b) *Forging the deceased's signature on the application for a special certificate of title.*
- c) *Transferring the suit land into her names using a forged transfer form well knowing that the deceased has never sold the suit land to her.*
- d) *Forging the deceased's signature on the transfer form used to transfer the suit*
10 *land into the Defendant's name.*

Through his own testimony and that of PW2, the Plaintiff led evidence to demonstrate that the Defendant, Betty Kabugo was registered on 13/11/1998 on the suit land under instrument No. KLA200331. This was in spite of the fact that at the same time, the late Charles Lusajjalubi Ssengendo was in possession and occupation
15 of the as holder of the duplicate certificate of title to the land. The expert witness, PW2, made it clear that the late Charles Lusajjalubi Ssengendo did not sign any of the documents that enabled the Defendant to be registered on the suit land.

This matter was heard ex parte and the Plaintiff's evidence stands unchallenged by the Defendant who did not file a defence to the suit. See Kaga Limited v. Haidaya Nantongo HCT-00-CC-CS-0626/2014, Bamwine J.
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In my view, while there was no direct evidence pointing to the Defendant's participation in the fraud, she was the sole beneficiary of the scam and the fraud must be visited on her. I am satisfied that the Plaintiff adduced sufficient evidence to prove that the Defendant was responsible for all the fraudulent transactions that
25 led to her illegal acquisition of the special certificate of title to the suit land.

2.What remedies are available to the Plaintiff?

Section 177 RTA (supra) provides that;

“Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the registrar shall give effect to that order.”

Given the blatant fraud exhibited by the Defendant, I am satisfied that the Plaintiff is entitled to cancellation of the Defendant’s special certificate of title and reinstatement of the late Charles Lusajjalubi Ssengendo as registered proprietor to the suit land.

On general damages, the law is that they arise from the natural course of things and are intended to put the Plaintiff back to the position he might have been if had the injury complained of had not occurred. See the case of Mugerwa Sulaiti V Umeme Limited HCCS No. 86 of 2012.

The Plaintiff’s Counsel submitted that the Defendant’s fraudulent acts were high handed and were deliberately orchestrated by the defendant to defeat the deceased’s interest in the suit land. She prayed that the Court grants the Plaintiff general damages against the Defendant for the inconvenience caused. I agree entirely.

In conclusion, I enter judgment in favour of the Plaintiff and order as follows;

- 1. The land comprised in Kyadondo Block 244 Plot 1807 measuring 0.10 acres of land situate at Kisugu belongs to the estate of the late Charles Lusajjalubi Ssengendo.**

2. The special certificate of title for land comprised Kyadondo Block 244 Plot 1807 measuring 0.10 acres of land situate at Kisugu issued to the Defendant is cancelled on grounds of being acquired by fraud.
3. The Commissioner Land Registration is directed to reinstate the late Charles Lusajjalubi Ssengendo as the registered proprietor of land comprised in Kyadondo Block 244 Plot 1807 measuring 0.10 acres of land situate at Kisugu.
4. The Plaintiff is awarded General damages of UGX 10,000,000(Ten million shillings).
5. Costs of this suit are awarded to the Plaintiff.

Olive Kazaarwe Mukwaya

JUDGE

31st March 2021

Delivered by email to Counsel for the Plaintiff.