

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**LAND CIVIL SUIT NO.31 OF 2014**

5 **JOHN WILLS NUWAMANYA MATSIKO-----PLAINTIFF**

**VS**

**MWANZA HABIB-----DEFENDANT**

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

**JUDGMENT**

The Plaintiff's claim against the Defendant is for trespass to land for which he seeks a declaration that he is the rightful owner; a permanent injunction against trespass, an order for demolition, general damages and costs of the suit. In his defence, the Defendant denied the claim in the Plaint and filed a Counter Claim seeking recovery of the land from the Plaintiff.

**Plaintiff's Facts**

20 The Plaintiff is the registered proprietor of land comprised in Block 5 Plot 1378 Kigezi, the suit land. He is a resident of the United States of America. The Defendant is the owner of a parcel of land adjacent to the suit land. On 19/12/2000, the Plaintiff's brother Baguma Alex, on behalf of the Plaintiff, purchased the suit land from Mr. Kikira M.S Kosea. A sale of land agreement was executed between the two and the Plaintiff was issued with a payment receipt No. 118 for 2,500,000/= by the vendor. The particulars of the payment were stated as; 'being payment of Plot of land on Nyakibale'.

On 22/1/2001, Mr. Baguma Alex bought the second and final portion of the land on behalf of the Plaintiff and upon payment he received a receipt No. 127 for UGX 2,500,000/= from the vendor. The particulars of the receipt were stated as; ‘being payment of Plot of land along Nyakibaale Road- Rukungiri.

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Upon execution of the agreements, transfer forms were executed by the vendor in favour of the Plaintiff. The Plaintiff then instructed Mr. Baguma to cause the amalgamation of the two Plots under one Certificate of Title.

10 Later, in 2013 the Defendant, unlawfully and without any colour of right, encroached upon the suit land by erecting a structure and planting crops on it prompting the Plaintiff to file this suit.

### Defendant’s Facts

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The Defendant denied the claim in the Plaint. He filed a counterclaim seeking for a declaration that part of the suit land belongs to him having purchased the same from the same vendor, Kosea Kikira on 20<sup>th</sup> day of January 2001. The Defendant contended that he had since made developments on the land. And he maintained that the Plaintiff  
20 obtained registration by fraud.

After hearing the evidence of the parties, this court visited the locus at made its observations which have been taken into consideration in the resolution of the issues.

25 **Issues**

- 1. Who is the owner of the suit land?**
- 2. Whether the Plaintiff obtained registration of the suit land by fraud?**
- 3. Remedies available to the parties.**

## **RESOLUTION**

### **Issue 1 and 2**

#### **Who is the owner of the suit land and whether the Plaintiff obtained registration of the suit land by fraud?**

The suit land is registered land under the name of the Plaintiff, Exb. P.1 is the certificate of title. To impeach this title, and claim ownership, it was the duty of the Defendant to adduce evidence of fraudulent acquisition imputed upon the Plaintiff.

10 In the case of Kampala Bottlers Ltd –Vs- Damanico (U) Ltd, (S.C. Civil Appeal No. 22/92), the Supreme court decided that even if fraud is proved, it must be attributable directly or by implication, to the transferee. Wambuzi, C.J stated at page 7 of his judgment;

15 “...fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean 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.”

The learned Chief Justice goes further to state:

20 “Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters.”

The vendor, in this suit, Mr. Kosea Kikira is deceased. Both the Plaintiff and the Defendant relied on sale agreements apparently executed by the vendor in their  
25 favour. In addition, the Plaintiff adduced two receipts, which remained on court record as identified by the witnesses and not as exhibits. The Defendant, DW1, had no such receipts to support his claim of purchase and maintained that the Plaintiff’s receipts were forgeries but adduced no evidence whatsoever to prove this allegation.

Instead, the Defendant testified that there were developments that he had put up on the land that proved that he was the rightful owner.

### Plaintiff's Evidence

5 This court received the evidence of three Plaintiffs' witnesses testifying that the Plaintiff was the rightful owner of the suit land. PW1, Alex Baguma testified that he purchased the land on behalf of his brother the Plaintiff. PW2, Mugenyi Rammy testified that he was the Assistant District Staff Surveyor Rukungiri in the year 2000 and he was familiar with the suit land. He was a witness to the transfer of the suit land  
10 from the late Kosia Kikira to the Plaintiff. At the time, the title had no description since the subdivision was still ongoing. In 2004, PW2 completed processing the deed plans and in 2006 the Plaintiff got his title. Mr. Mugenyi confirmed that he knew the signature of the late Kikira Kosea very well because they had worked together since 1982.

15 PW3, the Plaintiff, John Willis Niwamanya stated in June 2004 when he returned from the United States, he inspected the land which was unoccupied and on 20<sup>th</sup> day of June 2004, he met Kosea Kikira, filled transfer forms and was shown the two receipts confirming the purchase dated 19<sup>th</sup> day of December 2000 and 22<sup>nd</sup> day of  
20 January 2001 respectively. The second receipt did not have the corresponding agreement because the seller was giving the transfer documents instead. He then left the process in the hands of the surveyor PW2 and it was concluded on the 5<sup>th</sup> day of May 2006 when he was in the United States. The Plaintiff sued the Defendant because his kitchen was extending to his land by about six (6) feet and he had started claiming  
25 ownership of the disputed portion and planting crops. PW3's attempts to engage the surveyor to open boundaries were repelled by the Defendant.

### Defendant's Evidence

Four witnesses testified on the Defendant's behalf. The Defendant, Mwanza Habib Nshangi Bashaija, DW1, testified that he purchased the suit land on 20th day of January 2001 from Kosea Kikira in the presence of two witnesses; his wife, Asiat Mwanza and Kamambaya Abdul. The agreement, Exb.D.1, was made by the vendor.

5 In June 2002, the Defendant constructed toilets, a store, commercial house and boys' quarters and started residing on the land. He contended that the payment receipts relied on by the Plaintiff were doubtful since they do not indicate the size of the land and its location. In 2014, when the plaintiff started his claims, the Defendant lodged a caveat on Plot 1378 Block 5 Kigezi.

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DW2, and DW3 each testified that the suit land was the property of the Defendant who acquired it by purchase. They confirmed that they were present and were witnesses to the agreement. DW4, Kemigisha Gaudy, testified at the locus in quo. She stated that she is a neighbour to the suit land and before the Defendant took

15 possession, it was a grazing area.

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At the visit to the locus in quo on the 8th September 2020, PW1, Alex Baguma admitted that since the acquisition and registration on the suit land, the Plaintiff has never carried on any activity on the land. This was apparent at the locus visit. PW1

20 added that he allowed the Defendant to make use of the suit land as a neighbour- a portion of about 2 and half metres from the Defendant's property which is right above the suit land.

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This court observed freshly planted beans growing on the land. There was however no commercial house on the suit land as claimed by the Defendant in his evidence. The

25 store he referred to was on the border of the Defendant's land and the suit land and it appeared make shift, an extension of the Defendant's commercial house. It appeared that this was the extension of the kitchen, which constituted part of the trespass.

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According to this court's observation, the only current activity on the land was the cultivation of seasonal crops by the Defendant.

5      Going by the certificate of title, Exb. P.1 and the transfer forms, Exb. P.2, the Plaintiff is the registered proprietor of land comprised in Block 5 Plot 1378 in Muruka, Rukungiri. The certificate of title indicates that the Kosia Kikira was registered upon the title on the 20th February 1992 and on the 5th May 2006, the Plaintiff was registered on the land as proprietor. The Defendant did not offer any valid explanation as to why the vendor, executed the sale agreement in his favour on the 10      20th January 2001 and failed to sign transfer forms in the Defendant's favour and yet at all times since 20th February 1992, Kosia Kikira was the registered proprietor of the suit land, the particulars of which were included in the agreement of sale with the Defendant.

15      I am satisfied that the Plaintiff has established on a balance of probabilities that he lawfully acquired the suit land from the registered proprietor, Kosia Kikira. The Defendant has been unsuccessful in his attempts to prove that this title was acquired fraudulently or that the Plaintiff was directly or impliedly guilty of any fraud. The Defendant's Counter claim accordingly failed. I find that the Plaintiff is the owner of 20      the suit land having acquired it lawfully from the vendor, Kosia Kikira.

### **Issue 3**

### **Remedies**

25      Counsel for the Plaintiff made extensive submissions to support the award of the remedies sought in the Plaint. I appreciate these submissions. Having successfully established his claims against the Defendant as contained in the Plaint, it is my finding that the Plaintiff is entitled to the remedies prayed for.

**I hereby enter judgment in favour of the Plaintiff and order as follows;**

- 1. The Plaintiff is the lawful owner of the suit land comprised in Block 5 Plot 1378 Kigezi.**
- 2. A survey should be jointly conducted by the Plaintiff and Defendant to ascertain the boundaries of the suit land at the expense of both parties within 90 days of the date of this judgment.**
- 3. A permanent injunction is issued against the Defendant from trespass on any part of the suit land.**
- 4. General damages of UGX 5,000,000/= are granted to the Plaintiff.**
- 5. The Counter Claim lodged by the Defendant fails.**
- 6. Costs of the suit are awarded to the Plaintiff.**

**Consequential orders for demolition of any illegal structures on the suit land may be sought by the Plaintiff after the survey exercise is concluded.**

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**Olive Kazaarwe Mukwaya**

**JUDGE**

**31st March 2021**

**Delivered by email to Counsel to the parties.**

