THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

LAND DIVISION

CIVIL SUIT NO 35 OF 2020 (formerly Civil Suit No. 249 of 2014)

1. **FARAZIA NAMBI NALONGO**
2. **NAMBI REGINA :: PLAINTIFFS**
3. **NAZZIWA PROSSY (beneficiaries of the Estate of the Late Yowana Ssengedo)**

VERSUS

1. **GEOFFREY TAYEBWA**
2. **MERCY TAYEBWA**
3. **ADMINISTRATOR GENERAL :: DEFENDANTS**

(BEFORE: HON. LADY JUSTICE IMMACULATE BUSINGYE BYARUHANGA)

JUDGMENT

The plaintiffs filed this suit against the defendants seeking the following orders;

a. A cancellation of the defendants as the registered proprietors of 5 acres of the suit land comprised in Busiro Block 405-406, plots 1138 and 1139, land at Wamala Ssisa.
b. An order of delivery of the other remaining 5 acres in the names of the 3rd defendant as administrator to the beneficiaries of the late Yowana Ssengendo.
c. A declaration that the sales agreement Annexture “a” to the plaint is not the instrument the 1st plaintiff agreed on the 31st day of May 2009 to execute.
d. A declaration that the said document is riddled throughout by deceit and fraudulent misrepresentation.
e. An order for delivery and cancellation of the original of the said sales agreement contravened provisions of the Succession Act in respect to intestate Estates.
f. A declaration that the 3rd defendant did not carry out due diligence let alone follow the duly laid down legal procedures in taking over administration of the said estate.

g. General damages for trespass.
h. Costs of the suit.

According to the plaint, the 1st plaintiff who was of advanced age and illiterate was approached by the 1st defendant, agreed to part with one acre and in return the 1st defendant would help her to procure letters of administration for her father's estate.

The 1st plaintiff averred that the 1st defendant met the 1st plaintiff and made her sign a sale agreement which was written in the English language, a language that she did not understand. The 2nd and 3rd plaintiffs claim is that they were never consulted as beneficiaries to the estate of their late grandfather (the Late Yowana Ssengendo's estate) before the sale of the suit land.

The 1st and 2nd defendants averred that by agreement dated 31st May 2009, the plaintiff being of sound mind and in the presence of witnesses sold and transferred all her interests in the suit land to the 1st and 2nd defendants.

The said agreement was a final mutual agreement between the 1st and 2nd defendants and the plaintiff since the defendants had originally purchased 3 acres from the plaintiff. The 1st and 2nd defendants also averred that they bought one acre from Teddy Nansubuga (a plot she had been gifted by her grandmother (1st plaintiff) and the one acre which was compensation for helping the 1st plaintiff to acquire the special certificate which made them a total of five acres.

On the 30th of October 2014, joint scheduling notes were filed and the following issues were framed for trial;

1. **Whether or not there the 1st and 2nd defendants acquired the suit land lawfully.**
2. **Whether or not the 1st and 2nd defendants committed fraudulent acts in the process of purchasing and getting registered as proprietors of the suit land.**
3. **Remedies available to both parties**

At the hearing of the suit, the plaintiffs were represented by Counsel Joseph Luzige of **M/s Luzige, Lubega, Kavuma & Co Advocates,** the 1st and 2nd defendants were

represented by Counsel David Kasadhe of **M/s Kaggwa, Oweyesigire and Co. Advocates** and the 3rd defendant was represented by the **Administrator General Department.** The plaintiffs led evidence from two witnesses that is Pw1 (Farazia Nambi Nalongo) amd Pw2 (Semwezi John) while the Defendants led evidence form five witnesses that is Dw1 (Geoffrey Tayebwa), Dw2 (Grant Sekiwala), Dw3 (Ntege John Chrisetom), Dw4 (Teddy Nansubuga) and Dw5 (Mercy Oikirize Tayebwa).

Resolution of Issues

Issue 1:

Whether or not the 1st and 2nd defendants acquired the suit land lawfully

On the 1st issue, Counsel for the plaintiff submitted that the defendants fraudulently acquired the suit land. Counsel also submitted that Pw1 testified that the 1st defendant brought her the sales agreement on which she appended her thumb print on 31st May 2009 and that Pw2 appended his signature on the very agreement in 2012. Counsel further submitted that the said sales agreement was executed in English which the 1st plaintiff does not understand and as such the agreement is illegal and cannot be relied on to pass good title. On this issue Counsel cited **Sections 2 and 3 of the Illiterate Persons Protection Act and the case of Kasaala Growers Co-operative Society versus Kakooza Jonathan and Anor SCCA No. 19 of 2010.**

In addition, Counsel submitted that Pw2 testified that he did not witness any exchange of money between the 1st plaintiff and the 1st and 2nd defendants. Furthermore, Counsel submitted that Dw1 admitted that he never paid Ugx 40,000,000 as alleged in the sales agreement to the 1st plaintiff which Counsel considered as an admission of wrong doing. According to Counsel for plaintiff, the defendants took advantage of the 1st plaintiff's illiteracy and executed an agreement for the sake of stealing the plaintiff's land.

More to that, Counsel for the plaintiff submitted that the alleged sales transaction between the 1st plaintiff and the defendants and the one between Dw4 (Teddy Nansubuga) and the defendants are illegal and unacceptable in law because at the time of sale the 1st plaintiff did not have letters of administration for the estate of the Late Yowana Ssengedo.

In reply, Counsel for the defendants submitted that the sales agreement in question was not a purchase agreement per se but it was rather meant for valuation purposes of the suit land which was a consolidation of the 3 acres that the 1st defendant had purchased from the 1st plaintiff, the one acre that was purchased from Nansubuga Teddy (Dw4) and the one acre that was given to the 1st defendant as consideration for helping the 1st plaintiff process letters of administration for the late Yowana Sengedo's estate.

Counsel for the 1st and 2nd defendant further submitted that Dw1 (1st defendant) processed letters of administration for the 1st plaintiff and as such the defendants had fulfilled their obligations as per the Contracts Act, Cap 73 (repealed) which governed their transaction.

Decision of the Court

According to the evidence on record, the 1st plaintiff is the daughter of the late Yowana Sengendo who owned about 10 acres of land at Wamala, Ssisa. Whereas it is the plaintiffs' evidence that the 1st plaintiff never sold 5 acres of her suit land to the 1st and 2nd defendants, according to DEx4 (Nansubuga Teddy's witness statement), she testified that she grew up with her grandmother (Pw1). Furthermore, in paragraphs 8 and 9, she testified that the 1st plaintiff and the 1st defendant negotiated in her presence and the former decided to sell 3 acres of the land forming part of the estate of the late Yowana Ssengendo to Tayebwa for a consideration of Ugx 15,000,000 in order for him to help her process letters of administration for her late father's estate.

In paragraphs 13 and 14, DW4 (Nansubuga Teddy) testified that in 2009, her grandmother gifted her 1 acre of land which she sold to Tayebwa because it was on the same suit land and was next to the parcel which the 1st defendant had bought from her grandmother.

Furthermore, in paragraph 15, Dw4 testified that in 2009, the 1st plaintiff had used up all the money and she asked the 1st defendant to process for her letters of administration and in turn she would give him one extra acre of land. This evidence is corroborated by the testimony of Grant Sekiwala (DW2) and Ntenge John Chrisestorm (DW3) in their witness statements dated 11th December 2014.

Commented [U1]: See the 3rd defendant's WSD 1.The plaintiff sold her own portion of the land for which she had already been given a certificate of succession. This is corroborated by her grand daughter's witness statement where she testified that she witnessed her grandmother sell the suit land to the 1st and 2nd defendants.

This evidence is further corroborated by DEx5 and DEx6 which are acknowledgements of payment from the 1st defendant to the 1st plaintiff. According to the above mentioned acknowledgements, the 1st plaintiff was paid a total of Ugx 15,000,000 by the 1st defendant as consideration for the suit land and not Ugx 45,000,000 as mentioned in the sale agreement (PEx1).

Counsel for the plaintiff submitted that the sale agreement (PEx1) did not pass good title to the 1st and 2nd defendants because it was executed in the English language and yet the 1st plaintiff is illiterate which contradicts **Section 2 and 3 of the Illiterate Persons Protection Act** and secondly, that the defendants failed to prove that they had paid the 1st plaintiff Ugx 45,000,000.

Whereas, Counsel for the defendant submitted that the sale agreement was meant for valuation, I find that the sale agreement is misrepresentative in as far as the consideration that was stated to have been paid. The 1st and 2nd defendants could have valued the suit land in the known legal ways as opposed to using a sale agreement that is indicative of purchase price that was not paid.

However, there is overwhelming evidence to the effect that Farazia Nambi (PW1) sold 3 acres of land to Tayebwa (Dw1). Secondly, it was not contested that the 1st plaintiff gifted her granddaughter (Teddy Nansubuga) one acre of land which she in turn sold to the 1st defendant.

Finally, the Teddy Nansubuga (Dw4) testified that her grandmother used up all the money she had earlier been given by the 1st defendant for the 3 acres and she asked the 1st defendant to process for her letters of administration in consideration for one extra acre of land. DW1 (1st defendant) testified that he drew out a sales agreement to consolidate the prior sale transactions that had started way back in 2007.

On the issue of processing of the Letters of Administration, according to **paragraph 2(a)** of the written statement of defence of the 3rd defendant, the suit land was under the administration of the Administrator General. Furthermore, under **paragraph 2 (b)** the plaintiff had already been issued a certificate of succession for her share of the suit land on 5/9/1986. Therefore, the plaintiff could legally deal with the suit land. Furthermore, I

have also studied **DEx9** which is a certificate of title for the suit land which indicates that the Administrator General as the Administrator of the Estate of the Late Y. Sengendo under **instrument number KLA527543.** Therefore, there were letters of Administration in existence and a certificate of succession way before the defendants decided to purchase the suit land. Therefore, I find that the plaintiff's argument of the plaintiff dealing with the suit land without letters of administration is unmerited.

In conclusion, I find that the 1st and 2nd defendants lawfully acquired the suit land.

Issue 2:

Whether or not the 1st and 2nd defendants committed fraudulent acts in the process of purchasing and getting registered as proprietors of the suit land.

On this issue, Counsel for the plaintiffs submitted that the 1st and 2nd defendants conducted several fraudulent acts which warrant cancellation of their title. Counsel cited the case of **FJK Zaabwe versus Orient Bank and 5 ors SCCA No. 4 of 2006 at page 28** where fraud was defined as *an intention perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.*

Counsel also submitted that fraud must be attributable to the transferee either directly or by necessary implication. He also submitted that fraud must be specifically pleaded. On these issues Counsel cited **David Sejjaaka versus Rebecca Musoke Civil Appeal No. 12 of 1985 and JWR Kazzora versus MLS Rukuba SCCA No 13 of 1992.**

Counsel submitted that the defendants acted fraudulently by firstly, executing a sale agreement in English well aware that the 1st plaintiff was illiterate. Secondly, stating that they were purchasing five acres well aware that the 1st plaintiff had only given them (1st and 2nd defendants) one acre. Thirdly, the defendants making the 1st plaintiff sign an agreement where they indicated that the plaintiff was paid Ugx 40,000,000 cash whereas not. Fourthly, the sales agreement was allegedly executed on the 31st May 2009 and it was allegedly witnessed by LC1 chairperson on the 23rd February 2012. Fifthly, Counsel submitted that it was illegal for the defendants to purchase and take over the late Yowana Sengendo's land before the 1st plaintiff could obtain letters of administration. Counsel also

submitted that DW1 admitted that he was given 3 acres as payment for helping the 1st plaintiff to obtain letters of administration which process does not exceed Ugx 2,000,000.

In reply, counsel for the defendants submitted that all the evidence adduced by the plaintiff does not impute fraud. He further submitted that the only offence for the defendants was the absence of a well-articulated land sale agreement. Counsel further submitted that as a cardinal principle, consideration need not be adequate but sufficient but rather what matters is the agreement of the parties. Counsel also submitted that the unchallenged evidence of the defendants is that 3 acres were bought in good faith for valuable consideration from the 1st plaintiff in presence of her granddaughter. The 4th acre was purchased from Dw4 which was gifted to her by the 1st plaintiff. Finally, as evidenced on record, the 5th acre was given to the defendants by the 1st plaintiff as consideration for helping her get letters of administration.

Decision of Court

Section 59 of the Registration of Titles Act (RTA), is to the effect that a registered proprietor of the land is protected and his title is indefeasible except in cases of fraud. The Court in the case of ***Fredrick Zaabwe Vs Orient Bank & Others SCCA No, 4 of 2006***, *fraud was defined to mean;*

> ***"***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 of 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 act upon it to his or her legal injury.

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 further held that;
>
> '*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."

According to the evidence on record, the plaintiff had a certificate of succession for her own portion of the suit land and the letters of administration that the defendants were processing for her were for her Late sister's (Elizabeth Nakku)'s portion.

As earlier stated in issue one, there is overwhelming evidence that the plaintiff sold three acres of her portion to the defendants which payment she received according to Dw4. The 4th acre was gifted to Dw4 by the 1st plaintiff which she in turn sold to the 1st defendant according to the acknowledgment marked **DEx5.** The plaintiff admitted that she offered the 1st defendant one extra acre to help her process letters of administration for her sister's suit portion of the suit land which makes it a total of 5 acres. Therefore, I find that the 1st defendant was justified to state that he had purchased 5 acres in the sale agreement and as such that is not fraud since there is no false misrepresentation.

I have equally already decided on the issue of letters of administration. The plaintiff had a certificate of succession for her land which she had acquired in 1986 from the Administrator general and as such she was free to sell her land to the 1st defendant. This does not amount to fraud.

On the issue of the sale agreement, Counsel for the plaintiff submitted that the said agreement was executed in the English whereas the plaintiff is illiterate. Firstly, it is important to note that the 1st plaintiff appended her thumb print on the sales agreement. The plaintiff has not produced any evidence to prove that she was forced or induced into signing the sale agreement.

According **to sections 91 and 92 of *The Evidence Act***, when the terms of a contract have been reduced to the form of a document, no evidence of any oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from its terms may be admitted or given in proof of the terms of that contract except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible.

In the case of **DSS Motors Ltd versus Afri Tours and Travel Ltd H.C.C.S No 12 of 2013, Hon. Justice Yorokamu Bamwine held that,** Since the agreement between the parties was in writing, **the parole evidence rule is applicable to it**. This rule is to the effect that evidence cannot be admitted (or that even if admitted, it cannot be used) to add to, vary or contradict a written instrument. In relation to a contract of this nature, the rule means that where a contract has been reduced to writing, neither party can rely on evidence on terms alleged to have been agreed, which is extrinsic, that is, not contained in it. The rationale of the parole evidence rule is that parties who have reduced a contract to writing should be bound by the writing alone.

Having the parole evidence in mind, there is a written agreement that binds both the 1st plaintiff and the 1st defendant. According to the evidence on record there is no proof that the 1st plaintiff was forced to enter into the said agreement and as such the court shall treat it as binding. I find that fraud has not been proved against the defendants.

In respect of costs the law is to the effect that costs follow the event under section 27 of the Civil Procedure Act. However, in this case, the first agreement indicated forty million as consideration instead of fifteen million. The 1st defendant was party to that agreement. That being the case each party shall bear their own costs.

Issue 3:

Remedies available

I have already held that the transaction between the 1st plaintiff and the 1st and 2nd defendants is lawful and that the defendants acquired the land lawfully. The following orders are hereby made;

a. The plaintiffs' suit is dismissed
b. The 1st and 2nd defendant lawfully acquired 5 acres of the suit land which formed part of the Estate of the Late Yowana Sengendo.
c. Each party shall bear its own costs.

Dated at Kampala this10th Day of August 2021 and delivered by email.

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Immaculate Busingye Byaruhanga

Judge