

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 824 OF 2016

1. TUGUME FRED
2. ISABEL HIROME:..... PLAINTIFFS

VERSUS


1. MIRIAM LUBWAMA NALUGWA BBOSA
2. KIWANUKA RICHARD:..... DEFENDANTS

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT


The Plaintiffs cause of action against the defendants jointly and severally is for trespass and fraud. The facts constituting the Plaintiffs cause of action are as follows:

1. That on the 2nd day of January 2014, the Plaintiffs and the 2nd defendant entered into a land sale agreement where the 2nd defendant sold to the Plaintiffs 25 decimals of land comprised on **Block 121 Plot 2197 land situate at Nangabo at a consideration of forty million shillings (40,000,000/=)**.
2. That on the 1st day of September 2015, the Plaintiffs and the 2nd defendant further entered into another land sale agreement for the purchase of more 25 decimals on the same land comprised in **Block 121 Plot 2197 land situate at Nangabo at the consideration of forty million shillings (40,000,000/=)**.
3. That on the 15th June 2016, the Plaintiffs entered into another sale agreement in which the 2nd defendant sold to the Plaintiffs more 6 decimals at a consideration of twelve million shillings (12, 000,000/=) on


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the same land comprised in **Block 121 Plot 2197 land situate at Nangabo which came to a total of 56 decimals.**

4. That at the time of the 1st purchase, the 2nd defendant informed the 1st Plaintiff that he had sold the land measuring 11.5 decimals (50 feet x 100 feet) also part of the land comprised in **Block 121 Plot 2197 land situate at Nangabo to the 1st defendant.**
5. That on the 14th day of October 2015 at Kyaliwajala, Namugongo, the 2nd defendant handed over to the 1st Plaintiff the Certificate of Title to the suit land comprised in Block 121 Plot 2197 land situate at Nangabo together with the signed mutation forms and transfer forms, the 2nd defendant's passport photos and a photocopy of the driving permit to enable the Plaintiffs process of the subdivision and transfer of the Plaintiffs portion of land into their names.
6. That around August 2016, the Plaintiff brought a surveyor to open the boundaries of the Plaintiff's portion of land and this was done in the presence of the 2nd defendant.
7. That around September 2016, when the 1st Plaintiff had come to inspect the land, he found poles and barbed wires put by the 1st defendant fencing off part of the Plaintiff's land thereby trespassing on it.
8. That when the Plaintiffs asked the 1st defendant why she was fencing off the Plaintiff's land, the 1st defendant told the Plaintiffs that the 2nd defendant had sold the land to her and that she had bought 100 feet x 100 feet from the 2nd defendant.
9. That the 1st defendant has even gone ahead to try to develop the Plaintiffs land and is currently grading it.


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10. That when the Plaintiffs asked the 2nd defendant about it, the 2nd defendant told the Plaintiffs that he was going to sort it out but has never done so.

11. The Plaintiffs contend that the defendants are conniving to deprive and defraud the Plaintiffs of their land for which they paid consideration as the 1st purchasers.

The Plaintiffs listed the particulars of trespass as follows:

- i. The 1st defendant digging holes, inserting poles and fencing off part of the Plaintiff's land.
- ii. Grading the Plaintiffs land to develop it without any colour of right.
- iii. Encroaching on part of the Plaintiff's land where she only bought **11.5 decimals**.

The Plaintiffs listed the particulars of fraud as follows:

- i. The 2nd defendant conniving with the 1st defendant to defraud the Plaintiffs of their land.
- ii. The defendants claiming to have entered into an agreement of sale and buying of the Plaintiffs land when the Plaintiffs were the first to buy.

12. The Plaintiffs further aver that they have been deprived of the use and enjoyment of the suit property resulting into mental anguish and damage for which the defendants should be held liable.

The Plaintiffs pray that this court enters judgment in their favour with the following declarations /orders:


- i. A declaration that the Plaintiffs are the lawful, rightful and bona fide purchasers of the 56 decimals immediately after the 11.5 decimals (50 feet x 100 feet) belonging to the 1st defendant which is part of the suit land comprised in **Block 121 Plot 2197 land situate at Nangabo**.


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- ii. A permanent injunction restraining the 1st defendant from trespassing, dealing or interfering in any way with the Plaintiff's quiet enjoyment and occupation of the suit land.
- iii. General damages.
- iv. Costs of the suit.
- v. Any other relief that this court may deem necessary.


In her written statement of defence Mariam Lubwama Nalugwa Bbosa hereinafter referred to as **"the 1st defendant"** states inter alia:

1. That the Plaintiffs are not entitled to the remedies sought in their plaint.
2. That she takes exception of the alleged agreement between the Plaintiffs and the 2nd defendant and that the said agreement is clearly forged/or fraudulently stage managed by the Plaintiffs to defeat her interests in the suit land.
3. That the agreement relied on by the Plaintiffs is false much as it states in paragraph 3 that by the 2nd January 2014, the 1st defendant had purchased 11.5 decimals of land from the 2nd defendant.
4. That the 1st defendant has never purchased 11.5 decimals of land from the 2nd defendant and not on the 2nd January 2014.
5. That the 1st defendant is aware that the Plaintiffs forced/coerced and /or unduly influenced the 2nd defendant into signing the said agreement which was made on the 2nd January 2014 but way after the 1st defendant had already purchased her portion of 100 feet by 100 feet which is approximately 23 decimals from the 2nd defendant.
6. The 1st defendant contended that she had already purchased the 25 decimals of the suit land from the 2nd defendant and was in occupation



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of the same by the time the Plaintiffs purportedly purchased the suit land from the 2nd defendant.

7. That by 2nd January 2014, the 2nd defendant could not have informed the Plaintiffs that he had sold 11.5 decimals to the 1st defendant because by then the 1st defendant had not purchased any land from the 2nd defendant.
8. That the 1st defendant purchased 100 feet by 100 feet of the suit land from the 2nd defendant on the 12th February 2014.
9. The 1st defendant contended that there is no copy of a signed mutation form, a transfer form, a passport photo or driving permit attached to the plaint as claimed.
10. That the 2nd defendant could not have handed to the Plaintiffs duly signed transfer forms on the 14th October 2015 because that title included and still includes the 1st defendant's portion of 100 feet by 100 feet.
11. That she purchased the said plot from the 2nd defendant on the 12th February 2014 and an agreement was made to that effect.
12. That prior to the purchase, she physically inspected the suit land and found it vacant and undeveloped.
13. That she also conducted a search in the land office and established that the 2nd defendant was the registered proprietor and there was no encumbrance on it.
14. That about a year of the 1st defendant settling on her land, the Plaintiffs also came and purchased the adjacent land.


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15. That at one point the 1st Plaintiff sent an emissary a one Salongo Sayuni to try and persuade her to surrender the 11.5 decimals to the Plaintiffs and the Plaintiffs to compensate her with another portion of a similar size on the upper part of the land which the 1st defendant declined.
16. That from that time the Plaintiffs started threatening to evict her from the said land.
17. That the 1st defendant is now in occupation and full use of her 100 feet by 100 feet land which she purchased from the 2nd defendant.
18. The first defendant further contended that she is in advanced stages of processing her certificate of title for the portion she bought and this is with the help of the 2nd defendant.
19. The 1st defendant denied any connivance or intention to defraud the Plaintiffs.
20. The 1st defendant denies the claims of trespass.
21. That she is only in occupation, use and utilization of her said land as a bona fide purchaser thereof.
22. The 1st defendant also denies all allegations of fraud attributable to her by the Plaintiffs.
23. The 1st defendant further denies that she has never been in connivance with the 2nd defendant.
24. The 1st defendant further contends that by the time she purchased her land from the 2nd defendant, the Plaintiffs had not purchased any land from the 2nd defendant in that area and even if he had, the 1st defendant was not aware of it.



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25. The 1st defendant denies having caused any damage to the Plaintiffs.

The 1st defendant prays that the suit should be dismissed with costs.

In his written statement of defence Kiwanuka Richard hereinafter referred to as "**the 2nd defendant**" states inter alia:


1. That the agreement referred to between him and the Plaintiffs is not his deed as he made it under duress and was coerced and forced into signing it.
2. That the purported agreement was not signed on the date it purports to reflect but way after 12th February 2014 and after the 1st defendant had already bought 100 feet by 100 feet of land.
3. That the said agreement is false especially when it states that the 1st defendant had purchased 11.5 decimals of land from the 2nd defendant.
4. That the 1st defendant has never purchased 11.5 decimals from the 2nd defendant and not on 2nd January 2014.
5. That the Plaintiffs coerced and unduly influenced him into signing the said agreement.
6. The 2nd defendant further states that by the time the said agreements were made between him and the Plaintiffs, he had already sold 25 decimals of the land to the 1st defendant and the 1st defendant was in occupation and use of the same.
7. That by the 2nd January 2014, the 2nd defendant could not have informed the Plaintiffs that he had sold the 11.5 decimals to the 1st defendant because by then the 1st defendant had not purchased any land from the 2nd defendant.


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8. That the 2nd defendant could not have informed the Plaintiffs that the 1st defendant had purchased 11.5 decimals of land from him because the 1st defendant had never purchased 11.5 decimals from him.
9. The 2nd defendant further stated that he handed to the Plaintiffs the certificate of title to sever off their respective portion and not the 1st defendant's 100 feet by 100 feet she had bought before the Plaintiffs bought their 56 decimals.
10. That he sold the plot of land measuring 100 feet by 100 feet to the 1st defendant on 12th February 2014 and an agreement was made to that effect.
11. That prior to the said sale, no other person had bought any land on the disputed portion and it was vacant and bushy.
12. That after selling the said land to the 1st defendant, the Plaintiffs also approached him desirous of purchasing land there.
13. That the 2nd defendant then sold a total of 56 decimals to the Plaintiffs on three different occasions by selling 25 decimals on one occasion, 25 decimals on another occasion and 6 decimals on another occasion.
14. That after he sold to the Plaintiffs the said land, they started pressurising him to help them get 11.5 decimals from the 1st defendant's portion and shift the 1st defendant to the upper part of the land.
15. That he told the Plaintiffs that he could not do that but they should instead try to talk to and convince the 1st defendant.
16. That he later learnt that the Plaintiffs were disturbing the 1st defendant's quiet and peaceful possession of her land.

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17. That the matter was reported by the 1st defendant to Kasangati Police station where he was summoned to make a statement.
 18. That the Plaintiffs then came to him and threatened him with imprisonment if he did not state that he sold to the Plaintiffs first.
 19. That had it not been the threats of the Plaintiffs, he would not have stated that he sold to the Plaintiffs first because he sold 100 feet by 100 feet to the 1st defendant before selling any portion to the Plaintiffs.
 20. That he is aware that the 1st defendant is in full occupation and use of the 100 feet by 100 feet which she purchased from him.
 21. That the 1st defendant is in advanced stages of processing her certificate of title for the portion that she bought and the he is helping her in the process.
 22. The 2nd defendant denied any connivance or intention to defraud the Plaintiffs in any way.
 23. The 2nd defendant also denies having trespassed on the Plaintiff's land and had not seen the 1st defendant commit any trespass on the land belonging to the Plaintiffs.
 24. The 2nd defendant denies the claims of fraud as stated by the Plaintiffs in their plaint.
 25. The 2nd defendant denies having deprived the Plaintiffs of any land belonging to them and also denies having caused the Plaintiffs any damage.
- The 2nd defendant prays that the suit against him be dismissed with costs.


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In their joint scheduling memorandum the following issues were raised for resolution:

1. **Whether the 1st defendant is a trespasser on the Plaintiffs land.**
2. **Whether the 2nd defendant fraudulently sold to the 1st defendant the Plaintiffs land.**
3. **The remedies available to the parties.**

The Parties proceeded by way of witness statements from which they were cross examined. The details of their evidence is on record.

PLAINTIFF'S EVIDENCE

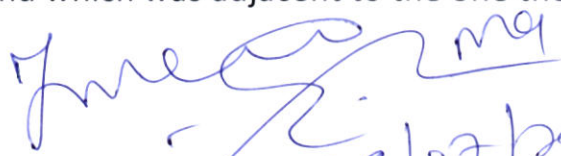
Alfred Tugume hereinafter referred to as **"the first plaintiff"** testified that he together with **Isabel Hirome** hereinafter referred to as **"the 2nd Plaintiff"** were approached by **Kiwanuka Richard** hereinafter referred to as **"the 2nd defendant"** who intimated to them that he wanted to sell part of his land that was comprised in **Block 121 Plot 2197 land at Nangabo Sub County Kasangati Wakiso.**

The 1st Plaintiff stated that after carrying out due diligence in the land registry and the physical land, and having been satisfied that the 2nd defendant was the registered proprietor he and the 2nd plaintiff decided to go ahead and buy 25 decimals of the suit land which is located on the V junction of Nangabo Kasangati Matuga Road.

That the said piece of land was immediately after the 11.5 decimals the 2nd defendant had just sold to the 1st defendant.

The 1st Plaintiff stated that they agreed with the 2nd defendant to buy the said land at **forty million shillings (40,000,000/=)** to be paid in two instalments. That at the execution of the agreement he paid **thirty five million shillings (35,000,000/=)** and that the transaction was to be finalised on the **2nd February 2014** at the office of his lawyer called **Louis Bakyenga**. A copy of the sale agreement was tendered in Court and marked as exhibit P.1.

The 1st Plaintiff further testified that on the 1st September 2015 they entered into another sales agreement with the 2nd defendant for more 25 decimals on the same Block and Plot of land which was adjacent to the one they had


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bought from the second defendant. The sales agreement was tendered in court and marked as exhibit P.2.

The 1st Plaintiff further stated that on the 15th June 2016 they bought from the 2nd defendant an additional 6 decimals of land at a consideration of twelve million shillings (12,000,000/=) and a separate land purchase agreement was made for that transaction. The sale agreement was tendered in court and marked as exhibit P.3.

The 1st Plaintiff further stated that he had been informed by the 2nd defendant that he had sold part of the land on the same Plot measuring 11.5 decimals to the 1st defendant.

The 1st Plaintiff further testified that on the 14th October 2014 at Kyaliwajjara Namugongo, the 2nd defendant handed over to him all the transfer forms and the Original Certificate of Title to enable him process the transfer of the land he had bought from the 2nd defendant.

That as a result of the process of registration, he engaged a surveyor to open up the boundaries in order for him to ascertain the exact portion and boundaries of all the plots he had bought from the 2nd defendant.

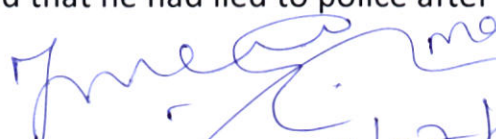
The 1st Plaintiff further stated that in September 2016 while he had gone to visit his said property and to check on how the surveyor had gone, he was shocked when he found when his land had been fenced by the 1st defendant who informed him that the same land had been sold to her by the 2nd defendant.

That when he asked the 2nd defendant about it, the 2nd defendant told him that it was a simple misunderstanding which he was going to rectify.

That the 2nd defendant never provided a solution and he then decided to take the matter to court.

That he was able to obtain an injunction from this court against the 1st defendant but the 1st defendant continued grading the suit land and making bricks from there.

The 1st Plaintiff further stated that he got calls from Kasangati Police summoning him to go and make a statement and was told that the 2nd defendant had reported a case against him. That he later came to now that the 2nd defendant had made an additional statement where he stated that the land belonged to the 1st Plaintiff and that he had lied to police after being coerced


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by the 1st defendant. The additional statement was tendered in court and marked as exhibit P. 11.


The 1st Plaintiff contended that the agreement between the 1st defendant and the 2nd defendant indicated that the 1st defendant bought the land in issue on 12th February 2014 when he had already bought it.

That in the said additional statement, the 2nd defendant acknowledged and admitted that it was not right to sell the same land twice and he proposed to refund the 1st defendant's money.

The 2nd witness of the Plaintiff was Bakyenga Louis hereinafter referred to as PW2. He stated that he was an Advocate of the High Court and had been approached by the 1st Plaintiff on the 2nd January 2014 and he informed him that he wanted to purchase the suit land. The 1st Plaintiff wanted him to draft the sales agreement. That the 1st Plaintiff came with the 2nd Plaintiff, the 2nd defendant who was the vendor and a one Sayuni Godius. That the 2nd defendant told him the terms he wanted to sell the suit land to the Plaintiffs. That he then drafted the agreement which all the said parties signed. That the 2nd defendant was to provide the mutation forms and transfer forms to enable the plaintiffs process their title after payment of the balance. He further stated that the consideration for purchase of the land was forty million shillings (40,000,000/=) and the first instalment that was paid was thirty five million shillings (35,000,000/=) which was paid at the execution of the agreement.

In his evidence, Niwagaba Yusuf hereinafter referred to as "PW3" stated that he was a Police Officer attached to Kasangati Police station.

PW3 stated that on the 28th September 2016 he was at the Police Station when he was allocated a file of criminal trespass which was opened vide CRB 952/2016 by the 1st defendant against the 1st Plaintiff. That the land in issue was on **Kyandondo Block 121 Plot 2197 at Ngabo village, Wakiso District**. That he took up the investigations and recorded statements from the 1st Plaintiff, the 1st defendant and the 2nd defendant. That he then visited the suit land and established that the 1st defendant had fenced off the suit land which she claimed was hers and he also established that the 1st Plaintiff and the 1st defendant had bought the suit land from the 2nd defendant. He said that by time the Plaintiffs instituted this case, the investigations were still ongoing.


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In her evidence, the 1st defendant stated that the 2nd defendant sold her the suit land early 2014. That she came to know that the 2nd defendant had inherited the suit land from his late father. That the 2nd defendant then took her around the suit land and told her that he owned about one acre of the land. That she preferred the lower part of the land that had a V shape and bought in acreage 100 feet by 100 feet. That an agreement was made to that effect with defendant two. She stated that she paid twenty million shillings (20,000,000/=) to the 2nd defendant and that he paid it in instalments. A copy of the agreement was tendered in court and marked as exhibit D1.

The 1st defendant further stated that she then fenced off her land and constructed some structures thereon. She also employed some boys to make some bricks for her so that she would be able to construct a permanent house thereon.

That with the help of her lawyers, she looked at the certificate of title and realised that the 2nd defendant had about 90 decimals of land and that the certificate of title had been completed on 11th March 2014 and had been registered in the names of the 2nd defendant and his other brothers and sisters. That she later learnt that on the 12th September 2014, the same title had been registered in the names of the 2nd defendant as the owner.

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title from the 2nd defendant but the 2nd defendant kept promising her that he would retrieve it from the Plaintiffs.

The 1st defendant further stated that the 2nd defendant gave her a signed mutation form and a photocopy of the certificate of title together with his passport size photograph to enable her start on the survey process

The 1st defendant stated that in 2016 the 1st Plaintiff approached her and requested her to leave 11.5 decimals of her land and relocate to the upper part of the land which he had bought from the 2nd defendant but she refused. That when she refused to give in, the 1st Plaintiff threatened her with eviction and made the life of the two boys she had employed very difficult. That she then reported the 1st Plaintiff at Kasangati Police Station on the 28th September 2016. That the 2nd defendant also made a statement to the Police on that day.

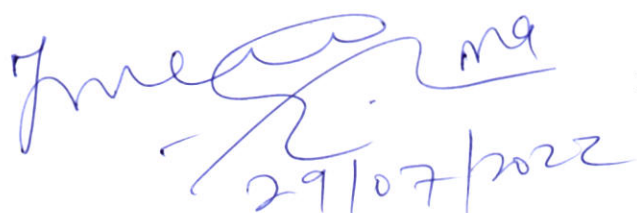
The 1st defendant further stated that after two months when she had reported the matter to Police, the 1st Plaintiff served her with summons to appear before this court and she learnt from the pleadings that the 2nd defendant appeared to have sold the land to the Plaintiffs and that in one of the agreements they had stated that she bought 11.5 decimals from the 2nd defendant before the 2nd defendant sold 56 decimals to the Plaintiffs which was false.

The 1st defendant denied that she had ever bought 11.5 decimals of land from the 2nd defendant but that she bought 100 feet by 100 feet from the 2nd defendant and at the lower part of the land. That this was on the 12th February 2014 when the entire land was still vacant and unoccupied by anyone.

The 1st defendant further stated that the 2nd defendant informed her that the Plaintiffs had threatened him with imprisonment hence his signing the attached agreements in their favour.

The 1st defendant further stated that when they appeared in court, the Plaintiffs and the 2nd defendant agreed that she was in possession of the suit land and had graded all the 100 feet by 100 feet and that the said land had semi-permanent structures thereon and that the land was still registered in the names of the 2nd defendant. The consent interim order was tendered in court and marked as exhibit D6.

That she later also learnt that the 1st Plaintiff and the 2nd defendant had gone back to Kasangati Police station and the 2nd defendant had made an additional

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statement and that she was later informed by the 2nd defendant that the 1st Plaintiff had threatened him with imprisonment and that is why he made the additional statement.

The 1st defendant contended that she is the lawful and rightful owner of the suit land which she bought from the 2nd defendant on the 12th February 2014. She further contended that she has never trespassed on the Plaintiffs land but she was occupying and using her land.


In his witness statement, the 2nd defendant stated that he knew the 1st defendant as the person she sold land measuring 100 feet by 100 feet before he sold 56 decimals to the Plaintiffs.

The 2nd defendant stated that in early 2014, he was approached by the 1st defendant who wanted to buy 100 feet by 100 feet from his land which he had inherited from his late father. That the land he inherited from his late father was approximately 90 decimals. That he then took the 1st defendant around the land and she decided to buy land that was at the lower part of the land. That on the 12th February 2014, by agreement he sold to the 1st defendant 100 feet by 100 feet of part of his land at a consideration of forty million shillings (40,000,000/=) and the 1st defendant paid him twenty million shillings (20,000,000/=) and the balance was later cleared.

The 2nd defendant further stated that after selling the said land to the 1st defendant, she took possession of it and waited for the certificate of title to mutate off her portion. That at the time he did not have the certificate of title.

The 2nd defendant further stated that he together with the other administrators of the estate of his late father managed to sever off 90 decimals from the bigger part of the family land and he was registered on his portion on the 12th September 2014.

The 2nd defendant further stated that around that time he was approached by the Plaintiffs who were interested in buying part of his land. That he agreed to sell to the Plaintiffs 25 decimals from his remaining land. That he informed the 1st Plaintiff that he had already sold off 100 feet by 100 feet of the land to the 1st defendant and that the said land was at the lower end of his land. That the 1st Plaintiff agreed to buy 100 feet by 100 feet which was adjacent to the 1st defendant's land. That the 1st Plaintiff presented to him a typed agreement of sale of land for him to sign and he signed it. That the 1st Plaintiff then told him


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that he had to take the agreements to his wife and his lawyer for them to sign before he could return his copy.

The 2nd defendant further stated that ever since, he has never received a copy of the agreement he signed with the 1st Plaintiff. That thereafter he handed to the Plaintiffs and Salongo Sayuni Godius the duplicate certificate of title and other documents to enable them sever off their 25 decimals. That it was the first time he was meeting the 2nd Plaintiff whom he came to learn was the wife of the 1st Plaintiff.

The 2nd defendant further stated that the 1st Plaintiff came back to him and requested to buy another 25 decimals which he agreed to sell to him and that made 50 decimals.

The 2nd defendant contended that he kept asking the Plaintiffs to return his residual title to enable the 1st defendant sever off her land but the Plaintiffs kept telling him that they were interested in more land. That the 1st Plaintiff then approached him to sell him 6 decimals from the remaining land which he did.

That when the Plaintiffs delayed to return the certificate of title he decided to give the 1st defendant a signed mutation form and a photocopy of the certificate of title to enable her start on the surveying process for her 100 feet by 100 feet land as she awaits the return of the certificate of title from the plaintiffs.

That around that time, the 1st Plaintiff started pressurising him to help him get 11.5 decimals from the 1st defendant's portion of land and shift the 1st defendant to the upper part of the land. That he told the 1st Plaintiff that he could not do that and advised him to persuade the 1st defendant.

The 2nd defendant further stated that he later go to know that the 1st Plaintiff was disturbing the 1st defendant on the land he sold her. That the 1st defendant then reported the matter to police and he was called to make a statement. That he informed the police that he had sold 100 feet by 100 feet to the 1st defendant before selling 56 decimals of his land to the Plaintiffs.

That later on the 1st Plaintiff approached him and threatened him with imprisonment unless he signed new agreements showing that he had sold to the 1st defendant only 11.5 decimals and not 100 feet by 100 feet. That out of

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pressure and fear from the 1st Plaintiff, he signed the agreements that have been exhibited in this case.

That the 1st Plaintiff then picked him and took him to Kasangati Police Station and in his presence and that of a police officer he was forced to make an additional statement claiming that he had lied in his first statement which was not true but it was due to fear and pressure from the 1st plaintiff.

The 2nd defendant contended that had it not been for the threats and pressure from the 1st Plaintiff, he would not have signed the agreements attached to the Plaintiff's trial bundle and he would not have made an additional statement the way he did.

The 2nd defendant further stated that before this suit was filed, the 1st defendant was in full occupation and use of her said land and had graded the same, put some structures on it and was making bricks from there.

The 2nd defendant contended that by the time he got registered on the title to the suit land, he had already sold 100 feet by 100 feet to the 1st defendant and had never sold 11.5 decimals or less to the 1st defendant.

On cross examination, the 2nd defendant stated that he sold land to the Plaintiffs and the 1st defendant.

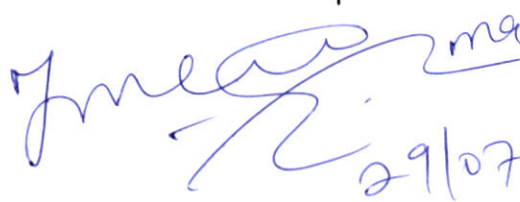
When this court visited the locus in quo, the 2nd defendant stated that he had sold the suit land to the Plaintiffs first before he again sold it to the 1st defendant.

The Parties then filed written submissions the details of which are on record and which I have considered in determining this case. I will combine issues one and two as they are interrelated

ISSUE ONE: Whether the 1st defendant is a trespasser on the Plaintiffs land.

ISSUE TWO: Whether the 2nd defendant fraudulently sold to the 1st defendant the plaintiffs land.

It was held in the case of *Justine E.M.N. Lutaaya versus Stirling Civil Engineering Company-S.C.C.A No. 110f 2002* that trespass to land occurs when a person makes an unauthorised entry upon land and thereby interferes or portends to interfere with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed not against the land, but against the person who is in actual or constructive possession of the land.


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At common law, the cardinal rule is that only a person in possession of the land has the capacity to sue in trespass.

The Plaintiffs and the 1st defendant both claim ownership of the suit land by having purchased the land from the 2nd defendant. Their interests are equitable in nature as they do not yet possess a certificate of title on what they purchased since the suit land is still registered in the vendor's name. Since there are two conflicting equities the 1st in time would prevail. The 2nd defendant conceded that he sold the suit land to two people to wit the Plaintiffs and the 1st defendant.

The evidence on record shows that the 2nd defendant sold to the Plaintiffs **25 decimals comprised in Block 121 Plot 2197 at Nangabo, Nangabo Parish in Nangabo Sub County in Wakiso District**. It indicated that the land sold was immediately after the 11.5 decimals sold to the 1st defendant which touches the V junction (See exhibit P.1). This was on the 2nd day of January 2014.

The subsequent purchase was on 1st September 2015 also involving 25 decimals (see exhibit P.2).

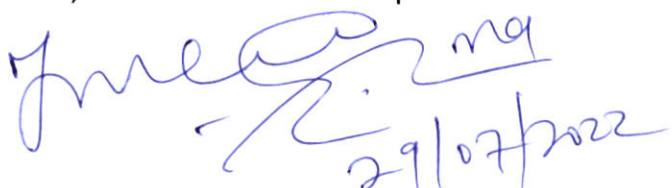
The 3rd purchase was on the 15th day of June 2016 which involved the purchase of 6 decimals of land (see exhibit P.3).

On the other hand the 2nd defendant sold to the 1st defendant land comprised in **Block 121 Plot 2197 measuring 100 feet by 100 feet**. The agreement did not give the exact location where this land was situate apart from stating that it was on **Block 121 Plot 2197**. It could therefore be situated on any part of that land. This sale was on the 12th February 2014 after the Plaintiff had bought his portion of land.

At the locus in quo the 2nd defendant stated that he sold the disputed land to the Plaintiff first and then also sold to the 1st defendant the same land.

The evidence on record therefore reveals that the initial 25 decimals the Plaintiffs bought were after the 11.5 decimals that had earlier been sold to the 1st defendant by the 2nd defendant.

I am persuaded basing on the agreements that were tendered in court, that it was the Plaintiffs who bought the disputed land first as it was properly described in the sale agreement. The 2nd defendant had also given his duplicate certificate of title to the Plaintiffs to sever off what they had bought. If the 1st defendant had bought first, I believe that the duplicate certificate of

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title would have been given to her to sever off her portion. The evidence of the Plaintiff was buttressed by the evidence of his advocate (PW2) who confirmed when the suit land was purchased by the Plaintiffs as he was the one who drafted the sale agreement. Much as the 1st defendant bought land from the 2nd defendant, her agreement was not specific about the position of the land she had bought on **Block 121 Plot 2197** as she was not buying the entire land.

I wish to observe that the confusion in this sales transactions was exacerbated by the 2nd defendant who was not truthful to all the parties that bought the suit land from him. The 2nd defendant caused all the confusion surrounding the suit land by changing positions basing on what he thought was convenient for him at the time. This can be seen by how he would make statements and later change them on grounds that he was being either influenced or intimidated. There is nothing to show that on his own volition he would report to any authorities any coercion or intimidation by any of the parties he claims did so. He was simply illicitly trying to enrich himself by selling the same piece of land to two people. The 2nd defendant admitted during cross examination and at the locus in quo that he sold the suit land to the Plaintiffs and later on to the 1st defendant.

I therefore do not blame the 1st defendant for having occupied the suit land which she initially believed had been rightly sold to her by the 2nd defendant.

Basing on the admission by the 2nd defendant, he fraudulently sold the 1st defendant the Plaintiff's land (the suit land). Since the 2nd defendant was the vendor, he is best placed to know who bought first and on what portion of the land. The Plaintiffs agreement was clear on which portion of the 2nd defendant's land they had bought their land as clearly shown in their sale agreement. It was held in the case of **Haji Asuman Mutekanga versus Equator Growers (U) Limited-S.C.C.A No. 07 of 1995** that there can be no better evidence against a party in a suit than an admission by him or her. The 2nd defendant clearly stated that he sold the suit land to the Plaintiff and thereafter sold it to the 1st defendant.

It was held in the case of **Fredrick Zaabwe versus Orient Bank and others-S.C.C.A No. 04 of 2006** that fraud was the intentional pervasion of the truth by a person for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. That it was 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 is


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intended to deceive another so that he or she shall act upon it to his or her legal injury.

The 2nd defendant intentionally perverted the truth when he sold the suit land to the 1st defendant when he had already sold it to the Plaintiffs.

The 1st defendant therefore never intentionally trespassed on the suit land as she believed she had rightfully purchased it from the 2nd defendant. This is because the land was still registered in the names of the 2nd defendant and there is no way she would have been aware of the agreement the 2nd defendant had made with the Plaintiffs over the suit land.

On the other hand the 2nd defendant fraudulently sold the suit land to the 1st defendant. In this case the fraud is attributable to the 2nd defendant

ISSUE THREE: Remedies available to the Parties.

1. The Plaintiff is the rightful owner of the suit land measuring **56 decimals** immediately after **11.5 decimals** belonging to the 1st defendant which starts at the V junction of the Kansangati- Nangabo Road and Kansangati Matuga Road and part of the land comprised in **Block 121 Plot 2197**.
2. A permanent injunction will issue against the 1st defendant restraining her from interfering in any way with the Plaintiffs land.
3. The 2nd defendant is to pay **twenty million shillings (20,000,000/=)** to the Plaintiffs as general damages for the inconvenience and mental anguish the Plaintiffs have had to go through to claim their land.
4. The 2nd defendant is to pay the costs of this suit to the Plaintiffs.



Hon. Justice John Eudes Keitirima

29/07/2022