THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 457 OF 2014

BENON TURYAMUREEBA :: PLAINTIFF

VERSUS

1. **EMMANUEL NGOBI**
2. **CHARLESTONE GENERAL AUCTIONEEERS & COURT BAILIFFS**
3. **COMMISSIONER LAND REGISTRATION :::::::::::::::::::: DEFENDANTS**

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT (EXPARTE)

Introduction:

The plaintiff filed this suit, seeking:

a) *A declaration that the cancellation of the plaintiff's names from the title in respect of the land comprised in* ***Block 8 plot 787, Rubaga (suit property)*** *was unlawful;*

b) *An order that the 1st defendant's names be cancelled and the plaintiff names reinstated on the title of the suit property.*

c) *General damages, interest; and costs of th suit.*

Background to the suit:

The background to this case is that in 2001, the plaintiff borrowed some money from one Anil Daman and pledged the suit title to him comprised in ***Lubaga Block 8, Plot 787***. In 2001 he filed a suit ***Civil Suit No. 147 of 2001*** against Anil Daman.

The two reached a consent which among others provided that judgment in ***Civil Suit No. 147 of 2001*** be entered against the plaintiff in the sum of ***Ugx 7,000,000/=***, payable within 45 days from the date of the consent.

When the plaintiff failed to comply with the order of 3rd May, 2001, Anil Daman proceeded to execute. His bailiffs attached the plaintiff's vehicle. When the matter came up for notice to show cause, it was agreed that the plaintiff be given 30 days to pay.

The judgment creditor Anil Daman was to immediately release the plaintiff's vehicle under attachment upon effecting such payment. An order was made but neither party complied with that order.

In 2002, the plaintiff filed ***Civil Suit No. 398 of 2002,*** where he was inter-alia, challenging Daman's withholding of the plaintiff's vehicle. He further filed ***Miscellaneous application No. 895 of 2004*** arising from ***Civil Suit No. 398 of 2002).***

In ***Miscellaneous Application No. 895 of 2004*** the plaintiff herein was seeking that execution proceedings in ***Civil Suit No. 147 of 2001*** be stayed until the hearing and disposal of ***Civil Suit No. 398 of 2002.***

The court further set conditions for the plaintiff to deposit in court security for costs of ***Ugx 3,500,000/-*** (Three million five hundred thousand shillings), which he did, as clearly indicated in his unchallenged witness statement.

However, even before proceeding with ***Civil Suit No. 398 of 2002,*** the plaintiff later discovered that the 2nd defendant, acting on behalf of Anil Daman, was proceeding with execution in ***Civil Suit No. 147 of 2001*** yet all the money had been deposited.

In 2013, upon making search at the land Registry, the plaintiff discovered that the suit property was transferred to the names of the 1st defendant on 30th January, 2007 under court execution in ***Civil Suit No. 147 of 2001***.

The suit challenges the legality and propriety of the sale of the plaintiff's property under execution which had been stopped by court.

Representation:

The plaintiff was represented by ***M/s Mwesigye Mugisha. & Co. Advocates***. The 2nd defendant filed his defence on 1st September, 2015. The court record indicates that on 13th April, 2017 court presided over by J. Naiga (RIP) had made a decision to proceed *exparte* against the 1st and 3rd defendants upon being satisfied that the two had been duly served and had failed to file their respective defences.

On 25th May, 2017 and as per affidavit filed 9th September, 2017 the defendants were however summoned again for the hearing of this case. ***M/s Ssengooba & Co. Advocates,*** which firm had

filed the WSD for the 2nd defendant were served by way of substituted service after the plaintiff had failed to locate their address for service.

On 5th October, 2020, ***M/s Mwesigye Mugisha & Co. Advocates*** wrote to the 2nd defendant's counsel which acknowledged receipt of the letter (but with a backdated stamp of 8th October, 2017), notifying the firm of the date of the next hearing of 19th October, 2020. As also directed by this court, the 2nd defendant was to file the trial bundle and witness statements before the date appointed for the hearing, which was not done.

At the next hearing, on 19th October, 2020, the defendants were all absent. It was evident that none of them had been served upon which another date of 10th November, 2020 was fixed for hearing of this matter.

Court on that day was informed that the firm declined to acknowledge service claiming that they no longer had instructions to represent the 2nd defendant. As per affidavit of service, the firm which never filed any notice of withdrawal, however committed themselves to inform the 2nd defendant about the directives of court. In addition, the defendants received service through the *Daily Monitor* of 9th November, 2020.

The 3rd defendant acknowledged service on 9th November, 2020 however did not file any defence. None of the defendants showed interest thereafter to make any follow up despite having been effectively served at all material times. The matter therefore proceeded *exparte*.

Issues for resolution:

In the plaintiff's scheduling memorandum the issues were:

1. ***Whether the sale and transfer of property comprised in Block 8 plot 787, by the 2nd defendant to the 1st defendant, under execution in Civil Suit No. 147 of 2001 was valid;***

2. ***Whether the 2nd defendant acted illegally and fraudulently in the sale and transfer of the suit property comprised in Rubaga Block 8, Plot 787;***

3. ***Whether the 1st defendant was privy/party to the illegalities and fraud in the process of the transfer of the suit property to him;***

4. ***Whether the 3rd defendant acted negligently in the process of cancellation of the plaintiff's name and registration of the 1st defendant's name on the title, comprised in Rubaga, Block 8, Plot 787;***

5. ***Remedies available to the parties.***

Consideration of Issues 1, 2 and 3.

Issues 1,2 and 3 are related since they refer to the validity/legality of the sale and transfer of the suit property and will therefore be considered jointly.

Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

Section 103 of the same Act further stipulates that:

> ***"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence."***

Analysis of the law:

Section 59 of the Registration of Titles Act provides that a certificate of title is conclusive evidence of ownership, save in cases where fraud is proved.

As per the recent decision passed in ***Senkungu Vs Yakobo, (SCCA No. 35 of 2006),*** fraud was defined as including all acts, omissions and concealments which include a breach of legal or equitable duty, trust or confidence. In all cases it implies a willful act by one person, intended to deprive another person of what he/she is entitled to.

Furthermore in ***Fredrick J.K Zabwe Vs Orient Bank & 5 Ors (SCCA No. 4 of 2006*** court citing ***Black's Law dictionary***, defined fraud as acting with intent to deceive or cheat; ordinarily for the purpose of either causing financial loss to another or bringing about financial gain to oneself.

Fraud is such grotesque monster that courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. It unravels everything and vitiates all transactions. (***Fam International Ltd and Ahmad Farah vs Mohamed El Fith [1994]KARL 307).***

Fraud by a transferor which is not known to the transferee cannot vitiate the title. It is trite law however that fraud that vitiates a land title of a registered proprietor must be attributable to the transferee. (***See: Wambuzi C.J, Kampala Bottlers vs Damanico (U) LTD, SCCA No. 27 of 2012).*** It is for those reasons that fraud must not only be specifically pleaded, it must be proved, to a level higher than that which is required for any other ordinary suit.

Analysis of the evidence:

The particulars of fraud as pleaded against the 1st defendant were:

a) *buying the suit land without bothering tpo confirm from court records whether the execution process was proper;*

b) *purchasing the suit land (if at all he did) without conducting a physical search from the occupants and the local authorities on the status of the land;*

c) *purchasing the suit land without confirming from the plaintiff as to whether the execution was proper or whether the plaintiff still claimed interest on the land;*

d) *ignoring (sic!) fresh enquiries on the occupancy of the land.*

The particulars acts of fraud and illegality pleaded against the 2nd defendant were as follows:

a). the 2nd defendant sold the land in total disobedience of court orders staying execution; and in contempt of court;

b). the 2nd defendant did not seek fresh authorization from court, before proceeding with execution;

c). no search was conducted by the 2nd defendant as regards the status of court orders/ records;

d). the 2nd defendant did not follow the law in execution process;

It was also the plaintiff's contention that the 3rd defendant had cancelled his name from the title without following the proper procedure; and failed to notify him of the intended cancellation of his names from the title.

As pointed out earlier, neither the 1st defendant nor the 3rd defendant had filed a defence to deny any of the allegations raised against them by the plaintiff.

A defendant who fails to file a defence closes himself or herself out of the jurisdiction of court; and cannot be heard. ***(Ref:Mufumba Fredrick vs Waako Laston Revision Cause No.006 of 2011; Kanji Devji Damor Jinabhai and Co. (19340) 1 EACA 87)***

In his WSD, the 2nd defendant denied liability and claimed that he carried out execution as ordered by court under ***Civil Suit No. 147 of 2001***; and had duly followed the procedures regarding attachment and sale of immovable property.

These procedures included obtaining a warrant of attachment; advertising in the newspaper; taxation of the bailiff's bill of costs inter partes; valuation report; and effective transfer for the title.

The 2nd defendant also claimed he had paid the judgment creditor; sold the property to the 1st defendant and issued a notice to the plaintiff to vacate the premises. Furthermore that he had carried out execution and paid the monies realized from the sale to the proper persons and that the sums due to the plaintiff were deposited in court, awaiting collection. ***(Annextures K and L).*** He claimed further that no stay of execution was ever served to him by the plaintiff. Although he filed his defence, he did not turn up in court to substantiate the above claims.

It was an undisputed fact that in 2001 the plaintiff had borrowed money from one Anil Damani, pledging his title as security for the loan. In 2001, Damani had filed ***Civil Suit No. 147 of 2001*** against the plaintiff claiming for the balance.

A consent was entered between the counsel for either side on 3rd May, 2001. The judgment was entered against the plaintiff and endorsed by court on 6th June, 2001 in the sum of ***Ugx 7,000,000/=***, to be paid to the defendant within 45 days. ***(PExh 2 and PExh 3).***

Subsequently, another suit was filed by the plaintiff vide: ***HCCS 398 of 2002*** which challenged Damani's withholding of the plaintiff's vehicle contrary to the order of 9th April, 2002 by the Deputy Registrar made vide: ***Civil Suit No. 147 of 2001.***

By that order, Damani who was the defendant and judgment creditor in that suit agreed to release the vehicle belonging to the plaintiff/ judgment debtor. That in the event of default, the defendant/judgment creditor would apply for attachment of judgment debtor's house.

The plaintiff later also filed ***MA No. 895 of 2004*** under which he obtained a stay of execution of the orders arising from ***Civil Suit No. 147 of 2001,*** pending the conclusion of ***HCCS 398 of 2002***.

Under the stay order issued by this court (presided over by J.S Arach Amoko (as she then was), the plaintiff was to deposit ***Ugx 3,500,000/=*** as security within a period of 30 days of the order, pending the determination of the main suit: ***HCCS 398 of 2002***..

Court further ordered that should the plaintiff/applicant default on the payment then execution was to be conducted in the normal manner. ***(ref: Annexture I2)***. The order was made on 17th March, 2006 and extracted on 19th April, 2006. A warrant of attachment of the suit property was subsequently issued on 8th May, 2006.

It was the plaintiff's claim however that in compliance with the said order a sum of ***Ugx 3,500,000/=*** had been paid on 13th April, 2006; ***Ugx 1,700,000/=*** on 21st April, 2006; ***Ugx. 1,100,000/=*** on 2nd May, 2006; ***Ugx 200,000/=*** and final payment on 14th April, 2006. ***(PExh 4).***

The plaintiff who testified as ***Pw1***, also referred to the correspondences made between his counsel ***M/s Mwesigye Mugisha & Co. Advocates*** and the Ag. Assistant Registrar ***(Pw5).*** That on 15th May, 2006 the plaintiff had received notice of vacation of the suit premises and notified of the pending sale of the suit property due to be made on 12th June, 2006.

The said firm of ***M/s Mwesigye Mugisha & Co. Advocates*** had immediately written to the Registrar on 7th June, 2006 informing court that security for costs had already been deposited as per court order, and acknowledged by the cashier of the court.

That they were surprised therefore to receive the eviction notice from the 2nd defendant against the plaintiff and therefore asked court at that point to recall the warrant which had been issued on 8th May, 2006.

In response, the Registrar on 16th June, 2006 had this to say:

> ....
>
> *The contents of your letter are not correct because your client failed to deposit in the court three million five hundred thousand shillings, as ordered by the judge.*
>
> *The judgment creditor was therefore right to execute the decree against your client.*
>
> *However since your client has now deposited the entire sum for security for costs, it is not necessary for execution proceedings to continue save of course for the recovery of the outstanding costs. (emphasis added).*
>
> *Your client can stop the process by paying to the bailiff the costs of execution.* ***(PExh 5).***

It is not known if the bailiff's costs were eventually paid but what is clear is that a copy of that letter was made to the 2nd defendant (court bailiffs) who two days earlier, on 14th June, 2006 had filed a return to court: ***Return in Civil Suit No. 147 of 2001:*** stating that following a warrant of attachment of immovable property of the plaintiff's land and its developments, an advert was made in the New Vision newspaper of 12th May, 2006. The property had been sold on 13th June, 2006 to the 1st defendant on forced sale at ***Ugx 16,000,000/=.***

The above implies that the 2nd defendant was duly notified by court of the status of payment of the plaintiff's obligations, but still went ahead to sign the instrument of transfer and apply to the 3rd defendant for a special certificate of title, without taking any trouble to challenge the court's decision.

It was the 2nd defendant's claim that out of that amount, ***Ugx 7,000,000/=*** was remitted to Anil Damani through his lawyers ***M/s Verma Jivram & Associates Advocates and Solicitors.*** As per the return of warrant ***(Annexture K')*** addressed to the Deputy Chief Registrar, High Court, a balance of ***Ugx 9,000,000/=*** was due to be released after taxation of the bill of costs.

Against that backdrop, there were several other sub-issues which this court needed to address, highlighted below under three subtitles:

a. Whether the suit property was duly advertised for sale:

By virtue of ***order 22 rule 64 of the CPR***, no sale of the property in execution of a decree shall take place until after the expiration of at least 30 days, calculated from date on which the public notice of sale has been advertised. That provision is couched in mandatory terms.

The attachment for sale in this instant case was made on 8th May, 2006 for ***plot 7879.*** The advert for the sale of the same property placed in the advert, in the *New Vision* of 12th May, 2006. The property sold off on 13th June, 2006 was however ***plot 787***. It was the plaintiff's contention therefore that what was put up for sale was property described as ***"Plot No. 7879, Block 8*** which did not belong to him.

Furthermore, a notice to vacate ***(Annexture "H" to the WSD)*** was purportedly issued to the plaintiff on 15th May, 2006 by the 2nd defendant but which, deduced from *paragraph 2(g)* of the rejoinder to 2nd defendant's WSD the plaintiff had denied having received.

Paragraphs 1 and 2 thereof reads:

> *Please refer to an advert in the New Vision of 12/05/2006 (Page 86) attached hereto whereby your house at Lubaga known as* ***Kibuga Block 8, Plot 7879*** *is due to be sold on 12/06/06". (emphasis added).*
>
> *You are now required to vacate the house ...to give potential buyers a chance to inspect the house....*

The 2nd defendant in a return of the warrant of execution made the following statement:

> *Following a warrant of attachment of immovable property of the plaintiff's land its development at* ***Lubaga Block 8 Plot 787 Busiro*** *I advertised the suit property in the New Vision Newspaper of the 12th day of May 2006 and sold on 13th day of June 2006 to Emmanuel Ngobi" (Emphasis mine).*

I cannot agree more with the submission by counsel for the plaintiff therefore that the notice to vacate, the advert for the sale and warrant of attachment indicated ***plot No. 7879***, which was different from ***plot No. 787*** (suit property) referred to in the return of warrant.

Counsel cited the case of ***Haji Amin Serumunye (objector) versus Greenland Bank and Another HC-Comm-MA. No. 469 of 2012,*** where the applicant applied for release of his property ***(Block 18, Plot 882)*** from execution.

While dismissing the application, the learned trial judge in that case noted that although this was a similar block, the properties were different since the plots were different. The said finding is equally applicable in this instance.

It goes without saying therefore that the plaintiff was not the owner of ***plot Number 7879*** which had been put up for sale. As such, what had been advertised for sale was different from the suit property which was eventually sold to the 1st defendant. In short therefore, neither was the suit property ever advertised as required by the rules nor was it in any case available at the time for sale.

In the event that it had been available for sale, it is a mandatory requirement for a warrant to be issued for every property to be sold in execution of an order of court which was never done for the property comprised in ***Block 8, Plot 787.*** As per ***Annexture A,*** a warrant of attachment in this instance was for the property comprised in ***Block 8, plot 7879.***

The 2nd defendant's argument that it had been issued prior to the sale of the suit property was therefore untenable.

b. Whether the 2nd defendant validly obtained the special certificate of title:

The law sets out an elaborate procedure for the sale of immovable property in the ***Civil Procedure Act, Cap. 71 (CPA)*** and the rules made thereunder ***(CPR)***, which I will not reproduce here.

Also as stipulated in ***section 48 of the CPA,*** a certificate of title must be lodged with court before the sale of the property under execution. Specifically under subsection ***(1)*** thereof, court may order but is not required to proceed further with the sale of any immovable property under a decree of execution *until there has been lodged with* court the title to the property. The court ordering such sale has power to order the judgment debtor to deliver up the certificate and show cause why the certificate should not be delivered up.

Where satisfied that a judgment debtor has wilfully refused or neglected to deliver up such certificate when ordered, the court may commit him to prison for a period not exceeding 30 days. ***(section 48 (3) of the CPA.)***

If satisfied that the certificate has been lost or destroyed or that the judgment debtor is wilfully withholding such certificate it is court which has powers to call upon the registrar of titles to

issue a special certificate of title, as prescribed by ***the Registration of Titles Act.*** In this case however, what actually transpired is not known.

Suffice to note that an execution is irregular when any of the requirements of the rules of court have not been complied with and in those circumstances, a court is enjoined to make an order of restoration. ***(Ref: James Kabaterine vs Charles Oundo and Another HCCS 177 of 1994*** *cited with approval by the* ***Court of Appeal in CACA No. 35 of 2008).***

The plaintiff contended that following a search in the Land Registry on 21st August, 2013 he had discovered that the property was transferred into the names of the 1st defendant. He claimed further that on 21st September, 2006 the 2nd defendant had applied for a special certificate of title since according to that letter the plaintiff had refused/neglected to surrender the original title. There is no communication from court to lead to the conclusion that the court had directed the 3rd defendant to issue a special certificate of title.

Evidence on record indicates that on 30th September, 2006 the Commissioner, Land Registration was notified of the sale of the property by public auction for the ***plot No. 787*** through the firm of ***M/s Ssengooba & Co. Advocates,*** upon which he had requested for the transfer to be made into the 1st defendant's names. Yet as pointed out, ***plot 787*** was never advertised in the first place.

On 6th November, 2006 relying on misleading information by the said firm, the 3rd defendant had written to the Managing Director of Uganda Printing and Publishing Corporation. The objective of that correspondence was to give notice that after expiration of one month from publication in the gazette, a special certificate of title would be issued, since the one originally issued in the names of the plaintiff was lost.

In *paragraph 7* of the statutory declaration the 2nd defendant claimed that the plaintiff had failed to surrender the same. In the very next *paragraph 8* he claimed that the title had been lost/destroyed.

It was the 3rd defendant's burden to verify the validity of the defendant's claims regarding the whereabouts of the duplicate certificate of title before placing the notice for a special title in the gazette.

Neither the 1st defendant nor the 3rd defendant were in court to explain the grave inconsistency. In the plaint itself it comes out clearly in *paragraphs 6 and 7* thereof that the plaintiff had pledged the duplicate certificate of title as security for the loan; and that there was wrongful attachment of his vehicle, yet the creditor Damani already had the certificate of title in his possession. The defendants did not bother to challenge that material aspect of the pleadings.

The duplicate copy of the certified copy of the title presented by the plaintiff as a matter of fact shows that Anil Damani was registered on the title as a legal mortgagee as early as 2007, on the same date and year when the 1st defendant acquired his title. Therefore before applying for a special certificate of title the defendants ought to have known that the duplicate certificate of title had remained in the hands of Anil Daman.

Indeed if the plaintiff had failed to pay the full amount as claimed then it would not have made any sense for the judgment creditor to return the duplicate title to the defaulter. The statutory declaration in support of the 2nd defendant's bid for a special certificate of title therefore also contained false and misleading information.

The entry on the title on 8th November, 2013 indicates that the plaintiff had attempted to lodge a caveat on the land on the suit land on which the 1st defendant was the current owner having been entered on the title on 30th January, 2007. This was confirmed by ***PExh 8,*** a search statement, and yet proof was led that the entire debt had by then already been settled, as indeed acknowledged by court on 16th June, 2006.

The registration of the 1st defendant on the title was therefore based on communication by the defendants' counsel, the contents of which were never verified. There was no specific order to authorize any such transfer or to direct the 3rd defendant to issue the special title.

This implies that the 2nd defendant who signed the transfer instrument did so invalidly. But secondly, that the 1st defendant had purchased land before a careful search was made at the land office to establish the actual ownership of this land.

This ought to have been a red flag that would ordinarily have put the 1st defendant as the prospective buyer on sufficient notice of the nature of the transaction in which he was about to enter. The application by the 2nd defendant for special certificate of title which was made on 21st September, 2006 with assistance of the 3rd defendant, had not therefore been made in good faith.

A court of law cannot sanction what is illegal and an illegality once brought to the attention of court will override all questions of pleadings, including admissions made therein. ***(Ref: Philemon Wandera & 2 others vs Yesero Mugenyi & Another SCCA No. 11 of 2018).*** The superior court faulted the Court of Appeal for failing to nullify and/or set aside the illegal sale for noncompliance with ***order 22 rule 64 of the CPR (formerly order 19 rule 22).***

As correctly stated no execution could proceed after the plaintiff had completed the deposit of security for costs, save for the bailiffs' bill of costs, which however according to the plaintiff was

never served to him. Indeed there is no evidence on record that service of the taxation hearing notice was ever effected.

From the above findings, the plaintiff's action against the 2nd defendant therefore succeeds.

c. Liability of the 1st defendant:

The plaintiff claimed that to date he and his family have enjoyed uninterrupted possession of the suit premises which he referred to as his family/matrimonial home. The certificate of title indicates that he got the title in 1989 for the land comprised in ***"Block 8, Plot 787"***, measuring 0.10 ha.

Order 22 rule 82 provides that where a sale is conducted, then there must be delivery of property in occupancy of the Judgment debtor. A visit at the locus was held by this court on 9th December, 2021 which clearly showed that the plaintiff is currently in occupation of the property with his family.

It was also the plaintiff's claim and I agree, that the 1st defendant was duty bound to enquire and establish whether the property he purportedly purchased from the 2nd defendant was the one appearing in the warrant of attachment and advert for as observed by the Court of Appeal in ***John Bagaire vs Ausi Matovu CACA 7/1796,*** lands are not vegetables. Buyers for land are expected to make thorough search prior to sale.

If he had made sufficient inquiries, he would have found discovered that the property appearing on the title was ***Block 8 Plot 787,*** not ***Plot 7879*** as advertised for sale. He failed to make the appropriate inquiries from the plaintiff, the neighbours and LCs about the occupation of this property. If he had done so, he would have found that the plaintiff was in occupation of the property.

If the 1st defendant had gone to court to confirm which of the two properties was under execution and sale he would have established that there was no order directing attachment of the suit property which he intended to buy and would have also been informed by court that the debt had been fully paid and that the plaintiff no longer had any liability in ***Civil Suit No. 147/2001;*** and that by 13th June, 2006 when the sale was purportedly conducted, the house/suit property was no longer available for sale.

All the above proved to court that no due diligence was conducted by him as the prospective buyer and therefore he was not a *bona fide* purchaser for value without notice of the fraud.

All in all, and in response to ***issue No. 1,*** the transfer of the suit proper was not valid as it had been carried out without adhering to the requisite rules. In respect of ***issue No. 2*** the 2nd defendant acted illegally and fraudulently in the sale and transfer of the suit property.

It would also be reasonable to conclude that since he is presumed to have been the agent of the 1st defendant, the 1st defendant had constructive knowledge of the illegalities and fraud committed in the process of transfer of the suit property to him.

The defence of a *bona fide* purchaser for value without notice was not therefore available to the 1st defendant. This also addresses ***issue No. 3*** accordingly.

Issue No. 4: Whether the 3rd defendant acted negligently in the process of cancellation of the plaintiff's name and registration of the 1st defendant's names on the title.:

This issue has been partly addressed.

In line with its mandate, the 3rd defendant (just like the 2nd defendant in line with his work as a bailiff) owed a duty to those they were mandated to serve.

The 3rd defendant ought to have demanded for a warrant of attachment of ***block 8, plot 787;*** advert of sale of the suit property; a court order directing the Commissioner of Lands to cancel the plaintiff's name and register the 1st defendant; transfer instruments/agreement of sale and evaluation form, among other documents.

Had he carefully examined the forms all of them within its custody, would have realized that the property in the warrant and advert was different from the one in the transfer form and evaluation report. He would at that point have guided the process by requesting for further and better particulars on the property in respect to which the office was to take action and also to rule out any possibility that the discrepancy in plot numbers was nothing other than a genuine error.

It is finding by this court therefore that the 3rd defendant had acted negligently and failed to carry out its duty in respect of the suit property. This issue is therefore answered in the affirmative.

Issue No. 5 Remedies:

The prayers by the plaintiff were made for the cancellation of plaintiff's names from the title was unlawful; reinstatement of his names onto the title; general damages for the inconvenience caused by the defendants' fraudulent and illegal transactions; interest and costs payable jointly and severely by the defendants.

In submissions learned counsel prayed that a sum of ***Ugx 500,000,000/-*** be awarded as general damages calculated as sufficient to atone for the stress and mental anguish endured and inconveniences suffered in his desperate attempts to stop further transactions on the suit land, upon discovery of the transfer in 2013; and interest at 23% from date of judgment, taking into consideration the more than six years spent in court.

General damages:

In submission a sum of ***Ugx 500,000,000/=*** was proposed as an award to the plaintiff for general damages. The plaintiff did not endeavor to explain how he had arrived at that estimate, thus leaving the determination of the damages to this court.

It is trite law that damages are the direct probable consequences of the act complained of such loss of use, loss of profit, physical inconveniences, mental distress, pain and suffering. ***(Kampala District Land Board Vs Venansio Babweyana Civil Appeal No. 2 of 2007)***.

Taking into account the period 8 or so years spent in court and the distress caused to the plaintiff throughout the period, knowing that any time he would be made homeless, an award of ***Ugx 100,000,000/=*** to the plaintiff would be considered a fair amount, to atone for the inconvenience, pain and suffering occasioned to him through the fraudulent and illegal acts of the defendants.

Section 177 of the RTA provides that upon recovery of land this court may direct the office of Commissioner, Land to cancel any certificate of title and substitute such certificate/entry as the circumstances may require.

In the premises, the following orders are issued:

1. ***The registration of Emmanuel Ngobi on the certificate of title for land comprised in Lubaga Block 8, plot No. 787 is cancelled and substitution thereof made by the Commissioner, Land Registration into the names of the plaintiff, Benon Turyamureeba.***

2. ***The defendants shall pay a sum of Ugx 100,000,000/= as an award to the plaintiff in general damages, as follows:***

    a. ***50% is to be paid by the 2nd defendant;***

    b. ***The balance of Ugx 50,000,000/- is to be paid jointly by the 1st and the 3rd defendants;***

c. ***Interest at the rate of 15% p.a is payable from the date of delivering this judgment till payment in made in full.***

d. ***Costs of the suit to be met by the 1st and 2nd defendants.***

Alexandra Nkonge Rugadya

Judge

27th July, 2022.

Delivered by email

27/07/2022.