

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
HCCS. NO. 563 OF 2007

PATRICK OKWIR

PLAINTIFF

V

MOSES EKWARO (Executor of the Will of
the late Charles Olwa Ekwaro)

DEFENDANT

BEFORE: HON. LADY JUSTICE P. BASAZA – WASSWA

J U D G M E N T

Representation:

Mr. Kania Renato for the Plaintiff.

Mr. Kyazze Joseph and Ms. Natukunda Antonia for the Defendant.

Introduction:

[1] Mr. Okwir filed the present suit on July 27, 2007 by ordinary plaint, against Mr. Charles Olwa Ekwaro (now deceased), for alleged fraud.

In his suit Mr. Okwir seeks *inter alia*, for an order of cancellation of Mr. Charles Olwa Ekwaro's name, and the substitution with his own name, from the certificate of title (EXH. DE 8) to **'the suit property'** described as; **'Plot 14, House**

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No. 274 Moroto Road - Lira, comprised in LRV 3618 Folio 16', measuring 0.342 Hectares. He also seeks for general damages and costs of the suit.

- [2] Regrettably, during the pendency of this suit, Mr. **Charles Olwa Ekwaro** (the deceased) passed on. In his defence, the late **Charles Olwa Ekwaro** also lays claim to the suit property in his erstwhile capacity as the Administrator of the Estate of his late younger brother; **Gasper Ayor Ekwaro**. Refer to clause 3 of the statement of defence, and a copy of the letters of Administration granted to him, dated March 28, 2002; vide Administration Cause No. LIR AC No. 0180 – 2001 (EXH. DE. 1).
- [3] Similarly, after the death of the late **Charles Olwa Ekwaro** in 2016, his son; **Moses Ekwaro** (current Defendant) was formally substituted by the Court of Appeal, vide Civil Appeal No. 191 of 2013, as the Defendant in this suit, by virtue of his being the holder of letters of probate to the estate of the deceased.
- [4] This suit has a checkered history. It was initially before Percy Night Tuhaise, J., (as she then was), who dismissed it on February 22, 2012 under Order 9 rule 22 of the CPR. It was only re-instated by the Court of Appeal on June 29, 2020 vide C/A No. 191 of 2013, following an appeal by Mr. Okwir against a Ruling and Order of dismissal of an application vide M.A No. 314 of 2012 for its reinstatement.

Background:

- [5] The undisputed facts of this case are that;

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i) Pursuant to the Uganda Government Public Service Housing Scheme on the Sale of Government pool houses, Mr. Okwir, who then was the Lira District Forest Officer, and the sitting tenant in the suit property, was offered the suit property for purchase in that capacity.

The said offer dated April 13, 1995 (**EXH. PE. 1**), was made by the Public Service Houses Sale Committee (**PSHSC**) of the Ministry of Lands, Housing and Urban Development (**MoLHUD**).

ii) The offer (EXH. PE 1) did not specify the value of the suit property, which was undetermined at the time. The value was subsequently specified as '**UGX. 19M (Shillings Nineteen Million)**', and was communicated to Mr. Okwir, by PSHSC in their letter dated May 5, 2003.

iii) Mr. Okwir currently resides in the suit property which is registered as a 49 - year lease in the name; Charles Olwa Ekwaro, w. e. f September 13, 2006.

iv) Before his passing, Charles Olwa Ekwaro had paid the full purchase price of **UGX. 19M** for the suit property, to the Government of Uganda through Housing Finance Company Ltd (**HFCU**)¹.

[6] The bone of contention in this case is;

On the one hand; 'Mr. Okwir contends that Mr. Charles Olwa Ekwaro fraudulently procured the registration of his name on the certificate of title to the suit

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¹ HFCU; now known as Housing Finance Bank Ltd.

property, claiming that he (Mr. Okwir) neither transacted, nor sold or transferred his interests in the suit property to the late Gasper Ayor Ekwaro, or to anyone’.

On the other hand; ‘Moses Ekwaro contends that Mr. Okwir sold his interests in the suit property to the late Gasper Ayor Ekwaro. That vide a letter dated May 31, 1995 (EXH. DE. 2); Mr. Okwir transferred his interests in the suit property to the late Gasper Ayor Ekwaro, and that the latter took possession of the suit property and paid a deposit to Housing Finance Company Limited on February 3, 1999 but died on November 8, 1999 before servicing the loan. That the loan was completed by the late Charles Olwa Ekwaro, the administrator of the estate of the late Gasper Ayor Ekwaro.

Issues for determination:

[7] Three (3) issues were agreed upon;

1. **Whether the Plaintiff has any legal or equitable interest in the suit property?**
2. **Whether Charles Olwa Ekwaro was lawfully registered as proprietor of the suit property?**
3. **Whether there are any remedies available to the parties?**

Determination of issues:

[8] Issues Nos. 1 & 2 will be determined jointly, to wit;

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**Whether the Plaintiff has any legal or equitable interest in the suit property, and
Whether Charles Olwa Ekwaro was lawfully registered as proprietor of the suit
property?**

[9] Mr. Okwir (66) testified as PW2 and called a handwriting expert; Ms. Chelangat Sylvia (41), a Police document examiner at the rank of Superintendent of Police, who testified as PW1.

[10] In defence, Mr. Ekwaro Moses (48) testified as DW1 and called Mr. Khayangayanga Dave (54); Currently working at the rank of Assistant Commissioner Human Settlements at the Directorate of Housing in the Ministry of Lands, Housing & Urban Development (MoLHUD), who testified as DW2.

The full testimonies of these witnesses are on the court record, and only relevant excerpts will be referred to in this judgment.

Submissions of Counsel on issues Nos. 1 & 2:

[11] Similarly, for brevity, the written submissions of both learned Counsel for each party shall not be repeated here. Reference to their arguments will only be made where, and when necessary.

Analysis by this Court:

[12] The crux of this suit is; **'whether or not Mr. Okwir authorized the transfer of the offer to purchase the suit property, from his names to the names of the late Gasper Ayor Ekwaro?'. The transfer was alleged to be vide a contested transfer**

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letter dated May 31, 1995 (EXH. DE. 2). Mr. Okwir's case is that he did not authorize the alleged transfer, he did not author the contested letter (EXH. DE. 2). He asserts that the letter was forged. That he did not sell, nor transfer his interests in the suit property.

For the defence, it is Mr. Ekwaro's case that Mr. Okwir authored the contested letter (EXH. DE. 2). That it is by the said letter that Mr. Okwir sold and transferred his interests in the suit property to the late Gasper Ayor Ekwaro.

[13] In the premises, my task is to ascertain the authenticity of the alleged transfer by the contested letter (EXH. DE. 2). The contested letter is upon which all correspondences, actions, decisions and controversies in this matter, revolve.

[14] The general rule of evidence is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. i.e. the burden lies on the person who wishes to give that evidence, and would fail if no evidence were given. See **Secs. 103 & 104 of the Evidence Act**².

[15] **Sec. 66 of the Evidence Act** provides that;

'If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting must be proved to be in his or her handwriting'.

[16] Mr. Okwir (PW2) testified that when the offer to purchase the suit property was made to him vide a letter dated April 13, 1995 (EXH. PE. 1), it was an offer made without a value. That when the value was communicated to him in a letter dated



² Cap 6 of the Laws of Uganda

March 19, 2003 (EXH PE. 3), he went to Housing Finance Company Uganda Ltd (HFCU) in 2006 to make the required down payment of 8% of the purchase price. That it is at that point that he was informed by HFCU that a one Gasper Ayor Ekwaro was already paying for the suit property, and that his name; Okwir, had been crossed from the file and replaced with that of Charles Olwa Ekwaro. That he was informed that Mr. Gasper claimed that he had purchased the suit property from him (PW2), and that he (PW2) had transferred his interest in the suit property to Mr. Gasper vide the questioned letter of May 31, 1995 (EXH. DE 2).

[17] He (PW2) further testified that owing to the claims by Mr. Gasper, HFCU refused to accept his down payment on account that they were only aware of Mr. Gasper Ayor Ekwaro as the rightful offeree.

[18] That he (PW2) first saw the questioned letter (EXH. DE. 2) when he was served with an eviction notice before filing the present suit. That the letter (EXH. DE 2) is a forged letter, he did not author it, and that he does not know the said Gasper Ayor Ekwaro. He asserted also that unlike the signature in the questioned letter, in his genuine signature; the last letter is a constant 'O'. That the signature in the questioned letter does not end the way his genuine signature ends, and is a forgery.

[19] He (PW2) further told court that he immediately protested the claim of Gasper Ayor Ekwaro to the Uganda Land Commission (ULC). That after reviewing his complaint, a one Mr. Lubowa Godfrey of ULC, who acted on behalf of the

Permanent Secretary (PS) of MoLHUD, issued a directive by a letter dated November 24, 2006 (EXH. PE. 4), validating the offer made to him (Okwir). That the PS further directed the mortgage Manager of HFCU to receive his down payment of 8% of the purchase price, and execute a mortgage with him for the outstanding balance. That HFCU responded to EXH. PE.4 by its letter dated March 6, 2007 (EXH. DE 9) to the effect that a certificate of title to the suit property had already been processed in the name of a one Charles Olwa Ekwaro. That it is from EXH. DE. 9 that he (PW2) learnt that Charles Olwa Ekwaro was registered on the certificate of title to the suit property. That his attempt to contest EXH. DE.9 was his decision to file the present suit.

[20] Ms. Chelangat (PW1), the handwriting expert, testified that she conducted an examination of the questioned letter of May 31, 1995 (EXH. DE. 2), which she marked in her report (EXH. PE 6) as Exhibit 'C1'. That she examined EXH. DE. 2 (Exhibit 'C1) together with the specimen sample signatures of Mr. Okwir that are shown in a letter of request by M/s Kania & Alli Advocates, dated May 3, 2021.

[21] She (PW1) stated that the summary of her findings as stated in her report³, is that; **'it is most likely that the writer of the sample handwriting / signatures of the word 'POAD' did not write the questioned handwriting of the word 'POAD' in Exhibit C1'**.

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³ At Page 3 of EXH. PE. 6

[22] She explained that she observed fundamental differences between the questioned document and the sample handwriting, which differences she detailed in her report. She however admitted, during cross – examination, that a person’s handwriting does not remain the same overtime and that there are natural variations, although added that the factors that cause natural variations, did not change Mr. Okwir’s signature over the years.

[23] For the defence, Mr. Ekwaro Moses (DW1) stated that by the questioned letter of May 31, 1995 (EXH. DE.2), Mr. Okwir transferred the suit property to the late Gasper Ayor Ekwaro. That Mr. Okwir instructed the Lira District Administration to transfer his ownership to the late Gasper Ayor Ekwaro.

That the PSPHC of MoLHUD accepted to offer the sale of the suit property to the late Gasper Ekwaro on the basis of Mr. Okwir’s said letter (EXH. DE. 2). That the said offer to the late Gasper by PSPHC of MoLHUD was vide a letter dated June 14, 1995 (EXh. DE.3). That the late Gasper Ekwaro obtained a loan from HFCU, with the knowledge of Mr. Okwir, and commenced the payments for the suit property, but died in 1999. That throughout the lifetime of the late Gasper Ayor Ekwaro, there was no claim or issue by Mr. Okwir. That between 1995 and 1999, before the late Gasper Ayor Ekwaro died, Mr. Okwir left the house peacefully, but after the death of the late Gasper in 1999, Mr. Okwir re-occupied the house. That between 1999 and 2001, the family of the late Gasper Ayo Ekwaro were in charge of the suit property.

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[24] DW1 further stated that upon obtaining letters of administration to the estate of the late Gasper Ayor Ekwaro, the late Charles Olwa Ekwaro, an elder brother to the late Gasper Ayor Ekwaro, attempted to resume payment of the loan to HFCU, but HFCU said they were unaware of the transfer. That by a letter dated November 22, 2005 (EXh. DE. 4) the late Charles Olwa Ekwaro sought the intervention of the Department of Human Settlements of the MoLHUD, over the matter. That MoLHUD wrote to HFCU vide a letter dated November 24, 2005 (EXh. DE. 5), informing HFCU that the suit property had been transferred to the late Gasper Ayor Ekwaro by Mr. Okwir. That in its said letter, MoLHUD requested HFCU to allow the late Charles Olwa Ekwaro conclude the said payment obligations for the suit property in his capacity as the administrator of the estate of the late Gasper Ayor Ekwaro. That after the late Charles Olwa Ekwaro paid the loan in full, HFCU issued to him (Charles Olwa Ekwaro) a certificate of final payment settlement (EXh. DE. 7) together with a certificate of title to the suit property in his names (EXh. DE. 8).

[25] DW1 further stated that the PSPHC of MoLHUD found no basis for Mr. Okwir's claim over the suit property, and advised him, by their letter of April 30, 2008 (EXH. DE 11), to seek the services of a handwriting expert to ascertain whether the questioned transfer letter had been forged. That Mr. Okwir never sought the services of a handwriting expert, but also refused to vacate the suit property despite eviction notices to him from MoLHUD.

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He (DW1) referred Court to two (2) eviction notices dated November 19, 2008 (EXH. DE. 12) and January 12, 2015 (EXH. DE. 13), written to Mr. Okwir by MoLHUD.

[26] On his part, Mr. Khayangayanga Dave (DW2) told court that the questioned letter of May 31, 1995 (EXH. DE. 2) was the basis upon which the PSPHC of MoLHUD used to transfer the offer of sale of the suit property from the names of Mr. Okwir into the names of the late Gasper Ayo Ekwaro. That around 2006 Mr. Okwir brought a claim over the suit property, contending that the late Gasper Ayor Ekwaro had forged that letter of transfer. That a meeting was held by the PSPHC of MoLHUD to decide on the matter, and relying on the records that showed that the purchase offer was made to the late Gasper Ayor Ekwaro following a transfer of the offer by Mr. Okwir, the Committee decided that Charles Olwa Ekwaro, was the rightful owner. That Okwir did not have any sufficient proof that the sale transfer was forged. He was advised to seek the services of a handwriting expert to ascertain his claims, which he did not do.

[27] Mr. Kania, learned Counsel for Mr. Okwir argued that the late Charles Olwa Ekwaro wasn't lawfully registered as proprietor of the suit property because the document (EXH. DE.2) upon which his registration as proprietor was based, was not authored by Mr. Okwir. That EXH. DE. 2 was a fabricated document and a forgery, and incapable of transferring legal title to the late Charles Olwa Ekwaro, and his predecessor; the late Gasper Ayor Ekwaro. That it was null, void and illegal. Mr. Kania also argued that Mr. Okwir, who he said had an equitable

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interest in the suit property, was incapable of transferring legal ownership therein to the late Gasper Ayor Ekwaro, nor to his successor; the late Charles Olwa Ekwaro. He prayed that this court finds that the late Charles Olwa Ekwaro was not legally registered as proprietor of the suit property.

[28] For his propositions, learned Counsel relied on the decision in **Macfoy v United Africa Insurance Co. Ltd**⁴

[29] In rebuttal, Mr. Kyazze and Ms. Natukunda learned Counsel for Mr. Ekwaro argued that Mr. Okwir claimed that HFCU availed him documents of change of ownership in 2005, and that the documents were different from EXH. DE. 2 and EXH. DE. 3, but failed to produce any other document. That it therefore follows that by 2005, before filing the present suit, Mr. Okwir was aware of EXH. DE. 2, but never raised any allegation of its forgery in his plaint. That nowhere in his plaint did he contest the legality of EXH. DE. 2, nor did he plead that it was forged as required by law, nor plead any particulars of the alleged fraud, nor that he did not know the late Gasper Ayo Ekwaro. That purporting to adduce evidence that EXH. DE. 2 was a forgery offends the law of pleadings, and is an afterthought. That he cannot be allowed to raise a different case from what is contained in his pleadings.

[30] For their proposition, learned counsel relied, *inter alia* on;

i) **Order 6 Rules 3 & 7 of the CPR**

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⁴ [1961] 3 ALL ER page 1170 at 1173.

- ii) **G. P. Jani Properties Ltd (in Vouluntary Liquidation) v Dar-es-Salaam City Council**⁵
- iii) **Edward Gatsinzi & Anor v Lwanga Steven**⁶

[31] In further rebuttal, learned Counsel; Mr. Kyazze and Ms. Natukunda, argued that in paragraph 4 (a) of Mr. Ekwaro's statement of defence, he averred that Mr. Okwir had transferred his offer to the late Gasper Ayor Ekwaro, and that the defence was served on Mr. Okwir with the transfer attached, but Mr. Okwir never filed any reply under Order 8 Rule 18 of the CPR, to the claim that the transfer was forged. That as it were, Mr. Okwir never contested or disowned the transfer letter; EXH. DE. 2, nor did he report any case of forgery of EXH. DE. 2, or cause any forensic investigation into the signature on the transfer letter. That Mr. Okwir even claimed that he does not know anyone called Gasper Ayo Ekwaro, whom he claimed was an imposter, but later changed and conceded that he knew the late Gasper Ayo Ekwaro.

[32] Learned Counsel also contested the expert opinion of the handwriting expert. They argued that;

- i) the handwriting expert did not compare the questioned document with any documents signed by Mr. Okwir in 1995 or before, and she made no

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⁵ [1966] EA 281

⁶ HCCS No. 690 of 2004 [Land Div]

comment on the effect of the absence of such documents from her report.

- ii) There are material contradictions between the expert's (PW1's) evidence and Mr. Okwir's (PW2) regarding the latter's signature.
- iii) That the handwriting expert's report (EXH. P.6) is no expert report.

[33] Learned Counsel concluded that Mr. Okwir neither has a legal, nor an equitable interest in the suit property. That he failed to prove any fraud against Mr. Ekwaro and his predecessors. For their propositions, they relied, *inter alia* on the cases below;

- i) **Christopher Bamweyana & Herman Byanguye⁷**
- ii) **Adam Bale & Ors v Willy Okumu⁸**

[34] Before I delve into determining issues Nos. 1 & 2, I will begin by addressing the argument by the learned defence Counsel that;

'no allegation of forgery of the questioned letter (EXH. DE. 2) was pleaded in the plaint, and that to raise it at the trial offends the law of pleadings, as it was an afterthought, and that Mr. Okwir cannot be allowed to raise a different case from what is contained in his pleadings'.

[35] I have looked again at the relevant parts of the plaint; paragraphs 5 & 6 (1) & (2) thereof, in which Mr. Okwir pleaded as that, I quote;

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⁷ HC C/A No. 24 of 2017 [Mpigi Circuit]

⁸ HCCA No. 21 Of 2005 [Jinja Circuit]

'After receiving the said letter the Plaintiff made arrangements to pay the required deposit and secure a mortgage from Housing Finance Company Uganda Ltd as per the arrangement which had been made for civil servants to access a mortgage facility therefrom'

'To his surprise he discovered that the defendant had fraudulently and falsely made representation to the Public Service Houses sale Committee, the Uganda Land Commission and Housing Finance Company Uganda Ltd that the Plaintiff had authorized him to pay for the house whereby the defendant went ahead to obtain a certificate of title for the property registered as LRV 3618 Folio 16 and a mortgage facility for himself in his own names from Housing Finance company Uganda Ltd'

PARTICULARS OF FRAUD

- (1) 'The Defendant claiming that the Plaintiff had authorized him to take over the property and pay for it in his own names'
- (2) Procuring of a certificate of title for the property without the knowledge or consent of the Plaintiff.

[36] In my view, while it is true that Mr. Okwir did not expressly mention the questioned letter (EXH. DE.2) in his plaint, he did in fact plead, as an alleged act of fraud against the Defendant, that the Defendant claimed that he (Okwir) authorized the questioned transfer. Since the questioned transfer was by the questioned letter (EXH. DE. 2), I find that for all intents and purposes, the Plaintiff pleaded in his plaint; the alleged falsification of the content and import of the questioned letter (EXH. DE.2), without necessarily using the words '**forged or forgery**'. I find that the cited paragraphs sufficiently laid out the Plaintiff's case, that has not changed.

[37] I will now turn to address the issues.

I have very carefully evaluated the evidence adduced by both parties, particularly the evidence surrounding the alleged transfer vide EXH. DE. 2. I have also very

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carefully considered the arguments of each respective Counsel, and the authorities they rely on, and the law. Below are my findings;

- [38] I entirely agree with the report (EXH. PE. 6) of the handwriting expert. I agree that there are fundamental differences between the questioned signature and the sample signatures. Particularly, the ending of the sample signatures that appear like a letter 'a' or letter 'o', which appear as flat on the questioned signature.
- [39] I equally agree with the observation of the expert, that there is a fundamental difference between the beginning letter 'P' in the questioned signature, and the 'P' in the sample signatures.
- [40] In addition, I note a marked difference, that was however not pointed out by the handwriting expert, in the pressure exerted on paper by the author of the sample signatures, viz'a vis the absence of, or minimal pressure, exerted on paper by the author of the questioned signature. The sample signatures are bold, compared with the questioned signature.
- [41] That said, and guided by the decision of the Supreme Court in Premchandra Shenoji & Shivam M.K.P. Ltd v Maximov Oleg Petrovich⁹, I have also considered the factors listed in paragraphs [43] – [45] of this judgment. I found those factors to be consistent with my findings above, in paragraphs [38] - [40].

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⁹ SCCA No. 9 of 2003

[42] In that Premchandra Sheno case (supra), the contest was whether the 1st Appellant therein, had authored the handwritten fax letter marked EXH. PE.8? The Supreme Court upheld the Judgment of Berko, JA., who wrote the lead Judgment of the Court of Appeal. Berko, JA., premised his judgment on **factors which corroborated the hypothesis that EXH. PE. 8 came from the 1st Appellant**, and thus agreed with the learned trial Judge that the 1st Appellant was the author. The factors that the learned Justice of Appeal referred to, included; the 1st Appellant's experience in jewelry that was mentioned in EXH. PE. 8, his experience, and the specific demand for \$200,000 for purposes specified in the fax letter. The Learned Justice concluded that the matters contained in EXH. PE. 8 were matters peculiarly within the knowledge of the 1st Appellant and nobody else.

[43] Similarly, in the present case, I have considered the factors below;

First, the evidence adduced by Mr. Okwir was coherent and consistent. I found his version of the chronology of events to be credible. He told court that while he waited between April 1995, the time of the initial offer of sale of the suit property (Refer to EXH. PE. 1), and the time the valuation of the suit property was communicated to him in May 2003 vide EXH. PE. 3, the questioned document was authored in May 1995, without his knowledge, and all other actions and decisions happened before he discovered them in 2006, when he went to HFCU to try to make a down payment of 8% of the value of the suit property.

Handwritten signature 9/8

I found nothing in the defence evidence to rebut this chronology of events, nor anything in Mr. Okwir's own evidence to contradict this.

[44] Second, in converse to the above, I found a number of unanswered questions, and or inconsistencies, in the defence evidence. These gaps cast strong doubt over the defence version that rendered it implausible.

i) No evidence was produced by the defence to support / corroborate the questioned transfer, allegedly vide the letter of May 31, 1995 (EXH. DE 2). No proof of any consideration was produced by Mr. Ekwaro to support the hypothesis that the alleged transfer was in fact made by Mr. Okwir to the late Gasper Ayor Ekawro, purportedly premised upon a sale by Mr. Okwir to the latter. Neither proof of payment, nor other proof was shown, to suggest that any money or some other consideration exchanged hands. No deed of assignment, no sale agreement, no memorandum of understanding, no Powers of Attorney, or such other document was produced.

ii) No proof was produced to support the assertion by Mr. Ekwaro Moses (DW1) that between 1995 and 1999 Mr. Okwir handed over possession of the suit property to the late Gasper, and then allegedly re-occupied it in 2001 after the death of the latter. On the contrary, all the letters produced suggested that at all material times to this suit, Mr. Okwir remained in possession of the suit property. Refer to EXHs. DE. 11, DE. 12 & DE. 13.

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- iii) It remained unexplained to this court, **'why and how'**, PSPHC of MoLHUD, could have communicated the value of the suit property to Mr. Okwir by their letter of May 5, 2003 (EXH. PE 3), yet it was purported by the defence, that the same PSPHC had already, as early as June 1995, switched their offer of sale of the suit property from Mr. Okwir to the late Gasper Ayor Ekwaro. Refer to the letter dated June 14, 1995 (EXH. DE.3). Logic suggests that if there was a genuine switch of offer by PSPHC, from Mr. Okwir to the late Gaper Ekwaro, then the communication of the value of the suit property ought to have been addressed to the person to whom the offer was allegedly switched to, or at the very least, copied in to him!
- iv) The defence failed to satisfy this court that Mr. Okwir received EXH. DE. 3 allegedly from the **PS of MoLHUD** that was allegedly copied in to him. Mr. Okwir said he did not know about that document, and his position was not rebutted. In converse, during cross-examination, Mr. Ekwaro (DW1) told court that Mr. Okwir did not sign in acknowledgement of the defence exhibits copied in to him. Similarly, in re-examination DW1 stated that 'all attempts to serve Mr. Okwir with the letters was not possible, that they could not get him.
- v) No minutes of the alleged meeting purportedly held on March 25 - 26, 2008, by **PSPHC of MoLHUD** were produced. It was not proved that PSPHC indeed held that meeting and in fact considered the controversy between Mr. Okwir and Mr. Charles Olwa Ekwaro.

Handwritten signature 9/2

Mr. Khayangayanga (DW2); the Assistant Commissioner Human Settlements at the Directorate of Housing in MoLHUD, was in a position to produce those minutes or such document, but he failed to do so. He (Khayangayanga) was given additional time by this court to look again at the MoLHUD records to throw more light to court on what exactly happened to their records after the alleged switch offer (EXH. DE. 4) of sale of the suit property was made, but he still failed to produce any document, nor to demonstrate that the MoLHUD records changed to that effect.

- [45] Third, this Court has taken into account the consistency, culminating into this present suit, with which Mr. Okwir protested to the claims of the late Gasper Ayor Ekwaro and his successors, right from the time he said he learnt of their claims in 2006. These are relevant facts. (see secs. 8, 10 (b) & 13 of the Evidence Act.)

Decision of Court on issues Nos. 1 & 2

- [46] Having found as I have, I hold that the questioned transfer of offer of sale of the suit property, vide the letter dated May 31, 1995 (EXH. DE. 2), is void. The letter dated May 31, 1995 (EXH. DE. 2) is a forged document, and is illegal and void.

- [47] A court of law cannot sanction what is illegal. It is settled that once an illegality is brought to the attention of court, court cannot sanction an illegality and any actions or proceedings that are founded on it. See Makula International Ltd v

Cardinal Nsubuga¹⁰, Kisugu Quarries Ltd v Administrator General¹¹ and Macfoy v United Africa Insurance Co. Ltd (Supra).

[48] In the result, **the alleged sale of the suit property to the late Gasper Ayor Ekwaro and the late Charles Olwa Ekawaro, and the consequent registration of the late Charles Olwa Ekawaro as proprietor on the certificate of title to the suit property, cannot be sustained. Both the purported sale and registration, founded on the forged letter of May 31, 1995 (EXH. DE. 2), are tainted with fraud and are null and void and must be set aside. Sec. 176 (c) of the RTA, applied.**

[49] My conclusion above is emboldened by the decisions of the Supreme Court in Sinba (K) Ltd v Uganda Broadcasting Corporation¹² and in David Sajjaka Nalima v Rebecca Musoke¹³, to the effect that where a party masterminds a plan and implements it in defeating and defrauding another of his / her interest in property, such party is guilty of fraud.

[50] In the final result, I find Judgment for the Plaintiff; Mr. Okwir, that he has at all material times had, and continues to have an equitable interest in the suit property as offeree, and rightful beneficiary of the Uganda Government Public Service Housing Scheme on the Sale of Government pool houses, in respect of the suit property. He was, and continues to be, entitled to benefit from the said

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¹⁰ SCCA No. 4 of 1981

¹¹ (1999) 1 EA at page 162 (S/C)

¹² SCCA No. 03 of 2014

¹³ SCCA No. 12 of 1985

scheme, by virtue of his erstwhile capacity; as the Lira District Forest Officer, and sitting tenant of the suit property.

[51] **Issue No. 1 is accordingly held in the affirmative; 'that the Plaintiff, Mr. Okwir has an equitable interest in the suit property.**

[52] **Issue No. 2 is answered in the negative; 'that the late Charles Olwa Ekwaro was NOT lawfully registered as proprietor of the suit property.**

Issue No. 3: Whether there are any remedies available to the parties?

[53] By reason of my conclusions under issues Nos. 1 & 2, I hold that Mr. Okwir is entitled to redress in the terms below;

Declarations & Orders of this Court:

1. Judgment is hereby entered for the Plaintiff; Mr. Okwir.
2. The sale of the suit property described as **'Plot 14, House No. 274 Moroto Road - Lira, comprised in LRV 3618 Folio 16', measuring 0.342 Hectares,** to the late Gasper Ayor Ekwaro and Charles Olwa Ekwaro, under the Uganda Government Public Service Housing Scheme on the Sale of Government pool houses, is hereby set aside.
3. The registration on the certificate of title of the suit property; of Charles Olwa Ekwaro as proprietor, is hereby cancelled and substituted with the names of the Plaintiff; Patrick Okwir.

Patrick Okwir 9/8

4. The Plaintiff; Mr. Okwir shall refund to the Defendant; Mr. Ekwaro Moses, the sum of **UGX. 19M (Shillings Nineteen Million)** paid by the late Charles Olwa Ekwaro, purportedly as the purchase price for the suit property.
5. The said sum of **UGX. 19M (Shillings Nineteen Million)** shall be repaid by Mr. Patrick Okwir to Mr. Ekwaro Moses within 36 months (i. e 3 years) from the date hereof, in any case, not later than August 10, 2025.
6. No damages are awarded to the Plaintiff, as none were proved.
7. The Plaintiff, Mr. Okwir is awarded the costs of this suit against the Defendant.

I so Order,



P. BASAZA - WASSWA
JUDGE

August 9, 2022

Judgment delivered to the parties via e-mail, and uploaded on the Judiciary ECCMIS system.