

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPAA
(LAND DIVISION)

CIVIL SUIT NO. 465 OF 2013

JOHN BAPTIST MUKASA MUKWATANYI

(Administrator of the Estate of the

late Mikairi Wassa Mukwatanyi ::::::::::::::::::::::::::::::::::: PLAINTIFF

-VERSUS-

BYAKIKA GRIEVES WAKUTALA ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGEMENT

Introduction

The Plaintiff brought this suit against the Defendant for trespass on the land at Kyaggwe, cancellation of the contract for failure of consideration and translation, fraudulent transfer of the certificate of title comprised in Kyaggwe Block 435 Plot 1 at Kansanga Koba and general damages.

Background.

The Plaintiff is a lawful owner of the land comprised in Kyaggwe Block 435, Plot 1 at Koba Kasanga having obtained the same as a beneficiary and administrator of the estate of the late Wasswa Mukwatanyi. By agreement dated 2nd April, 1999, the Defendant purchased from the Plaintiff 50 acres being part of the land comprised in Kyaggwe Block 435, Plot 1 measuring 258.7 acres. The Plaintiff handed over the duplicate certificate of title, mutation and transfer forms to enable the Defendant subdivide and mutate off the purchased land. However, the Defendant without the knowledge of the Plaintiff surveyed off 120 acres of the land thus diverting from the sale agreement. Upon further agreement, it was agreed the Defendant purchase the extra 70 acres he had surveyed making it a total of 120 acres. The Agreement was never read over to the Plaintiff, an illiterate, by the Defendant's lawyers and he did not understand the contents of the Agreement and the Defendant did not make any payment at the time of execution of the agreement, like it says. The Defendant paid the purchase price



in instalments and left an outstanding balance of UGX. 10,000,000/=. The Defendant thereafter fraudulently transferred all of the suit land measuring 258 acres in his name instead of 120 acres as agreed. In 2012, the Defendant trespassed onto the Plaintiff's land and cut down up to 160 banana plants, thus filing this suit.

The Defendant filed his written statement of defence where he denied all the Plaintiff's allegations and stated that he is the current registered owner of the suit land comprised in Block 435 Plot 1 measuring 258.7 acres having brought the same from the Plaintiff. He stated that he has never trespassed on the Plaintiff's land. He also stated that the Plaintiff is not an illiterate since he can read and write and that he never informed the Defendant's lawyers that he cannot understand the contents of the said agreement.

That while the Defendant was still paying for the 60 acres, the Plaintiff offered to sell him the remaining 70.7 acres at a price of UGX. 15,000,000/=. That the Defendant does not owe the Plaintiff any money. Furthermore, that the Plaintiff's children went to the Defendant's school and having failed to pay the required school fees, the Plaintiff asked the Defendant to deduct the purchase price as school fees and upkeep for his children. That he has never trespassed on the Plaintiff's land, and that he volunteered to give the Plaintiff and other bibanja holders on his land 33 acres as compensation to avoid any problems in the future.

The Defendant also counterclaimed the Plaintiff's suit where he alleges that the counter defendant trespassed on his suit land and cultivated on the same without his authority causing him psychological, emotional torture, loss of profits ad damages for which he seeks general damages, Permanent injunction against the plaintiff from trespassing on his land and costs of the suit.

Representation

At the hearing, the Plaintiff was represented by George Muhangi, Titus Ddamulira and Muhumuza M. and the Defendant was represented by Emmanuel Chandia and Geoffrey Bwire.



Issues for determination:

The parties filed their joint scheduling memorandum and raised three issues for determination;

1. Whether the Defendant purchased all the land comprised in Block 435, Plot 1 at Kasanga Koba, Ssabagabo, Kyaggwe or whether he only purchased 120 acres.
2. Whether the Defendant fraudulently transferred the certificate of title to the suit land.
3. Whether the Plaintiff is entitled to be paid by the Defendant a balance of UGX. 10,000,000/= as the outstanding balance on the purchase price for 120 acres of the suit land.
4. What remedies are available to the parties.

Parties filed written submissions as per the timelines set by court and these were taken into consideration in resolving the issues.

Resolution:

Issue 1: Whether the defendant purchased all the land comprised in Block 435, Plot 1 at Kasanga Koba, Ssabagabo, Kyaggwe.

I have carefully studied all the evidence on court record. The law of evidence is in effect premised on the legal burden of proof. In civil matters, the burden of proof is on the balance of probability. **The Evidence Act under sections 101-103** is in essence to the effect that he who alleges to a fact has the burden to prove. (See: **Jovelyn Bangahare-vs- Attorney General S.CCA No. 28 of 1993**)

The burden to prove all the allegations in the plaint was upon the Plaintiff and the evidence counsel submitted on, was weighed by court. It is not in dispute that the Plaintiff was the registered and legal owner of the suit land comprised Kyaggwe Block 435 Plot 1 situate at Koba Kasanga Mukono and sold land to the Defendant. The dispute is on the total of what was sold. It was the evidence of both the Plaintiff- PW1 and the Defendant DW5 that a land sale agreement was entered in April, 1999 for the purchase of 50 acres of the Plaintiff's land at a consideration of Ugx. 10,000,000/=. PW1 thereafter handed his duplicate certificate of title to the Defendant to survey and subdivide the land to acquire his 50 acres.

The Plaintiff PW1 in his testimony stated that he subsequently added 70 acres of land to the Defendant thereby making a total of 120 acres. This fact was also



not disputed by the Defendant. However, the Plaintiff disputes having sold off the entire piece of land of over 258.7 acres to the Defendant. PW1 testified that only 120 acres of the suit land were sold to the Defendant. This was reaffirmed by PW3, the Plaintiff's wife. PW1 and PW3 testified that in 2002, they were called by the Defendant to his office in the presence of his lawyers where they signed the 2nd sale agreement for which they believed was for the 70 acres of land.

However, the Defendant testified that the agreement signed in the 2002 as DExh3 was for the sale of another 70 acres out of the remaining part of the suit land and subsequently, the remaining land was also sold off by the Plaintiff upon which all the land was transferred in 2008.

According to the testimony of the PW1 and PW3, the Defendant called them over to his office in 2002 whereupon they signed another sale agreement (DExh3). This agreement purports that the Plaintiff having sold his entire land to the Defendant for the transfer to be carried out in 2008. However, the Plaintiff and PW3 testified that this agreement was in respect of the additional 70 acres of land. They further testified that the same was drawn by the defendant's lawyers and was never read and translated to them.

Section 3 of the Illiterate Protection Act (Cap) 78 enjoins any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his/her true and full address.

The Supreme Court of Uganda in the case of **Kasaala Growers Co-Operative Society -vs- Kakooza & Anor Civil Application No. 19 of 2010** held that this implies that he/she was instructed to write the document by the person for whom it purports to have been written and it fully and correctly represents his/her instructions and to state therein that it was read over and explained to him or her who appeared to have understood it.

Failure to comply with this section, renders the document inadmissible. In the instant case, it is very clear that the sale agreement PExh.3 was never read to the Plaintiff by the Defendants and his lawyers for which he believed he was signing for the agreed 70 acres of land sold to the Defendant. Indeed, from the evidence, it can be seen that the Plaintiff always executed his documents in Luganda and not in English. There is also proof of all engagements entered into by the Plaintiff, including his witness statement, having a certificate of translation. Further, during cross examination, the Plaintiff was asked to read out page 18 of the Plaintiff's trial bundle but he could not read the contents in English and asked for his lawyer to translate the same for him.



Furthermore, the Defendant testified that the Plaintiff continued to sell to him his remaining piece of land upon making verbal agreements in 2004 and 2007 and subsequently transferring the entire land to him. There is no documentary evidence to prove the contract and the Defendant during cross examination kept repeating that although this sale was not reduced in writing, the parties agreed to it. The Defendant did not offer certainty as to the terms of the alleged sale of the land on 12/2/2004 during his testimony. What might have helped prove this agreement or arrangement is the continued payment of money even beyond what was owed at the time. This however is not sufficient, especially considering that the Plaintiff and his witnesses maintained that this sale never occurred. I therefore do not believe that parties that entered into an agreement for the sale of land in 1999 and 2000 would orally/ verbally agree to the sale and purchase of the remaining land of over 138 acres without deducing the same terms into a written agreement.

In the case of **Sir John Bagaire vs Ausi Matovu CACA No.7 of 1996**, court noted that land is not vegetables but valuable properties. It was imperative on both parties to enter into an agreement for sale for such land; thus to state that this was a verbal commitment is quite unbelievable especially where the Plaintiff is in dispute of the same. Had he intended to sale his entire piece of land, then there should have been an agreement stating so. In any case, I am not convinced that the said monies paid over time to the Plaintiff by the Defendant were consideration for the remaining piece of land after the sale of the 120 acres.

With regard to the 70 acres sold to the Defendant as alleged, there is contention as to how this land was sold. The Plaintiff claims that the sale was executed as per Exhibit D5 and the Defendant claims it was by Exhibit D3. The dates on each of these exhibits are different.

Exhibit D5: - The Plaintiff testified that Exhibit D5 was for sale of the 70 acres subsequent to the sale of the 50 acres sold in 1999. The Defendant's case however is that D5 represents the 70.7 acres sold after the oral contract of sale for 60 acres. It is dated 3/7/2007.

The elements of offer, acceptance, consent of both parties, lawful consideration, capacity to consent and contracting for a legal purpose under section 10 of the Contracts Act, 2010 are applicable in this case. On the face of it, Exhibit D5 could be argued to be a contract. However, the same is purportedly signed by only one party, the Plaintiff, as the seller. There is no signature of the buyer who is the Defendant. However, even without both parties known signatures, both the Defendant and the Plaintiff maintained during their testimonies that they



consented to the transaction represented in exhibit D5 and that there was lawful consideration and it was for a lawful purpose.

I therefore find that Exhibit D5 is a lawful contract, and the same stands in proof of sale of 70.7 acres to the Defendant subsequent to the 50 acres sold in 1999.

I am inclined to believe the Plaintiff's evidence and testimony that he only sold 120 acres of land to the Defendant for which both parties agree. It is clear from the evidence that at the time of this sale, the Defendant retained the duplicate certificate of title that had been handed over to him.

I therefore find that of the suit land comprised in Block 435 Plot 1 measuring approximately 258.8 acres, the Plaintiff sold and the Defendant only purchased 50 acres on 2/4/1999 and 70.7 acres on 3/7/2007 bringing the total purchase by the Defendant to 120.7 acres of the suit land.

Issue 2: Whether the defendant fraudulently transferred the certificate of title to the suit land.

Fraud was defined by the Supreme Court in the case of **Fredrick Zaabwe vs Orient Bank; Civil Appeal No. 4 of 2006** as;

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture....."

In **Kampala Bottlers Limited v. Damanico (U) Limited, S. C. Civil appeal No. 22 of 1992**, court noted that allegations of fraud must be proved strictly and to a standard higher than a balance of probability generally applied in civil matters but not as high as beyond reasonable doubt.

For fraud to form the basis of impeaching a title, it must meet the requirement stated in **Kampala Bottlers Limited v Damanico (U) Limited (supra)** where it was held that such fraud must be: attributable to the transferee either directly or by necessary implication. In other words, the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

According to **section 77 of The Registration of Titles Act**, any certificate of title, entry, removal of encumbrance, or cancellation, in the Register Book, procured or made by fraud, is void as against all parties or privies to the fraud. Similarly, **section 176 (b) of The Registration of Titles Act** allows actions for recovery of land against the person registered as proprietor under the Act where that person was registered as proprietor of that land through fraud. Thus, fraud in the transaction will vitiate a title.

In the circumstances of this case, the Defendant is the current registered proprietor of the suit land having transferred the same from the Plaintiff. However, as discussed in issue 1, the Defendant was only entitled to 120.7 acres of the suit land which were purchased from the Plaintiff. PW1 testified that the duplicate certificate of title was handed over to the Defendant in 1999, upon which he was required to mutata off 50 acres of land and subsequently an additional 70.7 acres amounting to 120.7 acres of the suit land. However, the defendant held onto this certificate of title until 2007 where under the premise of giving moneys to the Plaintiff; later had the entire suit land transferred into his names.

I have already found that had it been the intention of the Plaintiff to sell his entire piece of land, the parties would have entered into a formal agreement as had earlier been done than making verbal agreements over such a huge piece of land. As noted above, fraud must be attributable to the transferee in this case; the Defendant. From the evidence, it is clear that instead of transferring the 120.7 acres of land to himself, the Defendant transferred the Plaintiff's entire piece of land to himself without any consent or agreement to do the same. This, I find, was a deliberate and dishonest act by the Defendant.

I therefore find that the defendant fraudulently transferred the entire piece of land comprised in Block 435 Plot 1 measuring approximately 258.7 acres to himself while entitled to only 120.7 acres thereof.

Issue 3: What remedies are available to the parties.

The Plaintiff sought orders that;

- a) An order cancelling the agreement between the Plaintiff and the defendant due to failure of consideration and translation of the said agreement at the time of signing dated 11th December, 2002.



- b) A declaration that the Defendant is a trespasser on the suit land measuring 138.7 acres belonging to the Plaintiff.
- c) A declaration that the Defendant's continued failure to pay up the Plaintiff all the money due to him amounted to a breach of contract.
- d) A declaration that the certificate of title in the names of the Defendant on land comprised in Kyaggwe Block 435 Plot 1 measuring approximately 258.7 acres was obtained fraudulently.
- e) A permanent injunction against the Defendant from further dealing and/or interfering with the suit land.
- f) A declaration that the 138.7 acres on the suit land belong to the Plaintiff.
- g) General damages and costs of the suit.

As discussed in issue 1 and 2 above, the Defendant was only entitled to 120 acres of the suit land that were purchased from the Plaintiff through agreement and that the entire suit land was thereby transferred fraudulently into the names of the Defendant.

Conclusion:


This court finds that the Plaintiff has proved his claim on a balance of probabilities. The Plaintiff is therefore granted declaratory orders that;

- a) The certificate of title in the names of the defendant on land comprised in Kyaggwe Block 435 Plot 1 measuring approximately 258.7 acres was obtained fraudulently.
- b) The Defendant is only entitled to 120 acres of the land comprised in Kyaggwe Block 435 Plot 1.
- c) The Defendant is a trespasser on the suit land measuring 138.7 acres belonging to the plaintiff.
- d) The Plaintiff is entitled to 138.7 acres on the suit land and the same should be effected from the certificate of title comprised in Kyaggwe Block 435 Plot 1. For avoidance of doubt, the Defendant will, at his cost, cause the transfer of the said 138.7 acres into the name of the Plaintiff.
- e) A permanent injunction against the Defendant from further dealing and/or interfering with the 138.7 acres of the suit land



- f) As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendants' actions. I find that the plaintiff has discharged his duty to prove damages as a result of the defendant's actions for which I award a sum of Ugx. 10,000,000/=
- g) Costs of this suit are awarded to the Plaintiff.

I so order.



Jeanne Rwakakooko
JUDGE
28/02/2022

This Judgement was delivered on the 02 day of March 2022