

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 153 OF 2014

KASSAM AMARSHI & SONS LIMITED.....PLAINTIFF

VERSUS

1. ROBER NKAMWESIGA
2. KAKAIRE ERIAS
3. BAMULANGEYO SAM
4. MOHAMOOD NSUBUGA
5. SHUJA ABUDUL KARIM KHAN.....DEFENDANTS

AND

KASSAM AMARSHI & SONS LTD

(Represented by Kakaire Erias;

Bamulangeyo Sam; Mohamood Nsubuga; &

Shuja Abdul Karim Khan).....NOMINAL DEFENDANT

Before: Lady Alexandra Nkonge Rugadya

JUDGMENT:

Introduction:

The plaintiffs in this case sought cancellation of the transfer of the certificate of title in respect of plot Nos. 114 and 116, Seventh Street, Industrial Area, Kampala, comprised in **LRV 330, Folio 8** (hereinafter referred to as the suit property), registered in the 1st defendant's names; an order directing the cancellation of the Special Certificate of title issued pursuant to *instrument No. 481124*, dated 13th March, 2013; an injunction; general and aggravated damages; costs and interest.

As against the 2nd-5th defendants, they sought the following orders/declarations:

- 5
- a) *that at no time have the 2nd-5th defendants ever been duly authorized to deal with the affairs and properties of the 1st plaintiff company and/or the plaintiffs' directors and/or shareholders including the suit property known as plot 114 and 116 Seventh Street , industrial Area, Kampala LRV 330, Folio 8;*
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- b) *that the 2nd -5th defendants are not directors and/or shareholders and/or agents of the 1st plaintiff and neither do they hold any other lawful stake or interest in the 1st plaintiff.*
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- c) *an order nullifying all the dealings actions, resolutions and documents made by the 2nd-5th defendants or any one or more of them on behalf of the plaintiffs.*
- 20
- d) *a consequential order directing the Registrar of titles to cancel the Special Certificate of title issued by the Commissioner Land Registration on the 31st May, 2013 under instrument No. 481124 in respect of the suit land;*
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- e) *A consequential order directing the Registrar of companies to expunge from the company file of the 1st plaintiffs all the company forms, resolutions and other documents made or filed by the defendants or any one or more of them;*
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- f) *a permanent injunction to restrain the 2nd -5th defendants from holding out to be shareholders, directors or other officials of the 1st plaintiff;*
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- g) *General damages;*
- h) *Aggravate damages;*
- i) *Costs of the suit and interest on (g), (h), above at court rate from the date of judgment until payment in full.*

As against the nominal defendant they prayed that judgment be entered against it for among others: a declaration that the transformation of the nominal defendant to its current state in the



company registry whereby it is owned and/or controlled and/or managed by the 2nd-5th defendants was null and void *ab initio*; and costs of the suit, to be paid by the 2nd-5th defendants.

Representation:

The plaintiffs were represented by ***M/s Kibeedi & Co. Advocates. M/s Capital Law Associates,***
5 represented the 1st defendant.

By way of a brief background, on 18th January, 2019 counsel for the plaintiffs duly notified this informed court that ***M/s Capital Law Associates,*** the firm representing the 1st defendant had been duly served. The 2nd-5th defendants whose whereabouts were not known were to be served through substituted service as directed by court.

10 On 18th March, 2019 during the pre-trial, Ms Kiconco represented Counsel Asiimwe Ronald for the defendants. Court noted that the defendants had been duly served at each occasion, but that they had never complied with the directives of court. It nevertheless gave them another chance to appear in court and present their documents.

On the next date fixed for hearing 19th September, 2019 only the plaintiff's side was in court.
15 Court thereupon appointed the 19th November, 2019 and 13th January, 2013 for the hearing and directed that the defendants to be served. The matter was cause listed for hearing.

The 2nd and 3rd defendant appeared in court on 19th November, 2019 and complained that they had not been served. From the record however, substituted service had been effected through the *Daily Monitor* newspaper of 19th February, 2015 by which they had been required to file a
20 defence.

In the interest of justice however, this court allowed the 2nd -5th defendants to file their defence out of time on 19th November, 2019, some four years later; and the matter which had been cause listed, was adjourned to 13th January, 2020, a date which was fixed in the presence of Mr. Asiimwe Ronald for the 2nd-3rd defendants.

25 Court directed that the defendants be served by 9th December, 2019 and for their statements to be on record by 21st December, 2019 together with their trial bundles, none of which however was done. This prompted court to award costs to the amount of ***Ugx 900,000/=*** on account of the failure for the matter to take off, attributed to the defendants.

On 13th January, 2020, again only the plaintiff side was in court. Court noted that the
30 defendants had not filed the defence despite the fact that the time within which to file their defence had been extended.

On the 10th February, 2020, the next date fixed for hearing, the 1st defendant's counsel, Ronald Asimwe appeared but his client did not appear. The matter thereupon proceeded for a full trial, in the absence of the defendants.

Issues:

5 The following issues were identified for determination by court:

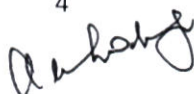
- 1) ***Whether the 1st defendant's title to the suit land was acquired fraudulently or unlawfully.***
- 2) ***Whether the 2nd-5th defendants have any legal interest in the plaintiff company, be it as its shareholders, directors or attorneys.***
- 3) ***Whether the power of attorney purportedly signed by the plaintiff appointing the 2nd defendant as plaintiff's attorney was fraudulent and/or unlawful.***
- 4) ***If so, whether the subsequent resolutions and company forms executed by the 2nd-5th defendants on behalf of the plaintiff were lawfully executed.***
- 5) ***Whether the plaintiff is entitled to the remedies sought in the amended***
plaint.

Background to the case:

The suit relates to property comprised in ***Plot No. 114 and 116 Seventh Street, Industrial Area Kampala LRV 330 Folio 8 (suit property)***. At all material times, it was registered in the names of ***M/s Kassam Amarshi & Sons Ltd***, the plaintiff company since 24th June, 1960 a fact which was never disputed. However, following the expulsion of the Asians in 1972, the property was taken over by the military regime of Idi Amin.

It was repossessed in 1993 and under a management contract with Mr. Mohammed Allibhai, ***(PE9)***, rented out by the plaintiff company. However on 17th January, 2001 the 2nd defendant obtained powers of attorney ***(PE19)*** purportedly from Badrudin Kassam Amarshi and Abdulali Kassam Amarshi (father of Karimali Abdulali Kassam), two of the directors of the plaintiff company. Karimali Abdulali Kassam testified as ***Pw4***.

Some decade or so later, on 20th June, 2013, the 2nd and 3rd defendants entered into an agreement with the 1st defendant for the sale of the suit property, a transaction which the plaintiff claimed to have been fraudulent.



The law:

By virtue of **section 101 (1) of Evidence Act, Cap. 6**, whoever desires court to give judgment to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**).

The burden of proof lies therefore with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more probable the conclusion which the plaintiff contend, on a balance of probabilities. (**Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004**).

Analysis of the evidence:

The plaintiffs' case rested on the evidence of four witnesses. **Pw1** Mr. Noorali Nazalari Hassam aged 82 years, a resident of Masaka, and had been in Uganda since 1993. **Pw2**, Mohammed Allibhai; **Pw3**, Mr. Sebuwuufu Erisa, the handwriting expert; and **Pw4**, Mr. Karimali Abdulali Kassam, claimed to have been the surviving director of the plaintiff company.

In his testimony **Pw1** told court that the company was owned by the plaintiff family which was well known to him, and that following the death of Abdulali Karimali Armashi, **Pw4's** father, **Pw4** took over the ownership till 1972 when the Asians were expelled from Uganda.

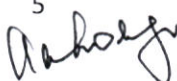
Initially Mr. Karimali Abdulali Kassam was the 2nd plaintiff in the suit but later withdrew. **Pw2**, Mr. Mohammed Allibhai, the Managing Director of *M/s Alderbridge Real Estate and Management Ltd*, currently the property Management Agent of the plaintiff company, and lawful attorney for the said company. He was therefore a key witness for the plaintiff in this suit.

The powers of attorney, exhibited by him in court as **PE4** had been donated to him on 10th July, 1992, initially, for the purpose of repossession of the suit property for and on behalf of the company.

A memorandum and articles of association for the said company was tendered in court and exhibited **PE5**, together with a certificate of incorporation for the company, dated 10th January, 1959 as **PE6**.

The memorandum listed the names of Gulamhussein Kassam Amarshi, Abdulali Kassam Amarshi, Badrudin Kassam Amarshi and Hassanali Kassam Amarshi as shareholders, each with one share, as at 5th January, 1959.

A duplicate certificate of title was also tendered in evidence, (**KAS1**) issued in January, 1955 for a 97 year lease term, under the names of the plaintiff company.

5


Pw2, Mohammed Allibhai testified that he just like **Pw1** had known the family of Kassam Amarshi of Masaka since his childhood, and in particular Abdulali Kassam Armashi, (**Pw4**) who is currently resident in Canada.

He confirmed **Pw1's** evidence that Mr. Abdulali Kassam Armashi, **Pw4** was son to the late Abdulali Kassam Amarshi, and surviving shareholder and director. The names of the original shareholders who were also the directors appeared in the company registry in 1970 as per the last annual returns filed by the company at the time. (**PE3**).

A search in the company registry by **Pw2** revealed that *Form 8*, **PE23**, notification of change of directors had been registered, following the death of Abdulali Kassam Amarshi on 15th May, 1969, the father to **Pw4**.

Pw4 his son was named as a new director of that company, under the names of Karimali Abdulali Kassam. In 1995, as per **PE24** another notification of change of directors was filed, this time by the 2nd, 3rd and 5th defendants. Unknown to the plaintiff company, **Pw4'** name was not listed among the directors.

The plaintiff's uncontroverted evidence indicates that after **Pw2** had obtained the powers of attorney in 1992, (**PE 4**), the suit property had on 2nd June, 1993 been restored to the plaintiff company as the original owners. (**Ref. PE8 and PE7**).

PE7 was a letter from the Minister of State for Finance recognizing the plaintiff company as the original registered proprietors. At the time of repossession in 1993 as the plaintiff's agent **Pw2** found that the property was being used by the Uganda Prisons as their workshop. He started receiving rent from them as the plaintiff's agent when the said tenancy was formalized with Ministry of Internal Affairs. Thus Uganda Prisons continued in occupation and paid rent till 6th November, 2000 when they gave notice to vacate the premises(**Refer to: PE11**).

On 25th May, 2011 **Pw2** on behalf of the plaintiff company through his management company entered into a tenancy agreement with *Wada Woods Ltd* for the suit property. (**PE 12**). The tenants continued in occupation, with rent remitted as per **PE 13**, (as at 3rd October, 2016) to the plaintiff company through their agent.

At the *locus* visit held on 29th April, 2021, *Wada Woods Ltd* confirmed that position. By 2016 the 1st defendant already had the suit property transferred into his names following the sale between him and the 2nd and 3rd defendants. He never filed any suit to challenge the plaintiff's continued occupation ad utilization of the premises.

Pw2 further testified that his company had also rented out part of the premises to *M/s Jaibra General Enterprises Ltd*, which at some point had defaulted in its rent payments. In the suit filed

against it in Nakawa court, judgment had been passed in favour of the plaintiff side on the 30th September, 2013: vide Civil Suit No. 635 of 2011 (Alderbridge Real Estate Management Ltd vs Jaibra General Enterprises Ltd).

Among the orders granted by that court was an order for recovery of the rental arrears and an
5 eviction order. The orders, the effect of which were to confirm the plaintiff's ownership of the suit property have never been discharged.

It is against that backdrop, the defendants who were total strangers to the processes of repossession; the renting and occupation of suit premises, and unknown to the plaintiff family, purporting to be the company directors somehow through a company resolution on 21st
10 February, 2013, authorized Mohamood Nsubuga (4th defendant), Kakaire Erias (2nd defendant) and Sam Bamulangeyo (3rd defendant), to sell the suit property to the 1st defendant.

It was **Pw2's** evidence that around July, 2013 they got to learn from one of the neighbors, that the 1st defendant wanted to sell the suit property. The neighbor had also availed to him a copy of the certificate of title (**PE14**), registered in the names of the 1st defendant on 18th July, 2013.

On 26th August, 2013 the 1st defendant advocates, **Ms Capital Law Partners and Advocates** wrote to the private security company that was guarding the property on behalf of the plaintiff's managing agent, claiming the 1st defendant's ownership of the suit land.

However upon inquiry by **Pw2** from the director, (**Pw4**) he had denied having issued any authority to anyone to sell the suit property to the 1st defendant. On 10th December, 2013 he gave **Pw2**
20 powers of attorney, **PE 18**, under which he authorized him to protect his interests in the suit property as a shareholder and director.

A notice of a caveat emptor was put up in the *Daily Monitor* Newspaper on 23rd August, 2013, notifying the public that the property had never been sold. (**PE15**). **Pw2** also lodged a caveat on the suit land in August, 2013 (**PE16**) as well as a complaint with the Land Protection Unit.

The 1st defendant who by 26th August, 2013 had constructive knowledge of the caveat never sought its removal from the suit land, despite the fact that by that time he had already purchased the suit property.

The plaintiff company claimed therefore that they had physical possession of the suit property which they denied having sold; and therefore the transfer to the 1st defendant was fraudulent,
30 since he had notice, and/or was party and/or privy to the fraud.

The company claimed further that the 1st defendant failed to exercise the basic due diligence of identifying the actual proprietor of the suit land and its interest represented by its tenants and agents who were in physical occupants at the time.

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1st defendant's case:

Unlike the 1st defendant, the 2nd-5th defendants did not file any response to the allegations raised by the plaintiff company. It is trite that a party who does not enter appearance and file his defence is deemed to have admitted the allegations in the plaint (**Smith vs Auto Electric Services Ltd**
5 **(1951) 24 KLR22 K**).

This court also came across a letter dated 8th April, 2014 titled: *Denial of any instructions to sue Roger Nkamwesiga in this suit and MA No. 355 and 356 of 2014*, addressed to the Registrar of the Land Division.

10 The author of that letter Mr. Kakaire Erias (2nd defendant) who signed as a director of the company denied having instructed **Ms Kibeedi & Co. Advocates** to sue *Mr. Roger Nkamwesiga* the 1st defendant.

In that letter the said director confirmed that the company had sold the suit property to Nkamwesiga for valuable consideration and with no outstanding payment. He asked court
15 therefore to dismiss the suit and applications as frivolous and not sanctioned by the company.

The issues raised in the letter were however the gist and subject of this suit. It was also a question to be addressed by this court as to whether or not the 2nd defendant had the power and/or authority to write, represent and act on behalf of the company.

On his part, although the 1st defendant failed to respond to the summons issued by court for the
20 hearing, he filed a WSD in which he claimed that Karimali Abdulali Kassam Amarshi was a fictitious person.

He made reference to one Karimali Abdulali Kassam a British national and another person with names similar to those, but a Canadian national born in Masaka. He also disputed the validity of the management contract signed by **Pw2** on the basis that it was never executed by the
25 registered proprietor nor executed by a person who had authority to bind the former registered owner. The source of his information however could not be readily be established nor were the allegations therefore substantiated.

He furthermore relied on the company resolution **PE25** dated 21st February, 2013 signed by 2nd and 3rd defendants both purporting to be directors of the company; and the search statement
30 dated 17th June, 2013 which showed that the 97 year lease was in the names of the plaintiff company.

In his counterclaim therefore he claimed that fraud had been committed by the plaintiff and not by him, claiming that he was a *bonafide* purchaser for value without any notice of the fraud.

8


The law:

A registered proprietor is protected from ejection from certificate save for fraud (**section 176 (c)**). Similarly under **section 59** of the **RTA** the general principle is that a title is conclusive evidence of ownership, except where it has been established that fraud has been committed. This applied to the plaintiff company equally as it did to the 1st defendant, both of whom had registration for the same piece of land, though at different times.

It is trite law that that fraud that vitiates a land title of a registered proprietor must be attributable to the transferee, registered purchaser or the purchaser's agents. Fraud of a transferor not known to the transferee cannot vitiate the title. **See: Wambuzi C.J, Kampala Bottlers vs Damanico (U) LTD, SCCA No. 27 of 2012.**

The party who seeks reliance on fraud must not only specifically plead fraud, but must also prove it- the burden being heavier than on a balance of probabilities generally applied in civil matters. (**Kampala Bottlers Ltd. Vs Damaniaco (U) Ltd (supra)**).

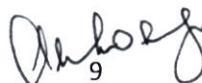
A *bona fide* purchaser for valuable consideration of land derives protection under **section 181 of the RTA**. The term is defined in **Black's Law Dictionary 8th Edition at page 1271** to mean:

"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has good faith paid valuable consideration without notice of prior adverse claims."

In **Uganda Posts and Telecommunications vs Abraham Kitumba SCCA No. 36 of 1995**), where there is failure to make reasonable inquiries or ignorance or negligence was held to form particulars of the offence of fraud.

Courts have always been consistent in placing a burden on prospective buyers of land to carry out prior inquiries before purchasing land property, as an act of due diligence. Such is not only a requirement of law and practice but an act of prudence.

Thus where it is found that the defendant had all the means available to him to establish the truth or verify the information received by him, the presumption would be that he had constructive knowledge of fraud. (Refer also to: **Omar Salim Mukasa Vs Haji Muhammed & another CACA NO 114 of 2003**). In that same case it was also held that in equity constructive knowledge is deemed to constitute fraud.


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The 1st defendant in this case relied on a number of documents which he received from the defendants: the sale agreement between them, (**PE27**), which he had signed as the purchaser on 20th June, 2013.

PE14, was the certificate of title, his proof that he had legally acquired the property. A statement of search dated 17th June, 2013 (*annexture D to his WSD*), indicating that the plaintiff company was the registered owner. Notice of change of directors was filed in 1995, listing three (3) of the defendants as the directors of the plaintiff company.

The above therefore raised the issue of the validity of the documents, also raising the issue of the capacity of the defendants to enter into the transaction, so crucial to the determination of the entire case.

Section 10(1) of the Contracts Acts 2010 defines a contract as *an agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.*

Under **section 10 of the Contracts Act, No. 7 of 2010**, a binding contract/sale agreement would arise when one is made with the free consent of parties *with capacity* to contract, for a lawful consideration, with a lawful object, and with the intention to be legally bound.

Further, under **section 11(1) (supra)** a person must have the capacity to contract where that person is of eighteen years or above; of sound mind; and not disqualified from contracting by any law to which he or she is subject.

This court in its analysis of the documents as presented by the defendants noted that the 2nd and 3rd defendants purporting to act on behalf of the company did not however sign the sale agreement as directors or shareholders. They carried out the transactions as individuals, but did so under the name of the plaintiff company.

This point is strengthened by the fact that none of the documents relied on by the 1st defendant had the company seal or stamp. The 2nd defendant who claimed to have been issued with powers of attorney dated 17th January, 2001, however did not use those powers in effecting the transfer but instead signed in his individual capacity, with another person who evidently had no powers of attorney/ authority to deal with the property.

In that instrument the donors of the powers were Abdulali Kassam Amarshi & Badrudin Kassam Amarshi of UK 461 Lode LA Sol hull West Midlands 89 2 BNS, formerly KASSAM AMARSHI & SONS LTD of Masaka.


10

Pw4 whose evidence was received by court via a video all refuted the defence claims, confirming that his father from whom the 2nd defendant purported to have received the said powers of attorney had died in 1969.

5 He became the director and subsequently the sole surviving director after the death of the other directors. His father could not therefore have signed the powers of attorney as a dead man. This was confirmed in the report of **Pw3** the hand writing expert, that the signature appearing on the deed as that of **Pw4's** father could not have been his.

10 It therefore also leaves one wondering that if the 2nd defendant and other defendants were listed as directors of the company as early as 1995 why he deemed it appropriate to secure the powers from the original directors in 2001.

Put rather differently, if indeed the powers of attorney donated by the original directors in 2001 had been genuine, then it ought to have been the same donors to pass the resolution to dispose of the property.

15 **Pw2** disputed the said notification of the change of directors as it was not signed by any of the legitimate shareholders and directors of the 1st plaintiff company. He also refuted, rightly so, the appointment of the defendants as shareholders or directors since there was no resolution of the company in the registry, to that effect.

20 Furthermore, in the rejoinder by the plaintiff in *paragraph 6(d)* of the plaint, it was argued that *clauses 5.2 and 6.3* of the Sale Agreement, the completion of the sale was conditional upon the defendant getting vacant possession of the suit property and no third party claims arising within a period of one year ending 19th June, 2014, which conditions were not met. The plaintiff therefore claimed that as such therefore not only was the sale transaction fraudulent but also incomplete. I could not agree more.

25 It was the 1st defendant's duty to carry out prior search and thorough investigations, to scrutinize the documents presented to him by the defendants and establish who the actual owners of the suit property or the company itself were, specifically after knowing that it was a family company.

30 Had he conducted a physical search of the premises, he would have discovered the truth since at the time of the transaction in 2013, the tenants of the plaintiff company were in occupation and remitting rent to the company through its agents.

Credible evidence was led by the plaintiff to prove that *WADA Woods Ltd* were in quiet and uninterrupted occupation of the premises and had been in such occupation since 2011, paying

rent to the agent of the plaintiff company. This was before the 1st defendant had even thought about purchasing the property.

He however never took the trouble to obtain vacant possession, as per the terms of the sale agreement. He had full access to the DAPCB, the company registry and the Land offices, and at all material times had full access to the services of his counsel. He therefore had constructive knowledge of the true ownership of the company, its family setting and the ownership and occupation of the suit property.

It is trite that a person who purchases an estate which he knows to be in occupation of another person other than the vendor is not a *bona fide* purchaser for value without notice of the fraud if he/she fails to make inquiries before such purchase is made.

Thus whether or not there was fraud and whether or not a party was a *bonafide* purchaser for value without notice the question that a court would poise is whether the defendant honestly intended to purchase the suit property and did not intend to acquire it wrongfully. (**David Sejjaka Nalima vs Rebecca Musoke SCCA No. 12 of 1985**).

If the 1st defendant had taken enough trouble, he would have established that the annual returns for the period ending 22nd February, 2013 revealed that the directors and shareholders of the plaintiff were still the same as originally filed.

There was enough information and such circumstantial evidence sufficient to raise the red flag, which ought to have put him on notice of the fraudulent intentions of the defendants to permanently deprive the company of its property, using the fake documents.

In Vivo Energy Uganda Ltd vs Lydia Kisitu CACA NO. 193 of 2013, court while laying emphasis on the need for thorough investigation rejected the argument that a certificate of title was enough to establish ownership, where there was circumstantial evidence that should have put the defendant on notice requiring him to go beyond the certificate of title.

In **Uganda Posts and Telecommunications vs Abraham Kitumba SCCA No. 36 of 1995**), such failure to make reasonable inquiries or ignorance or negligence was held to form particulars of the offence of fraud.

Fraud is defined as act of dishonesty or 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 her or to surrender. (Ref: **Kampala Bottlers Ltd. vs. Damaniaco (U) Ltd SCCA No. 2 of 1992.**); **F.I. K Zaabwe vs Orient Bank and 5 others SCCA No. 4 of 2002**)

It 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**).

It was not enough for the 1st defendant to challenge the management contract and leave out the authenticity of the powers of attorney in December, 2013. The omission to challenge those powers and the annual returns of 2013 could only mean that in 2013, the company was in reality still in control.

Pw2 against whom several acts of fraud were raised by the 1st defendant, was not party to the suit. He was an agent of the plaintiff and as a holder of powers of attorney merely acted on instructions of his principal. The 1st defendant therefore had no cause of action against him and could not blame him for his own folly.

The 1st defendant, just like the rest of the defendants failed to turn up in court to substantiate or provide proof to any of the allegations made by the plaintiff, thus making it appear that all claims perceived against the plaintiff and its agents were abandoned.

There is nothing on record to show that there had been any sale or transfer of that company to the defendants by the members of the family of the plaintiff company. Since therefore the defendants did not seek prior consent of the plaintiff to sell off the property the contract of sale between the 1st defendant and the rest of the defendants is declared null and void.

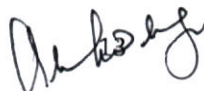
The defendants had no legal interest in the company and its property, be it as shareholders, directors or attorney and therefore lacked the capacity to commit the company in any transaction. Accordingly, the resolutions and company forms were unlawfully executed by the defendants.

That therefore fully resolves **issues No. 1, and 2**.

Issue No. 3: Whether the power of attorney purportedly signed by the plaintiff appointing the 2nd defendant as the plaintiff's attorney was fraudulent and/or unlawful.

This has been answered in part. As earlier noted, the 2nd defendant obtained power of attorney signed by Abdulali Kassam Amarshi dated 17th January, 2001 and registered with the Registrar of documents under Instrument No. 9637, purportedly appointing him as attorney of the plaintiff.

The plaintiff led proof however that the instrument alleged to have been signed by the father of **Pw4** had been dead since 14th May, 1969 before the Asians were expelled from Uganda. Both the original and photocopies of the death certificate were tendered in court as **PE20**.



As noted earlier, the signature appearing on the instrument were examined by the handwriting expert, Mr. Sebuwuufu Erisa who testified as **Pw3**. The findings in his report were dated 11th April, 2014 **PE 21**, and **PE 22** dated 17th November 2015 which were not challenged by the 2nd defendant.

- 5 Such was proof that the powers of attorney purportedly issued and relied on by the 2nd defendant to transfer the suit property to the 1st defendant had been forged, rendering the entire transaction fraudulent.

That also therefore addresses **issue No.3**.

Remedies:

10 **General damages:**

Its trite law that, that damages are direct and probable consequence of the act complained of, also noted in the case of **Kampala District Land Board and George Mitala Vs Venansio Bamweyana CA No. 2 of 2007**. Such may be loss of profit, physical inconvenience, mental distress, pain and suffering, (**See also Assit (U) Vs Italian Asphalt & Haulage & Anor HCCS No. 1291 of 1999 at**
15 **page 5**).

It is also a settled position of the law that the award of general damages is in the discretion of court and is always as the law will presume to be the natural consequence of the defendant's act or omission.

- 20 The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. (**See: Fredrick Nsubuga Vs Attorney General S.C.C.A. No. 8 of 1999**).

Therefore, in the circumstances of the quantum of damages courts are mainly guided by the value of the subject matter, the economic inconvenience that the party was put through at the instance of the opposite party and the nature and event of the breach.

- 25 A party is eligible for general damages where loss and inconvenience has been suffered due to the wrongful act of the defendant. He/she must be put in the position he or she would have been in had he or she not suffered the wrong; and must lead evidence or give an indication what damages should be awarded on inquiry as the quantum. (**Ongom Vs. AG (1979) HCB 267, cited by court in Kamugira Vs National Housing & Construction Co. CS.No. 127 of 2009**)

Accordingly, the following orders/declarations are made:

- 30 a) **The plaintiff company is the rightful owner of the suit property comprised in plot 114 and 116 Seventh Street, Industrial Area, Kampala LRV 330, Folio 8;**


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- b) *The 2nd-5th defendants had no interest in, were not directors or shareholders in the plaintiff company and therefore had no valid authority to act on behalf of the surviving director or deal with any company affairs and/or its properties, including the suit property;*
- c) *An order issues accordingly, nullifying all the dealings actions, resolutions and documents made by the 2nd-5th defendants or any one or more of them on behalf of the plaintiffs.*
- d) *A consequential order issues directing the Registrar of titles to cancel the Certificate of title issued on the 31st May, 2013 under instrument No. 481124 in the names of the 1st defendant in respect of the suit land;*
- e) *A consequential order issues directing the Registrar of companies to expunge from the company file of the 1st plaintiff all the company forms, resolutions and other documents purported to have been made or filed by the defendants or any one or more of them; and accordingly, the plaintiff company to be restored to its current status/ownership.*
- f) *a permanent injunction is granted to restrain the 2nd -5th defendants from holding out to be shareholders , directors or other officials of the 1st plaintiff;*
- g) *General damages of Ugx 150,000,000/= (Uganda shillings one hundred and fifty million only) with interest payable at court rate from the date of judgment until payment in full.*
- h) *costs of the suit, to be paid by the 2nd-5th defendants.*


Alexandra Nkonge Rugadya

Judge

12th April, 2022

 Delivered by mail
Alexandra Nkonge Rugadya
12/4/2022