

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

CIVIL SUIT NO. 0105 OF 2016

BISASO PAUL:.....PLAINTIFF

VERSUS

- 1. UGANDA FINANCE TRUST LIMITED**
- 2. NSANGI REBECCA:.....RESPONDENTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff was in a relationship with the 2nd Defendant for over 20 years. The 2nd Defendant purchased the suit land and gave it to the Plaintiff as a gift *intervivos* and the Plaintiff got a certificate of title.

The Plaintiff mortgaged the land to the 1st Defendant as security for a loan provided by the 1st Defendant to the 2nd Defendant. The Plaintiff deposited the certificate of title to the 1st Defendant to hold for the mortgage period. The mortgage was satisfied and the Plaintiff requested the 1st Defendant to release the title, but the 1st Defendant declined on grounds that the 2nd Defendant had not issued him with instructions.

Later the 1st Defendant released the title, but the 2nd Defendant lodged a caveat on the said title and placed thereon a caveat and injunction stopping removal of the caveat.

The Defendants filed written statement of defence. The facts above indicates that during the progress of the case, the title was handed back to the Plaintiff, leaving the case as between only the Plaintiff and the 2nd Defendant.

Issues:

1. Whether the 2nd Defendant is the lawful owner of the suit land.
2. Whether the Plaintiff has any interest in the suit land.
3. Whether the 1st Defendant refused to release a certificate of title to the Plaintiff was lawful.
4. What remedies are available.

Resolution

The 2nd Defendant did not participate in the suit. The Plaintiff led evidence that proved that the 2nd Defendant gave the Plaintiff the land as a gift and even had it transferred into his names. The evidence satisfies the requirement for a *gift intervivos*. The *gift intervivos*, being a gifted transfer of property without any monetary consideration by one person in favour of another and accepted by him or her behalf. See

Black's Law Dictionary, 8th Edn. definition at page 710 – which defines a *gift intervivos* as a gift of personal property made during the donor's life time and delivered to the donee with the intention of irrevocably surrendering control over the property.

This is clarified in **Joy Mukoba versus Wambuwi HCCA 55/2005** which held that for a *gift intervivos* to take irrevocable roots, the donor must;

- a) Intend to give the gift.
- b) Deliver the property.
- c) The donee must accept the gift.

Evidence shows that the 2nd Defendant accepted the Plaintiff to be registered on the suit land as lawful owner and donee accepted the gift and the transfer was effected in Plaintiff's names and had possession of the Certificate of Title.

The requirements for a gift *intervivos* were certified and 2nd Defendant cannot revoke it now. Indeed Section 59 of the Registration of Titles Act, only allows such a Certificate of Title to be received in all Courts as conclusive evidence of ownership by the person named in the Title as proprietor, with power to dispose of the land described therein. The only exception is upon proof of fraud; as per Section 176 (C) of the RTA. Cases of ***John Katarikawe versus William Katwiremu (1977) HCB 187***, held that once a person is registered as a proprietor of

land his title is indefeasible except for fraud. In this case there was no proof of such fraud.

The Plaintiff has by evidence on record satisfactory satisfied the burden of proof that he is the lawful owner of the suit land, and there by the Court finds that the 2nd Defendant/Counter Claimant is not the owner of the land and has no claim there on.

This finding disposes of both issue 1 and 2 as above.

The 3rd issue is redundant.

Issue 4:

Remedies:

As a result of the findings in issue 1 & 2 the following remedies are available to the Plaintiff.

- i. A consequential order for the Registrar of Titles to remove the caveat lodged on the suit land.
- ii. General damages are compensatory. The Court is aware that the land was gifted to Plaintiff by 2nd Defendant.

The 2nd Defendant however due to the breakdown of their relationship in unfairly treated the Plaintiff causing him pain and suffering and in the process caused him to suffer damages. For the pain, suffering and loss occurring from this matter Court will allow a nominal amount of shs. 10,000,000/= (*ten million shillings only*).

The Plaintiff is granted costs of the suit and of the counter claim.

Judgement entered in favour of the Plaintiff/Counter Defendant in terms as above.

The counter claim is not proved and is dismissed as prayed.
I so order.

.....

Henry I. Kawesa

JUDGE

22/04/2022

22/04/2022:

Kakeeto Denis for the Plaintiff.

Plaintiff in Court.

Assumpta Namandi for 2nd Defendant.

2nd Defendant present.

Dorothy: Clerk

Court:

Judgment has been read in the presence of both Counsel.

Sgd:

Ayo Miriam Okello

22/4/2022