

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]  
CIVIL SUIT NO. HCT-00-LD-CS-2859-2016**

**KIMBUGWE JONATHAN ::::::::::::::::::::::::::::::::::: PLAINTIFF**  
*(Administrator of the Estate of the late Rose Kiiza Nachwa)*

**VERSUS**

- 1. IAN AREBAHONA**
- 2. BAKAHUMURA CHARLES**
- 3. HENRY MWESIGWA**
- 4. BERNARD MUHANGI BAMWINE**
- 5. MICHAEL MURITHI**
- 6. COMMISSIONER LAND REGISTRATION ::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE: HON. JUSTICE BERNARD NAMANYA**

**JUDGMENT**

**Introduction:**

1. The disputed land is comprised in Busiro Block 395 Plot 303 Land at Sekiunga, along Kampala – Entebbe Road (now subdivided into Plots 1974, 1975, 1976, 1977, 1978, 1979 and 1980). The plaintiff is an Administrator of the Estate of the late Rose Kizza Nachwa, having been granted powers by Lady Justice Faith Mwondha, Judge of the High Court (as she then was) on the 5<sup>th</sup> October 2009, vide High Court (Nakawa) Administration Cause No. 544 of 2009. The plaintiff claims that the land was fraudulently transferred to the defendants, and seeks its recovery. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants deny any wrongdoing, and assert that they lawfully acquired ownership of the land. The 3<sup>rd</sup> and 6<sup>th</sup> defendants did not file a defence, and the matter proceeded ex parte against them.



**Representation:**

2. The plaintiff was represented by Mr. Kintu Nteza of M/s Kintu Nteza & Co. Advocates. The 1<sup>st</sup> defendant was represented by Dr. Benson Tusasirwe of M/s Tusasirwe & Co. Advocates. The 2<sup>nd</sup> defendant was represented by Mr. Paul Rutisya of M/s Kasirye, Byaruhanga & Co Advocates. The 4<sup>th</sup> and 5<sup>th</sup> defendants were represented by Mr. Peter M. Walubiri of M/s KBW Advocates.

**The plaintiff's evidence:**

3. The plaintiff produced three witnesses to prove his case. PW1 (Kimbugwe Jonathan), PW2 (Kato Juma Bamweyana) and PW3 (Apollo Mutashwera Ntarirwa).
4. The plaintiff relied on the following documents:
  - i). Exh.P1 – Death certificate of the late Rose Kizza Nachwa;
  - ii). Exh.P2 – Grant of letters of administration to the plaintiff;
  - iii). Exh.P3 – Certificate of title in the names of the 1<sup>st</sup> defendant for Plot 1980;
  - iv). Exh.P4 – Lease certificate of title for LRV 3906 Folio 4 Plots 1978 & 1979 in the name of the 5<sup>th</sup> defendant;
  - v). Exh.P5 – Lease agreement between the 4<sup>th</sup> and 5<sup>th</sup> defendants;
  - vi). Exh.P6 – Transfer and application for consent to transfer from Rose Kiiza Nachwa and the 1<sup>st</sup> defendant dated July 2007;
  - vii). Exh.P7 – Mutation and Area Schedule Form for Plot 303;
  - viii). Exh.P8 – Certificate of title in the names of the 4<sup>th</sup> defendant for Plot 1979; transfer form and application for consent to transfer;



- ix). Exh.P9 – Certificate of title for Plot 1977 in the names of the 1<sup>st</sup> defendant;
- x). Exh.P10 – Certificate of title for Plot 1976 transferred in the name of the 3<sup>rd</sup> defendant;
- xi). Exh.P11 – Transfer and consent application form for Plot 1976 from the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant;
- xii). Exh.P12 – Certificate of title for Plot 1975 in name of the 1<sup>st</sup> defendant;
- xiii). Exh.P13 – Certificate of title for Plot 1974, transfer and application for consent to transfer from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant;
- xiv). Exh.P14 - Certificate of title for Plot 1978 in the name of the 4<sup>th</sup> defendant;
- xv). Exh.P15 – Caveat on Plot 1979 by the plaintiff;
- xvi). Exh.P16 – Caveat on Plot 1977 by the plaintiff;
- xvii). Exh.P17 – Caveat on Plot 1976 by the plaintiff;
- xviii). Exh.P18 – Caveat on Plot 1975 by the plaintiff;
- xix). Exh.P19 – Caveat on Plot 1974 by the plaintiff;
- xx). Exh.P20 – Caveat on Plot 1978 by the plaintiff; and
- xxi). Exh.P21 – Report of handwriting expert dated 7<sup>th</sup> March 2011.

**The defendants' evidence:**

- 5. The defendants produced the following six witnesses to prove their case. DW1 (Arebahona Ian), DW2 (Joseph Batume), DW3 (Mulumba Matia), DW4 (Bernard Muhangi Bamwine), DW5 (Bakahumura Charles) and DW6 (Michael Murithi).
- 6. The defendants relied on the following documents:



- i). Exh.D1 – Sale agreement between Rose Kizza Nachwa and JBK & Partners Ltd dated 2002;
- ii). Exh.D2 – Sale agreement between Kyekabira Wiiliam and JBK & Partners Ltd dated 2002;
- iii). Exh.D3 – Sale agreement between JBK & Partners Ltd and the 1<sup>st</sup> defendant dated 19<sup>th</sup> November 2002, together with transfer forms and receipts for payment of the purchase price;
- iv). Exh.D4 – Addendum to agreement for sale of land dated 24<sup>th</sup> January 2003;
- v). Exh.D5 – Certificate of title for Plot 303 in the name of the 1<sup>st</sup> defendant;
- vi). Exh.D6 – Certificate of title for Plot 303 (mutated into 1980) in the name of the 1<sup>st</sup> defendant showing correction of registration error;
- vii). Exh.D7 – Sale agreement between Ian Arebahona and Bernard Bamwine and Michael Muriithi dated 15<sup>th</sup> November 2007;
- viii). Exh.D8 – Sale agreement between the 1<sup>st</sup> defendant and Henry Mwesigwa dated 24<sup>th</sup> June 2009;
- ix). Exh.D9 – Letter of IGP directing CIID to issue police report;
- x). Exh.D10 – Letter by DPP closing file of complaint against the 1<sup>st</sup> defendant;
- xi). Exh.D11 – Report of the handwriting expert;
- xii). Exh.D12 – Police bond form for the 1<sup>st</sup> defendant;
- xiii). Exh.D13 – Acknowledgement of receipt of payment by the 2<sup>nd</sup> defendant (undated);
- xiv). Exh.D14 – Certificate of title for Plot 1974;
- xv). Exh.D15 – Agreement of sale of land between the 1<sup>st</sup> defendant and the 4<sup>th</sup> and 5<sup>th</sup> defendants;



- xvi). Exh.D16 – Certificate of title for Plot 1978;
- xvii). Exh.D17 – Certificate of title for Plot 1979;
- xviii). Exh.D18 – Certificate of title for LRV 3906, Folio 4, Plots 1978 and 1979; and
- xix). Exh.D19 – Sale of land agreement between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant dated 30<sup>th</sup> July 2007.

**Locus in quo visit:**

- 7. On the 26<sup>th</sup> May 2023, court carried out a locus in quo visit to the suit land located at Sekiunga, Kampala – Entebbe Road, adjacent to Akright Housing Estates – Kankungulu in the presence of counsel for the plaintiff, and counsel for the 1<sup>st</sup> defendant.
- 8. The plaintiff, and the 2<sup>nd</sup> and 5<sup>th</sup> defendants were present during the locus in quo visit.
- 9. No evidence was adduced by either party at the locus in quo visit.
- 10. Court made the following observations: i) that the land is vacant; ii) that there is on-going stone quarrying activity on the upper part of the land; iii) that the person operating the stone quarry is unknown; and iv) that the stone quarry is on the 1<sup>st</sup> defendant's land.

**Issues to be determined by the court:**

- 11. The following issues were framed for court's determination:
  - i). Whether the defendants or any one of them acquired title to the suit land through fraud?



- ii). Whether the defendants or any one of them is a bona fide purchaser for value without notice?
- iii). What remedies are available to the parties?

**Issue No.1: Whether the defendants or any one of them acquired title to the suit land through fraud?**

12. I have carefully considered the arguments of the various parties to the suit. I have also carefully evaluated the evidence that is before me.
13. The plaintiff seeks cancellation of the defendants' certificates of title. The plaintiff claims that the 1<sup>st</sup> defendant used a forged transfer form to procure registration as the owner of the land. The plaintiff makes several other allegations of fraud against the defendants. It is a well established principle of law, that in fraud cases, the party asserting fraud bears a heavier legal burden prove his case beyond a mere balance of probabilities. See the case of *Fam International Ltd & Anor v. Muhammed Hamid (Civil Appeal No. 16 of 1993) [1994] UGSC 12 (per Justice Benjamin Odoki (J.S.C))*.

**The transfer of the land from Rose Kiiza Nachwa to Ian Arebahona on the 26<sup>th</sup> July 2007:**

14. It was argued for the plaintiff, relying on the evidence of PW1 (Kimbugwe Jonathan), that Plot 303 was transferred to Ian Arebahona, the 1<sup>st</sup> defendant on 26<sup>th</sup> July 2007, using a transfer form dated July 2007 long after the death of Rose Kiiza Nachwa on the 11<sup>th</sup> September 2006. That the 1<sup>st</sup> defendant never purchased the suit land (Plot 303) from the late Rose Kiiza Nachwa, and no sale agreement existed between the parties. That the transfer form (Exh.P6) used by



the 1<sup>st</sup> defendant to transfer the suit land has a forged signature of the late Rose Kiiza Nachwa, which fact was also confirmed by a handwriting expert, who testified that he was requested by Police to examine the signature of the late Rose Kiiza Nachwa on Exh.P6 (transfer and consent form), and his conclusion was that the signature was forged. Counsel for the plaintiff submitted that the 1<sup>st</sup> defendant was fraudulent in transferring the suit land into his name using a forged transfer form. That the false representation that Rose Kiiza Nachwa had signed transfer forms in favour of the 1<sup>st</sup> defendant, whereas not, is evidence of fraud directly attributable to the 1<sup>st</sup> defendant. He relied on the testimonies of PW2 (Kato Bamweyana) and PW3 (Apollo Mutashwera Ntarirwa) for his submissions. He further submitted that, on the authority of Chao & Others (Trading Zung FU Co) v. British Traders & Shippers Ltd (N.V. Handelsmaatschappij J. Smits Import – Export Third Party [1954] 1 ALL ER 779 at 787, the transfer of the land to the 1<sup>st</sup> defendant is null and void.

15. In answer, counsel for the 1<sup>st</sup> defendant submitted as follows. That in 2007, in the course of trying to subdivide the land so as to transfer part of the land to the 2<sup>nd</sup> defendant, it was discovered that the 1<sup>st</sup> defendant's land had been mistakenly registered in the leasehold land register, instead of the mailo land register where it ought to have been registered. That the land office requested that fresh transfer forms be signed by Rose Kizza Nachwa in order to rectify the error in the register. That JBK & Partners Ltd approached the plaintiff, who had in fact brokered the sale of the suit land by Rose Kizza Nachwa to them, and tasked him with finding Rose Kizza Nachwa, his purported aunt to sign them. That shortly thereafter, the plaintiff returned the said transfer forms to JBK & Partners Ltd, assuring them that he had caused Rose Kizza Nachwa to sign them. That the signed transfer forms were passed onto Advocate John P.



Baingana and, through him to the land office, where the entry that had been made in error was cancelled, and replaced with another and correct one, on the 26<sup>th</sup> July 2007 under Instrument Number KLA347228. He relied on the testimonies of DW1 (Ian Arebahona), DW2 (Joseph Batume) and DW3 (Mulumba Matia) for his submissions.

**Decision by the court on the transfer of 2007:**

16. I have carefully considered the arguments of both parties on the transfer of the land in 2007.
17. The transfer that resulted into the registration of the 1<sup>st</sup> defendant as owner of the land on the 26<sup>th</sup> July 2007 was admitted in evidence as Exh.P6. Whereas Rose Kiiza Nachwa is alleged to have signed this very transfer form in July 2007, she had in fact died on the 11<sup>th</sup> September 2006 as per the death certificate (Exh.P1). PW3 (Apollo Mutashwera Ntarirwa), a handwriting expert testified that the signature of Rose Kiiza Nachwa on the transfer form of July 2007 is forged. The report of the handwriting expert was admitted in evidence as Exh.P21.
18. The story crafted by the 1<sup>st</sup> defendant that it is Kimbugwe Jonathan, the plaintiff who was tasked with the responsibility of procuring fresh transfer forms from Rose Kizza Nachwa in 2007 that turned out to be forged, is difficult to believe. According to the evidence adduced by the 1<sup>st</sup> defendant, the plaintiff brokered the sale of the land in 2003. But why would the 1<sup>st</sup> defendant trust a broker, Kimbugwe Jonathan to get signed transfer forms in 2007 four years later? Why was the 1<sup>st</sup> defendant not interested in physically meeting Rose Kizza Nachwa to see her sign the transfer forms? Was the 1<sup>st</sup> defendant diligent in entrusting



the alleged broker, Kimbugwe Jonathan to get him signed transfer forms from Rose Kizza Nachwa in 2007? If the 1<sup>st</sup> defendant had insisted on physically meeting Rose Kizza Nachwa in 2007, he would probably have discovered that she was already dead, and the use of a forged transfer form in 2007 that has caused all these problems, would not have arisen.

19. There is no doubt that the use of a forged transfer form is evidence of fraudulent transfer of the land into the names of the 1<sup>st</sup> defendant. The fraud is attributable to the 1<sup>st</sup> defendant because he was the direct beneficiary of the transfer. See the cases of *Fredrick J.K Zaabwe v. Orient Bank Ltd and 5 others, S.C.C.A No.4 of 2006*; and *Kampala Bottlers Ltd v. Damanico (U) Ltd, Supreme Court Civil Appeal No.22 of 1992 (coram: S.W.W. Wambuzi C.J, A. Oder, J.S.C., H. Platt, J.S.C)*.
20. Accordingly, therefore, I am satisfied with the evidence adduced by the plaintiff, that the transfer of the land to the 1<sup>st</sup> defendant on the 26<sup>th</sup> July 2007 cannot stand because it is based on a forged transfer form.

**The alleged transfer of the land from Rose Kizza Nachwa to Ian Arebahona on the 10<sup>th</sup> March 2003:**

21. It was argued, rather strongly, for the 1<sup>st</sup> defendant, that the land was transferred into the 1<sup>st</sup> defendant's names on the 10<sup>th</sup> March 2003, when the said Rose Kizza Nachwa was still very much alive. That the transfer of 2003 was effected through a transfer form signed by the said Rose Kizza Nachwa. That the plaintiff's own witness, Apollo Mutashwera Ntarirwa, the handwriting expert who testified as PW3, clearly stated in his report (Exh.P21) that the sale



agreement between Rose Kizza Nachwa and JBK & Partners Ltd was signed by her. That her signature thereon was consistent with her known signatures.

22. On the other hand, counsel for the plaintiff strongly contested the 1<sup>st</sup> defendant's stand. He argued that there no evidence to prove that the late Rose Kizza Nachwa signed a transfer form in favour of JBK and Partners Ltd or the 1<sup>st</sup> defendant, and that the said transfer form was used to register the 1<sup>st</sup> defendant as owner of the land on the 10<sup>th</sup> March 2003. That there was no evidence to prove that this transfer was entered in error because it was filed in the leasehold land registry. That the 1<sup>st</sup> defendant neither tendered in court the alleged transfer form of 2003 nor called the Commissioner for Land Registration to prove these allegations. That these are mere allegations that should not be believed by court. He further argued that, on the contrary, the plaintiff tendered in court a certified copy of the white page of Busiro Block 395 Plot 303 (mutated into Plot 1980), certified by the Commissioner for Land Registration, which proves that the 1<sup>st</sup> defendant was first registered on the 26<sup>th</sup> July 2007, and that there is no entry of the 1<sup>st</sup> defendant, having been entered on the title deed earlier in 2003.

**Decision by the court on the alleged transfer of the land on the 10<sup>th</sup> March 2003:**

23. I will start by warning myself on the burden of proof. In the case of Greenland Bank (In Liquidation) v. Richard Ssekiziyivu t/a Global General Auctioneers, High Court (Commercial Division), Civil Suit No.501 of 2001 (per Justice Yorokamu Bamwine (as he then was)), it was held that:

*"When [a] party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof, that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption."*



See also the Supreme Court case of J.K Patel v. Spear Motors Limited, SCCA No.4 of 1991

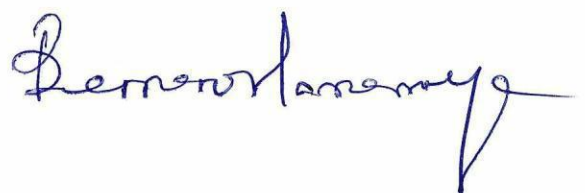
24. In the instant case, the plaintiff has proved that the transfer of the land in 2007 was based on a forged transfer form. But the 1<sup>st</sup> defendant asserts that he became a registered owner of the land on the 10<sup>th</sup> March 2003, and that the actions of the Registrar of Titles in 2007 was merely to correct an error in the registration particulars, otherwise, that his proprietary interest in the land is intact. The burden of proof has shifted to the 1<sup>st</sup> defendant; he bears the burden to prove that he was lawfully registered as owner of the land in 2003.
25. I have carefully evaluated the evidence adduced by the 1<sup>st</sup> defendant. It is alleged that Rose Kiiza Nachwa transferred the land to the 1<sup>st</sup> defendant on the 10<sup>th</sup> March 2003. A copy of the transfer form that was used in 2003 was not adduced by the 1<sup>st</sup> defendant. However, he adduced a copy of the certificate of title for the land comprised in Block 395 Plot 303 land at Sekiunga (Exh.D6) showing that he was entered as registered owner of the land on the 10<sup>th</sup> March 2003 under Instrument Number KLA247330.
26. DW1 (Ian Arebahona) testified that he purchased the suit land from JBK and Partners Ltd, who had initially purchased the land from Rose Kiiza Nachwa (Exh.D1 to D3). That it was agreed between the two parties that transfer of the land be effected directly from Rose Kiiza Nachwa to Ian Arebahona, the 1<sup>st</sup> defendant. That the parties agreed that payment of the purchase price be channelled through C. Mukiibi Sentamu & Co Advocates, the lawyers of JBK and Partners Ltd, who would ensure that letters of administration are processed, and the land transferred to Rose Kiiza Nachwa, and later to JBK and Partners



Ltd and eventually the 1<sup>st</sup> defendant. That in due course, it was agreed between the two parties that transfer of the land would be effected directly from Rose Kizza Nachwa to the 1<sup>st</sup> defendant, skipping JBK and Partners Ltd, to avoid unnecessary expenses. According to the 1<sup>st</sup> defendant, this is how he became registered owner of the land on the 10<sup>th</sup> March 2003. At this time, Rose Kiiza Nachwa was still alive, and PW3 (Apollo Mutashwera Ntarirwa), a handwriting expert, confirmed that she indeed signed a sale agreement dated 2002 between her and JBK and Partners Ltd. DW2 (Joseph Batume) testified in support of the 1<sup>st</sup> defendant's version of events, and that the transfer of the land was effected directly from Rose Kiiza Nachwa to the 1<sup>st</sup> defendant. DW3 (Mulumba Matia) equally testified in support of the 1<sup>st</sup> defendant's testimony. As to how he became registered owner of the land on the 10<sup>th</sup> March 2003, DW1 (Ian Arebahona) testified that:

*"I received from Mr. Joseph Batume the transfer form for Plot 303 which was signed by Nachwa, in whose names the land now was, together with the certificate of title. The form had been signed by her in blank, that is to say, it did not reflect the names of the purchaser. Mr. Joseph Batume explained to me that transferring the land into his company's names, when the company had already sold to me, so as to then transfer the land all over again into my names, would entail unnecessary expenses, and suggested that using the forms signed and provided by Rose Kizza Nachwa, the land be transferred directly into my names. I agreed to the proposal and the land was transferred into my names in March 2003."* underlining is mine for emphasis

27. The oral and documentary evidence adduced by the 1<sup>st</sup> defendant to prove that he was registered as owner of the land in 2003 requires careful consideration.



The first point, is that the certificate of title adduced by the 1<sup>st</sup> defendant (Exh.D6), is not certified by the Commissioner for Land Registration. Secondly, when compared with Exh.P3, a certificate of title for Busiro Block 395 Plot 303 (mutated into Plot 1980), certified by the Commissioner for Land Registration on the 17<sup>th</sup> February 2012, it reveals the following contrasting features. Exh.P3 (certified by the Commissioner for Land Registration) shows that the 1<sup>st</sup> defendant was first entered as the registered owner of the land on the 26<sup>th</sup> July 2007 under Instrument Number KLA347228. There is no record of the 1<sup>st</sup> defendant being entered as the registered owner of the land in 2003 on Exh.P3. This contrasts with Exh.D6 which shows that he was first entered as owner of the land on the 10<sup>th</sup> March 2003 under Instrument Number KLA247330. And then the 1<sup>st</sup> defendant was again entered as registered owner of the land on the on the 26<sup>th</sup> July 2007 under Instrument Number KLA347228. On Exh.D6, it is indicated that the registration of 10<sup>th</sup> March 2003 under Instrument Number KLA247330 is cancelled, and the words "Entered in error" are inscribed. No instrument number and date of cancellation are indicated. On the face of it, this would seem to support the narrative by the 1<sup>st</sup> defendant that he was first registered as owner of the land in 2003, which was later cancelled by the Registrar of Titles due an error, and replaced with another transfer of 2007. But there is one fundamental problem. Exh.D6 is not certified by the Commissioner for Land Registration, and Exh.P3 which is certified by the Commissioner for Land Registration tells a different story. In fact, Exh.P3 proves that the 1<sup>st</sup> defendant was only registered as owner of the land on the 26<sup>th</sup> July 2007. There is no record of him having been registered as owner of the land in 2003.

A handwritten signature in blue ink, appearing to read "Bernard Lameray". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

28. It ought to be recalled that, according to the record of proceedings, on the 12<sup>th</sup> May 2014, counsel for the 1<sup>st</sup> defendant undertook to adduce proof of transfer of the land in 2003 in form of additional witnesses and documents from the land office. I have perused the court record, and found no such proof provided by counsel.
29. Curiously, is it not the practice, that the Commissioner for Land Registration would have indicated an instrument number, and date for entry on the certificate of title, cancelling the 1<sup>st</sup> defendant's registration as owner of the land in 2003? Was it not prudent for the 1<sup>st</sup> defendant to call the Commissioner for Land Registration as a witness to support his narrative that his registration as owner of the land in 2003 was cancelled as having been entered in error, and replaced with that of 2007? Is Exh.D6, a genuine certificate of title or not? I am left wondering as to what the answers to these questions are, but I need not wonder any more, the inevitable conclusion that I must make in the vacuum so successfully created by the 1<sup>st</sup> defendant, is that he is implicated in the fraud that got him registered as owner of the land on the 26<sup>th</sup> July 2007.
30. There is no evidence before me to prove that the 1<sup>st</sup> defendant became the registered owner of the land on the 10<sup>th</sup> March 2003. Exh.D6, which the 1<sup>st</sup> defendant relied on to prove that he was registered as owner of the land in 2003 is not certified by the Commissioner for Land Registration. This court is unable to rely on the contents of Exh.D6. In fact, the unsuccessful narrative by the 1<sup>st</sup> defendant that he was first registered as owner of the land in 2003 has so heavily discredited his case, that I now doubt the credibility of the entire oral evidence adduced to support his case.



31. As to the admissibility of oral evidence to contradict documentary evidence, the law on this point as provided for, in sections 91 and 92 of the Evidence Act (Cap 43) is clear, and it is that, oral evidence shall not be admitted to contradict the contents of a document. See the case of Saroj Gandesha v. Transroad Ltd, Supreme Court Civil Appeal No.13 of 2009 (coram: Odoki, C.J., Katureebe; Okello; Tumwesigye; and Kisaakye; JJ.SC).
32. Accordingly, this court cannot rely on the oral evidence adduced by the 1<sup>st</sup> defendant, that he became registered owner of the land in March 2003, in light of the very clear documentary evidence of Exh.P3, certificate of title for Busiro Block 395 Plot 303 (mutated into Plot 1980), duly certified by the Commissioner for Land Registration on the 17<sup>th</sup> February 2012. Exh.P3 proves that the 1<sup>st</sup> defendant first became registered owner of the land on the 26<sup>th</sup> July 2007 and not in March 2003.
33. It was strongly argued for the 1<sup>st</sup> defendant that the plaintiff cannot be allowed to benefit from his own fraudulent conduct. Counsel for the 1<sup>st</sup> defendant argued that the legal maxim "*ex turpi causa non oritur actio*" translated as "*no action arises from deceit*" applies to the plaintiff's claim, and that this court should not aid him to benefit from his own illegal act. He relied on the case of Saunders & Another v. Edwards & Another [1987] 2 ALL ER 668 for this argument.
34. I will briefly comment on the submission by counsel for the 1<sup>st</sup> defendant on the applicability of legal maxim "*ex turpi causa non oritur actio*" to his client's case. The English case of Thackwell v. Barclays Bank plc [1986] 1 ALL ER 676 provides some very useful guidance for the application of the legal maxim. The brief facts of the case are that Thackwell sued the Bank in respect of a forged cheque. The Bank contended inter alia that the legal maxim of "*ex turpi causa*



*non oritur actio*” prevented Thackwell from pursuing the claim because he had been party to, or had knowledge of, the fraudulent refinancing scheme which had caused the cheque to be paid to Thackwell. The court held that:

*“Where the defence of ex turpi causa non oritur actio was relied on the court had to look at the quality of the illegality relied on and the proximity of the illegal conduct to the claim maintained by the plaintiff, and then determine (a) whether there had been illegality of which the court should take notice and (b) whether by affording the plaintiff the relief sought it would in all the circumstances be contrary to public policy because the court would be seen to be indirectly assisting or encouraging the plaintiff in his criminal act.”*

35. The 1<sup>st</sup> defendant sought to rely on the legal maxim, and argued that the plaintiff was the one that procured the forged transfer form, and that therefore, he cannot be allowed to benefit from his own illegal action. This is based on the oral testimonies of the 1<sup>st</sup> defendant and his witnesses, DW2 (Joseph Batume) and DW3 (Mulumba Matia). I have already held above, that the 1<sup>st</sup> defendant and his witnesses attempted to contradict the contents of Exh.P3, a certificate of title certified by the Commissioner for Land Registration, that the 1<sup>st</sup> defendant became a registered owner of the land on the 10<sup>th</sup> March 2003. It is my finding that the oral evidence of the 1<sup>st</sup> defendant and his witnesses is unreliable, and for this reason, I do not believe their evidence that it is the plaintiff that procured the forged transfer form. Accordingly, the legal maxim of *“ex turpi causa non oritur actio”* does not apply to the 1<sup>st</sup> defendant’s case.



36. Therefore, it is my decision that the 1<sup>st</sup> defendant has failed to prove that he was first registered as owner of the land on the 10<sup>th</sup> March 2003 which was cancelled by the Registrar of Titles due an error, and replaced with one of 26<sup>th</sup> July 2007.

**Conclusion on Issue No.1:**

37. I am satisfied that the plaintiff has proved beyond a mere balance of probabilities, that the 1<sup>st</sup> defendant was fraudulently registered as owner of the land on the 26<sup>th</sup> July 2007. The 1<sup>st</sup> defendant's registration as owner of the land was based on a forged transfer form, and this was adequately proved by the handwriting expert, PW3 (Apollo Mutashwera Ntarirwa). In the case of *Kampala Bottlers Ltd v. Damanico (supra)*, it was held that fraud must be attributable to the transferee, either directly or by necessary implication. I am satisfied that the plaintiff has proved attribution of the fraud to the 1<sup>st</sup> defendant, because it was him that stood to benefit from the forged transfer form, so that he could become registered owner of the land in 2007. He cannot deflect this fraudulent act to anyone else. He is directly implicated. I now turn to consider Issue No.2.

**Issue No.2: Whether the defendants or anyone of them is a bona fide purchaser for value without notice of fraud:**

38. The doctrine of a bona fide purchaser for value without notice of fraud is set out in *section 181 of the Registration of Titles Act (Cap 230)*:

***"181. Purchasers protected***

*Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he or she is registered as proprietor any purchaser bona fide*



*for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he or she claims was registered as proprietor through fraud or error or has derived from or through a person registered as proprietor through fraud or error; and this applies whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever."*

39. It is a fundamental rule that a purchaser of a legal estate for value without notice has an absolute, unqualified and unanswerable defence against the claims of any competing title holder. The onus of proof lies on the person putting forward this plea. It is a single plea, and is not sufficiently made out by proving purchase for value, and leaving it to the claimant to prove notice if he or she can. The purchaser must act in good faith. Any sharp or unconscionable conduct may disentitle a purchaser from putting forward this defence. The purchaser must undertake a full investigation of title before completing the purchase. In order to derive benefit from the doctrine, a purchaser must have made all the usual and proper inquiries, and still found nothing to indicate the interest of a third party. A purchaser who falls short of this standard cannot not plead that he or she had no notice of third-party rights which proper due diligence would have discovered. A purchaser is deemed to have constructive notice of a fact if he or she had actual notice that that there was some incumbrance, and a proper inquiry would have revealed what it was; or deliberately abstained from inquiry in an attempt to avoid having notice; or omitted by carelessly or for any other reason, to make an inquiry which a purchaser acting on skilled advice ought to have made, and which would have revealed the incumbrance. A purchaser has a duty to inspect the land and make a full inquiry about anything which appears



inconsistent with the title offered by the vendor. Possession of land that is inconsistent with a vendor's title constitutes sufficient notice to the purchaser of the rights of the possessor. See Megarry & Wade: The Law of Real Property, 9<sup>th</sup> Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, 2019 at paragraphs 5-005; 5-016-5-023); See also Mohammed Abdallah Garelnabi v. Diana Irene Nayiga (Civil Appeal No. 231 of 2019) [2022] UGCA 78, the Court of Appeal of Uganda (per Justice Catherine Bamugemerire, JA).

40. In the case of Yakobo M.N. Senkungu & 4 Others v. Cresensio Mukasa, Civil Appeal No. 17 of 2014, the Supreme Court of Uganda (per Justice Augustine S. Nshimye, J.S.C) held that:

*“In order for one to seek the protection of Section 181 (supra), he/she must prove that he/she is a bona- fide purchaser. The purchaser must act in good faith, ought to have given due consideration and purchased the land without notice of the fraud.”*

41. The doctrine applies to shield a purchaser from the fraud committed by a vendor of land.
42. Accordingly, having put forward the plea of a bona fide purchaser for value without notice of fraud, the onus is on the defendants to prove the following essential elements: i) that they acted in good faith; ii) that they undertook a full investigation of the vendors' title; and iii) that they undertook a thorough due diligence on the land, including a thorough inspection of the land, and still found no equitable interest that was inconsistent with the vendors' title.



43. I will now proceed to evaluate the evidence adduced by the defendants in order to determine if the plea of “a bona fide purchaser for value without notice of fraud” has been sufficiently established.

**The 1<sup>st</sup> defendant (Ian Arebahona):**

44. I have already dealt with the case of the 1<sup>st</sup> defendant. He is not a bona fide purchaser for value because he is the one that benefitted from the forged transfer form that got him registered as owner of the land on the 26<sup>th</sup> July 2007.

**The 2<sup>nd</sup> defendant (Bakahumura Charles):**

45. It was argued on behalf of the 2<sup>nd</sup> defendant that he is a bona fide purchaser for value without notice of fraud.
46. In his evidence in chief, DW5 (Bakahumura Charles) testified that he purchased the land from the 1<sup>st</sup> defendant through a sale agreement dated the 30<sup>th</sup> July 2007 (Exh.D19). That he paid a total purchase price of 50 million Uganda shillings to the said vendor. That at the time of executing the said agreement, the land was described as Busiro Block 395 Plot 303 measuring 2.023 hectares from which he only purchased 1 acre. That the sale agreement required the 1<sup>st</sup> defendant to subdivide and mutate 1 acre which he had purchased from him, and the same was later transferred into his names and registered as Busiro Block 395 Plot 1974. That prior to his purchase of the land, he entrusted Mr. Paul Baingana, an Advocate to represent him during the purchase process, and to ensure that he was legally protected. That the said Advocate informed him that he had conducted a search at the Land registry which confirmed the 1<sup>st</sup> defendant's ownership of the land. That he further carried out a physical



inspection of the land, and also met with the area local authorities, and introduced himself to them. That it was clear all this time that the land was vacant, without any developments, and there were no squatters on the land or other persons claiming interests in the land. That upon acquiring the land, some of the area local council officials assisted him in fencing off his portion of the land. That from the time of his acquisition of the land, he has continued to have physical possession of it. In cross examination, DW5 (Bakahumura Charles) claimed to have done a search on the land title prior to buying but he did not produce a copy of the search statement.

47. I have examined Exh.P13 (certificate of title for land comprised in Busiro Block 395 Plot 1974, certified by the Commissioner for Land Registration on the 17<sup>th</sup> February 2012). It shows that the 1<sup>st</sup> defendant was registered as owner of this particular plot of land on the 31<sup>st</sup> August 2007. The sale agreement by which the 2<sup>nd</sup> defendant purchased the land is dated 30<sup>th</sup> July 2007. It is clear to me that the 2<sup>nd</sup> defendant purchased the land before the 1<sup>st</sup> defendant was registered as owner of the land. Upon signing of the sale agreement dated the 30<sup>th</sup> July 2007, the 2<sup>nd</sup> defendant acquired an equitable interest in the land which transformed into a legal interest on the 13<sup>th</sup> September 2007 when his name was entered on the certificate of title as registered owner. Exh.P13 also shows that the only caveat on the land lodged by the plaintiff was registered on the 22<sup>nd</sup> February 2010. This proves that although the 2<sup>nd</sup> defendant failed to produce a copy of the search statement, there were no incumbrances on the land by the time he purchased the land. The evidence before me does not prove that the 2<sup>nd</sup> defendant was involved in the fraudulent registration of the 1<sup>st</sup> defendant



48. It is my decision that the fraud committed by the 1<sup>st</sup> defendant is not attributable to the 2<sup>nd</sup> defendant. Accordingly, having regard to the evidence before me and the law, I declare the 2<sup>nd</sup> defendant to be a bona fide purchaser for value without notice of fraud. His ownership of the land is protected and his title cannot be impeached.

**The 4<sup>th</sup> and 5<sup>th</sup> defendants (Bernard Muhangi Bamwine & Michael Murithi):**

49. DW4 (Bernard Muhangi Bamwine) testified that he lawfully purchased land comprised in Busiro Block 395 Plots 1978 and 1979. That he became registered owner of the land on the 3<sup>rd</sup> April 2008 under Instrument Number KLA371376; and on the 3<sup>rd</sup> April 2008 under Instrument Number KLA371376 respectively (Exh.D16 & D17). He further testified that sometime in November 2007, he was offered by the 1<sup>st</sup> defendant the land comprised in in Busiro Block 395 Plot 1978 and 1979 at Sekiunga for purchase, and when he searched the register, and inspected the land, he found no registered incumbrances, occupants or claimants on the said land. That by agreement of sale dated 15<sup>th</sup> November 2007 between the 1<sup>st</sup> defendant and himself, and the 5<sup>th</sup> defendant as his surety, he purchased from the 1<sup>st</sup> defendant, land comprised in Busiro Block 395 Plot 1978 and 1979 at Sekiunga, and the 1<sup>st</sup> defendant duly executed the transfer forms. The certificates of title for the said land were in the names of the 1<sup>st</sup> defendant. That subsequently, on 25<sup>th</sup> April 2008, he entered into a lease agreement with the 5<sup>th</sup> defendant, and on 25<sup>th</sup> September 2008, a leasehold certificate of title was granted to him vide Instrument Number KLA390775. That he does not know how the 1<sup>st</sup> defendant acquired the land. That there was no fraud on his part, and that the 5<sup>th</sup> defendant and himself are bona fide purchasers for value without notice of fraud. In cross examination, he testified that he did not consult the area local council officials. That he did not consult



neighbours because they were not there, the place was empty and he was buying a piece of it. That he did not open boundaries of the land.

50. I have perused Exh.P8, which is a certificate of title certified by the Commissioner for Land Registration on the 17<sup>th</sup> February 2012. It shows that the 1<sup>st</sup> defendant became registered owner of the land on the 31<sup>st</sup> August 2007. The sale agreement between the 1<sup>st</sup> defendant and the 4<sup>th</sup> defendant is dated 15<sup>th</sup> November 2007 (Exh.D15) which means that by this time, the land was already registered in the names of the 1<sup>st</sup> defendant. Exh.P8 also shows that a caveat by the plaintiff was registered on the 22<sup>nd</sup> February 2010 when the 4<sup>th</sup> defendant was already the registered owner of the land having been entered on the 3<sup>rd</sup> April 2008. I am satisfied that the fraud committed by the 1<sup>st</sup> defendant is not attributable to the 4<sup>th</sup> defendant. It is my decision that the 4<sup>th</sup> defendant is a bona fide purchaser for value without notice of fraud. His title cannot be impeached.
51. DW6 (Michael Murithi) testified that he lawfully purchased land comprised in Leasehold Register Volume 3906 Folio 4 Busiro Block 395 Plots 1978 & 1979. He became registered owner of the land on the 25<sup>th</sup> September 2008 under Instrument Number KLA390775 (Exh.D18). That the land was leased to him by the 4<sup>th</sup> defendant. That he made a search of the register, and visited the said land, and there were no registered incumbrances or otherwise. That on 25<sup>th</sup> April 2008, he entered into a lease agreement with the 4<sup>th</sup> defendant, and on 25<sup>th</sup> September 2008, a leasehold certificate of title was granted to him vide Instrument Number KLA390775. That he does not know how the 1<sup>st</sup> defendant acquired the land. That there was no fraud or fraudulent transfer of the property either to himself or to the 4<sup>th</sup> defendant, and the 4<sup>th</sup> defendant and himself are bona fide purchasers for value without notice of fraud.



52. I have perused Exh.D18, a certificate of title and lease. It shows that the 5<sup>th</sup> defendant became registered owner of the land on the 25<sup>th</sup> September 2008 after being granted a lease on the land by the 4<sup>th</sup> defendant. The lease agreement is dated 25<sup>th</sup> April 2008. I am satisfied that the fraud committed by the 1<sup>st</sup> defendant is not attributable to the 5<sup>th</sup> defendant, him having obtained a lease from the 4<sup>th</sup> defendant, who is himself a bona fide purchaser for value without notice of fraud. Accordingly, it is my decision that the 5<sup>th</sup> defendant is a bona fide purchaser for value without notice of fraud. His title cannot be impeached.

**Counter claim by the 1<sup>st</sup> defendant:**

53. The 1<sup>st</sup> defendant filed a counterclaim to the suit and prayed for the several reliefs.

54. In view of my holding above that the 1<sup>st</sup> defendant was fraudulently registered, I dismiss the 1<sup>st</sup> defendant's counter claim with costs.

**Issue No.3: What remedies are available to the parties?**

55. In the final result, I grant the following orders:

- 1). That the plaintiff's suit against the 2<sup>nd</sup> defendant (Charles Bakahumura), the 4<sup>th</sup> defendant (Bernard Muhangi Bamwine) and the 5<sup>th</sup> defendant (Michael Murithi) is dismissed.
- 2). That the plaintiff's suit against the 1<sup>st</sup> defendant (Ian Arebahona) and the 3<sup>rd</sup> defendant (Henry Mwesigwa) has succeeded.
- 3). The 1<sup>st</sup> defendant's counter claim is dismissed with costs.
- 4). I direct the Commissioner for Land Registration to remove a caveat lodged by Kimbugwe Jonathan on land comprised in Busiro Block 395 Plot 1974, registered in the name of the 2<sup>nd</sup> defendant (Charles Bakahumura).

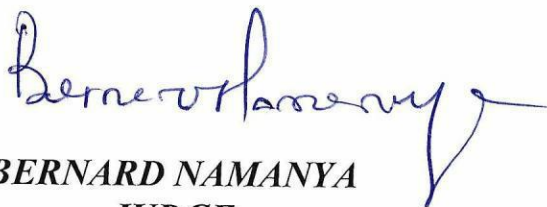


- 5). I direct the Commissioner for Land Registration to remove a caveat lodged by Kimbugwe Jonathan on land comprised in Busiro Block 395 Plots 1978 and 1979 registered in the name of the 4<sup>th</sup> defendant (Bernard Muhangi Bamwine).
- 6). I direct the Commissioner for Land Registration to remove a caveat lodged by Kimbugwe Jonathan on land comprised in Leasehold Register Volume 3906 Folio 4 Busiro Block 395 Plots 1978 & 1979 registered in the name of the 5<sup>th</sup> defendant (Michael Murithi).
- 7). I direct the Commissioner for Land Registration to cancel certificates of title in the name of the 1<sup>st</sup> defendant (Ian Arebahona) for land comprised in Busiro Block 395 Plots 1975, 1977 and 1980.
- 8). I direct the Commissioner for Land Registration to cancel a certificate of title registered in the name of the 3<sup>rd</sup> defendant (Henry Mwesigwa) for land comprised in Busiro Block 395 Plot 1976.
- 9). I direct the Commissioner for Land Registration to register Kimbugwe Jonathan (Administrator of the Estate of the late Rose Kiiza Nachwa) as owner of the land comprised in Busiro Block 395 Plots 1975, 1976, 1977 and 1980.
- 10). That a permanent injunction issues restraining the 1<sup>st</sup> and 3<sup>rd</sup> defendants, their agents, servants, workmen and all those claiming under them and/or deriving authority from them from trespassing, encroaching, interfering and/or in any way dealing with the land comprised Busiro Block 395 Plots 1975, 1976, 1977 and 1980.
- 11). I award general damages of Ushs 5,000,000 (five million Uganda Shillings) to the plaintiff which shall be paid by the 1<sup>st</sup> defendant (Ian Arebahona) and the 3<sup>rd</sup> defendant (Henry Mwesigwa).



- 12). That the plaintiff is awarded costs of the suit which shall be paid by the 1<sup>st</sup> defendant (Ian Arebahona) and the 3<sup>rd</sup> defendant (Henry Mwesigwa).
- 13). As between the plaintiff and the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants, I order that each party shall bear its own costs, for the reason that the mentioned parties are victims of the fraudulent transfer of the land to the 1<sup>st</sup> defendant.

**IT IS SO ORDERED.**

A handwritten signature in blue ink, appearing to read 'Bernard Namanya', with a stylized flourish at the end.

**BERNARD NAMANYA**  
**JUDGE**

**15<sup>th</sup> August 2023**

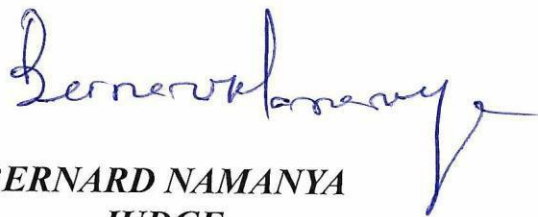
**Attendance**

15<sup>th</sup> August 2023 at 9:08am

Akaijagye Sonia, holding brief for Mr. Peter Walubiri	Counsel for the 4 <sup>th</sup> and 5 <sup>th</sup> defendants
Kamoga Jonathan, holding brief for Mr. Kintu Nteza Felix	Counsel for the plaintiff
Allena Kanyakire	Court Clerk

**Court:**

Judgment delivered in open chambers.



**BERNARD NAMANYA**  
**JUDGE**

*15<sup>th</sup> August 2023*